Affirmed and Opinion filed August 9, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00696-CR

THURMAN HENRY ELLIS, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 828,040

O P I N I O N

Pursuant to a plea agreement, appellant, Thurman Ellis, pled guilty to the felony offense of driving while intoxicated. The trial court subsequently assessed appellant's punishment at five (5) years confinement in the Institutional Division of TDCJ – probated for 5 years, and 100 days in jail as a condition of community supervision. Raising a single issue for review, appellant now challenges his conviction. We affirm.

Background

On November 4, 1999, motorist Leonard Morrison observed an individual driving erratically on a Harris County roadway. Using his mobile phone, Morrison notified the

police who dispatched officer J.R. Brashier. Brashier proceeded to the scene where he saw officer Chambers had detained appellant for an investigation. Brashier stated that appellant appeared intoxicated and was driving with a suspended license. He drove appellant to the police station and performed tests confirming appellant's intoxication. Brashier placed appellant under arrest for driving while intoxicated. Prior to entering a guilty plea, appellant filed a motion to suppress all evidence supporting his conviction based on the State's lack of reasonable suspicion to detain. Based on an affidavit submitted by Brashier, detailing Chambers's observations of appellant's erratic driving and Morrison's report, the court denied appellant's motion to suppress. Appellant's sole issue for review is the trial court's denial of this motion.

Standard

When reviewing a trial court's ruling on a motion to suppress, we afford almost total deference to the trial court's determination of the historical facts supported by the record. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997); *Chilman v.State*, 22 S.W.3d 50, 53 (Tex. App.—Houston [14th Dist.] 2000, pet ref'd). This is especially so when the trial court's findings of fact are based on an evaluation of credibility and demeanor. *Id*. Conversely, when the ruling is on application of the law to a fact question that does not depend upon an evaluation of credibility and demeanor, we review the trial court's decision de novo. *Id*. Determinations of reasonable suspicion and probable cause are reviewed de novo. *Id*. at 87 (citing *Ornelas v. United States*, 517 U.S. 690 (1996)). We will review de novo the application of these facts to law.

Investigatory Detention

Appellant attacks the State's reasonable suspicion evidence by arguing: 1) no evidence was presented from officer Chambers, because assertions of his observations in officer Brashier's affidavit were inadmissible hearsay; 2) no evidence was presented from citizen Morrison, because assertions of his observations in officer Brashier's affidavit were inadmissible hearsay within hearsay; 3) no evidence was presented by officer

Brashier because he did not have personal knowledge of events described in the affidavit; and, 4) no evidence was presented regarding the reliability of citizen Morrison's testimony.

We first turn to appellant's hearsay contentions contained in subissues one and two. Hearsay is a statement, other than one made by the declarant while testifying at trial or a hearing, offered in evidence to prove the truth of the matter asserted. TEX. R. EVID. 801(d). Thus, a statement which is not offered to prove the truth of the matter asserted, but is offered for some other reason, is not hearsay. *Jones v. State*, 843 S.W.2d 487, 499 (Tex. Crim. App. 1992). Regarding out-of court statements implicating a person as a suspect, the hearsay rule is not applicable. *Id*. In *Jones*, an officer testified that out-of-court statements implicated the defendant and were the basis for the defendant becoming a suspect and ultimately led to his arrest. *Id*. The court held the extrajudicial statements were not inadmissible hearsay because they were admitted not to prove the truth of the matter asserted, but to explain how the defendant was a suspect. *Id*. The statements of officer Chambers and citizen Morrison, contained in Brashier's affidavit, were not offered to prove that appellant was driving while intoxicated. Instead, these statements were offered to demonstrate the how officer Brashier came to regard appellant as a suspect. Accordingly, appellant's subissues one and two are without merit.

We now turn to appellant's third and fourth subissues. Here appellant argues that officer Brashier's affidavit was insufficient to show reasonable suspicion to detain appellant because none of the facts stated therein reflect his personal knowledge. In addition, appellant complains Brashier's affidavit, largely based on the report by witness Morrison, contains no showing of Morrison's reliability.

An investigative detention occurs when a citizen is confronted by a police officer who, under a display of law enforcement authority, temporarily detains the person for purposes of an investigation. *Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995). It is well settled that law enforcement officers may stop and briefly detain persons

suspected of criminal activity on less information than is constitutionally required for probable cause to arrest. *Terry v. Ohio*, 392 U.S. 1, 22 (1968); *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997). However, it is equally well established that the officer must have reasonable suspicion in order to justify an investigative detention,. *Terry*, 392 U.S. at 21; *Davis*, 947 S.W.2d at 242-43.

A court examines the reasonableness of a temporary detention in terms of the totality of the circumstances. *Woods v. State*, 956 S.W.2d 33, 38 (Tex. Crim. App. 1997). To justify an investigative detention, the officer must become aware of and articulate specific facts premised upon his experience and personal knowledge. This evidence, coupled with logical inferences from those facts, would warrant the intrusion on the detainee. *Garza v. State*, 771 S.W.2d 549, 558 (Tex. Crim. App. 1989). These facts must amount to more than a mere hunch or suspicion. *Id*. Instead, the articulated facts used by the officer must create reasonable suspicion that some activity out of the ordinary is occurring or has occurred, a suggestion to connect the detainee with the unusual activity, and an indication the unusual activity is related to crime. *Id*.

In an attempt to establish reasonable suspicion to detain appellant for driving while intoxicated, Brashier submitted the following affidavit:

> On or about November 4, 1999, I was on patrol when I received a dispatch regarding a cell phone caller who was reporting an erratic driver on a public roadway in Harris County, Texas. I received a description of the vehicle and I located the vehicle after the vehicle had been stopped by officer Chambers of the Houston Police Department. I identified the defendant by his Texas Driver's License (which was under suspension) and I observed him to be extremely intoxicated. I learned that the wheel witness (Leonard Morrison) had observed the defendant driving all over the place on the road, nearly striking a number of cars and running some of them off the road. Officer Chambers stopped the defendant as a result. The defendant failed to maintain a single lane on a number of occasions and also stopped his car at a green light on more than one occasion.

Based on this affidavit, we find that Brashier established reasonable suspicion to detain appellant for driving while intoxicated. In reaching this conclusion, we are not

limited to consider only Brashier's personal knowledge. Brashier could properly act upon the basis of information relayed to him by other officers such as Chambers. *Fearance v. State*, 771 S.W.2d 486, 510 (Tex. Crim. App. 1988). Moreover, a reviewing court may consider the sum of information known to the officers at the time of arrest or detention in determining probable cause or reasonable suspicion. *Farmah v. State*, 883 S.W.2d 674, 678 (Tex. Crim. App. 1994). Brashier's personal knowledge of these facts was not necessary because he formed a reasonable suspicion to detain appellant based on information provided by Chambers and the police dispatcher

Finally, appellant claims that the affidavit contains no facts showing witness Morrison's reliability, and therefore does not support a finding of reasonable suspicion. We disagree. When a named informant is a private citizen whose only contact with the police results from having witnessed a criminal act committed by another, the credibility and reliability of the information is inherent. *Esco v. State*, 668 S.W.2d 358, 360-61 (Tex. Crim. App. 1982). Here witness Morrision reported his observation that appellant, at a minimum, made multiple unsafe lane changes in violation of the Texas Transportation Code. *See* TEX. TRANS. CODE ANN. § 545.060 (Vernon 1999). Therefore, under the holding in *Esco*, Morrison's report to the police was reliable. Accordingly, we overrule appellant's issue for review and affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed August 9, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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