Affirmed and Opinion filed April 27, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00665-CR

TOMAS RUIZ SANCHEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 804,336

O P I N I O N

After entering a guilty plea and waiving his right to a jury trial, the trial court found Tomas Ruiz Sanchez, appellant, guilty of possession of marijuana weighing more than four ounces and less than five pounds. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121(b)(3) (Vernon Supp. 2000). The trial court assessed punishment at ten months in the Texas Department of Criminal Justice, State Jail Division. Appellant complains in one point of error that the trial court erred in denying his motion to suppress evidence. We affirm the trial court's judgment.

FACTUAL BACKGROUND

City police officers were informed that a suspect wanted for sexually assaulting a child could be found at a certain apartment. After verifying the warrant, Officers Anderson and Biggs went to the apartment to effectuate the arrest. When they arrived, the officers knocked on the door, and when someone answered, they smelled a heavy odor of marijuana coming from inside the apartment. They saw the suspect inside the apartment, crouched down and hiding in a corner. The man who answered the door invited the officers inside the apartment, and the officers arrested the suspect.

Next, Anderson and Biggs went inside the dining room. They saw marijuana packaged in clear plastic bags on the dining room table and arrested the individuals around the dining room. While they were handcuffing the occupants, appellant and another male walked through the apartment's open door and into the living room area. Appellant was carrying a white paper sack, and when he and his friend saw the officers and the people on the floor being cuffed, they ran away from the apartment. Biggs chased after them and caught appellant's friend in the parking lot; appellant escaped. Anderson then broadcasted a description of appellant over the police radio.

Officer Howard, who was dispatched to help Anderson effectuate the warrant, arrived at the apartment complex and saw appellant walking by with a white paper sack in his hand. When Howard heard Anderson's broadcast description, he pursued appellant. Howard found appellant crouched in the apartment's dumpster, clutching the white paper sack. Howard held appellant at gunpoint until Anderson arrived. Both officers then gave appellant verbal commands, removed him from the dumpster, and took him into custody. The substance in the white paper sack later tested positive for marijuana.

Appellant moved to suppress the evidence, arguing that the officers had no reasonable suspicion or probable cause to arrest, search, or detain him. The trial court denied appellant's motion to suppress, and he appeals the trial court's ruling on the motion.

DISCUSSION AND HOLDINGS

In his sole point of error, appellant argues that the trial court erred in denying his motion to suppress the evidence. Appellant claims the officers lacked reasonable suspicion or probable cause to arrest,

search, or detain him for three reasons: (1) appellant was not named in the arrest warrant; (2) appellant was merely present at the scene, and no independent factors affirmatively link him to the criminal activity in the apartment; and (3) appellant's frisk was not justified because he presented no risk of harm to the officers. Thus, appellant argues that his detention and arrest were unlawful, and the evidence seized as fruit of his detention and arrest should not have been admitted into evidence. We disagree.

Standard of Review

In reviewing a trial court's ruling on a motion to suppress evidence, an appellate court must determine the applicable standard of review. *See Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App.1997). When conducting our review, we give great deference to a trial court's determination of a mixed question of law, where historical fact findings and rulings on the applicable law are based on an evaluation of credibility and demeanor. *See Loserth v. State*, 963 S.W.2d 770, 772 (Tex. Crim. App.1998). However, mixed questions of law and fact that do not turn on an evaluation of credibility and demeanor are reviewed *de novo*.[1] *See Guzman*, 955 S.W.2d at 87.

If the issue is whether an officer had probable cause, under the totality of the circumstances, the trial court is not in an appreciably better position than the reviewing court to determine the issue. *See id.* Although great weight should be given to the inferences drawn by trial judges and law enforcement officers, determination of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. *See Guzman*, 955 S.W.2d at 87 (citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). Similarly, whether a defendant was "detained" within the meaning of the Fourth Amendment is a mixed question of law and fact which is reviewed *de novo*. *See Hunter v. State*, 955 S.W.2d 102, 105 n. 4 (Tex. Crim. App.1997).

Reasonable Suspicion to Stop or Detain Appellant

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[1] Cases involving an application of law to fact reviewed *de novo* exist when the State's evidence is uncontroverted, i.e., appellant has neither presented conflicting testimony nor contradicted the State's evidence in any way. *See State v. Ross*, 999 S.W.2d 468, 470-71 (Tex. App.—Houston [14th Dist.] 1999, pet. granted). These cases do not turn on "an evaluation of credibility and demeanor because the trial court does not have to decide which conflicting testimony deserves more weight." *Id*.

Law enforcement officers may briefly stop an individual suspected of criminal activity for an investigatory detention based on less information than is required for probable cause. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968). An officer must justify an investigative detention with specific articulable facts which, along with the officer's experience, personal knowledge, and logical inferences drawn from those facts, would warrant him in detaining the individual. *See Comer v. State*, 754 S.W.2d 656, 657 (Tex. Crim. App. 1986). These facts must create some reasonable suspicion that the detained person is, has been, or soon will be involved in criminal activity. *See Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995). The facts creating a reasonable suspicion do not themselves have to be criminal; they only need include facts which render the likelihood of criminal conduct greater than it would be otherwise. *See Crockett v. State*, 803 S.W.2d 308, 311 (Tex. Crim. App. 1991).

When we determine reasonable suspicion, we examine the totality of the circumstances surrounding the detention. *See Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed. 2d 301 (1990). "[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, __ U.S. __, 120 S.Ct. 673, 676, 145 L.Ed. 570 (2000). A person's nervous, evasive behavior is a relevant factor in determining reasonable suspicion. *See id.* Unprovoked flight upon noticing the police may justify an officer in suspecting that an individual is involved in criminal activity. *See id.*

Moreover, the determination of reasonable suspicion is not limited to the facts solely within the detaining officer's knowledge. *See State v. Jennings*, 958 S.W.2d 930, 933 (Tex. App.—Amarillo 1997, no pet.). We can rely on information relayed to him by other officers and the sum of the information known to those officers cooperating with him. *See Fearance v. State*, 771 S.W.2d 486, 509 (Tex. Crim. App. 1988). When the detaining officer acts only on a radio dispatch or a request to apprehend the suspect, the State must show that the detaining officer acted on the request of someone who had reasonable suspicion or probable cause. *See Jennings*, 958 S.W.2d at 933.

Here, Officer Howard detained appellant at gunpoint until another officer arrived to help take him into custody. As we discussed, Howard was first dispatched to help Anderson effectuate the arrest warrant for the sexual assault suspect. When Howard arrived at the apartment complex, he saw appellant

walking by with the white paper sack in his hand. After hearing appellant's description broadcasted over the police radio, Howard searched for appellant and found him hiding in the dumpster, clutching the paper sack.

Howard had a reasonable suspicion to detain appellant based upon the circumstances and his knowledge and experience as a police officer. Appellant matched the description of the police broadcast he heard over the radio. Howard could logically infer that appellant was or had been involved with criminal activity because he found appellant in a suspicious place; appellant was hiding in a dumpster. Additionally, Anderson, the officer who made the request over the police radio, had reasonable suspicion based on the information known to him and Officer Biggs. Anderson and Biggs entered the apartment smelling a strong odor of marijuana and saw marijuana in plain view on the dining room table. They observed appellant walk into the apartment unannounced with a paper sack in his hand, and flee upon seeing them. When Anderson chased after appellant, appellant ran and hid from him. These circumstances, taken together, justify Howard's decision to stop or detain appellant.

Probable Cause for Appellant's Warrantless Search and Arrest

As we explain further below, we also conclude that the officers had probable cause to search and arrest appellant without a warrant because appellant was found in a suspicious place - a dumpster - and the facts and circumstances known to the officers were sufficient to lead them to believe that appellant had committed or was committing an offense. A peace officer must have a warrant for an arrest unless a statutory exception applies. *See Josey v. State*, 981 S.W.2d 831, 841 (Tex. App.—Houston [14th Dist.] 1998, no pet.). To justify appellant's warrantless arrest, the State must show probable cause and an exception to the warrant requirement. *See Cornejo v. State*, 917 S.W.2d 480, 481 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd). Probable cause to make a warrantless arrest exists when "the facts and circumstances within the officer's knowledge, and of which the officer had reasonably trustworthy information, were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *See Cornejo,* 917 S.W.2d at 482-83. An exception to the warrant requirement exists when a peace officer finds a person in a suspicious place and under

circumstances reasonably showing the person has been guilty of some felony or is about to commit some offense against the law. *See* TEX. CODE CRIM. PROC. ANN. Art. 14.03(a)(1) (Vernon Supp. 2000).

We apply a "totality of the circumstances" test to determine probable cause based on a warrantless search and seizure. *See Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991). The burden is on the State to prove the existence of probable cause to justify a warrantless arrest or search. *See Brown v. State*, 481 S.W.2d 106, 109 (Tex. Crim. App. 1972). Article 14.03(a)(1) requires the legal equivalent of probable cause. *See Amores*, 816 S.W.2d at 411.

When determining a "suspicious place" for the purposes of article 14.03(a)(1), few, if any, places are suspicious in and of themselves. *See Johnson v. State*, 722 S.W.2d 417, 421 (Tex. Crim. App. 1986). Determining whether a place is suspicious is highly fact-specific. *See Holland v. State*, 788 S.W.2d 112, 114 (Tex. App.—Dallas 1990, pet. ref'd). A place may become suspicious, from a police officer's perspective, due to facts and circumstances known to the officer and any reasonable inferences he can draw from those facts. *See Muniz v. State*, 851 S.W.2d 238, 251 (Tex. Crim. App. 1993).

If an arrest is justified under article 14.03(a)(1), a police officer is entitled to conduct a search incident to the arrest. *See Flores v. State*, 895 S.W.2d 435, 444 (Tex. App.—San Antonio 1995, no pet.). The officer can search appellant's person and the area within his immediate control. *See Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). As we noted, both of the elements of probable cause are present here.

First, Officers Howard and Anderson could have determined that appellant was in a suspicious place when they discovered him. Prior to his detention, appellant walked into an apartment where contraband was in plain view, and fled upon noticing the police officers. Anderson knew the occupants inside the apartment were engaged in illegal activity - possession of marijuana - and when appellant immediately fled upon entering the apartment, Anderson broadcasted his description over the police radio. Howard identified a man matching appellant's description, and pursued him. The chase ended at a dumpster, where appellant was hiding - inside the dumpster. We have no problem concluding that the dumpster was a "suspicious place."

Second, Howard and Anderson could have concluded that they discovered appellant under circumstances reasonably showing he had committed or was about to commit some offense against the law. Appellant walked into an apartment, unannounced where marijuana was in plain view. He was holding a white paper sack. Immediately upon seeing the police officers, he ran and then hid in a dumpster, still clutching the white paper sack. From these facts, Howard and Anderson could have reasonably concluded appellant had committed or was about to commit an offense dealing with contraband when he walked inside the apartment.

We conclude that Officers Howard and Anderson had sufficient probable cause to arrest appellant without a warrant under article 14.03(a)(1) of the Texas Code of Criminal Procedure. The marijuana and any other evidence produced during his search was found within the scope of a search incident to an arrest.

Consequently, appellant's detention and arrest was legal, any evidence produced as a result of that detention and arrest was admissible, and the trial court did not err in overruling appellant's motion to suppress evidence. We overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

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Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed April 27, 2000.
Panel consists of Justices Yates, Fowler and Edelman.
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