Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NO. 14-98-00546-CR

TEDDYE T. JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 772,108

O P I N I O N

Appellant was charged with the offense of possession with intent to deliver cocaine. TEX. HEALTH & SAFETY CODE ANN. § 481.112 (Vernon 1992). After the trial court denied his motion to suppress, appellant pleaded guilty to the lesser offense of possession of a controlled substance and admitted true to two enhancement paragraphs. Pursuant to a plea bargain, the trial judge sentenced him to twenty-five years confinement. In his sole point of error, appellant claims the trial court erred in denying his motion to suppress. We affirm.

On January 7, 1998, Houston Police Officers' Larry West and Mark Collinsworth ran into Edgar Charles at a Shell Station on the 610 Loop. West described Charles as a beggar that he had seen on a couple of occasions. Officer Collinsworth flagged down Charles, who approached the unmarked vehicle. Both officers were wearing plain clothes. Officer West told Charles that he "wanted a 20," which meant $20 worth of crack cocaine. Charles said that he would need a ride so he could make contact with his "man." The officers let Charles get in the car and they drove to a duplex about a mile from the gas station.

When they reached the area, Officer West saw appellant walking out of a duplex. He testified that he had been to that location several times before and had retrieved narcotics. Officer West stopped the vehicle, then Officer Collinsworth handed Charles money to buy cocaine. When Charles crossed the street, appellant waived and motioned to him. Officer West saw the two talking to each other, but was not in a position to see whether they had exchanged the money for cocaine. Shortly thereafter, appellant directed Charles to the door of the duplex. Charles went inside and appellant began to walk away from the complex. Officer West instructed the raid team via radio that he wanted them to stop the appellant for "constructive or possibly carrying our money."[1]

Houston Police Officer Scott Boyce received the radio dispatch from the undercover officers. He saw appellant and asked him to stop. Appellant complied. Boyce immediately performed a pat down search for weapons. When Boyce touched appellant's front left jacket pocket, he felt a substance that he immediately recognized as a packet of cocaine. Officer Boyce confiscated the cocaine and placed appellant under arrest. It was later revealed that Charles did not buy cocaine from appellant, but from another person that he met inside the duplex.

[1] On cross-examination, appellant's counsel asked Officer West if he directed the police officers to arrest appellant for constructive delivery. Officer West testified that he did.

A ruling on a motion to suppress lies within the sound discretion of the trial court. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). At the hearing on the motion, the trial court serves as the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Id.*; *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App.1990). Therefore, absent a clear showing of an abuse of discretion, we will not disturb the trial court's ruling.

Appellant argues that the officers did not have probable cause to arrest and subsequently search his person. The State claims that appellant was detained by Officer Boyce and was immediately patted down for safety purposes, or alternatively, that there was probable cause to support a warrantless arrest under TEX. CODE CRIM. PROC. ANN. Art. 14.01 (Vernon 1997). This court will uphold the trial court's ruling if it is correct on any theory of law applicable to the case. *Calloway v. State*, 743 S.W.2d 645, 651-52 (Tex. Crim. App.1988). As the trial judge in this case did not specify the basis for allowing the evidence from the search to be admitted, we must determine whether the record supports a conclusion that the warrantless search at issue fell within any of the recognized exceptions to the warrant requirement. We hold that the police had reasonable suspicion to detain appellant and to perform a limited pat down search.

The characterization of a stop as an arrest or merely detention based on restraint of movement is made in light of all the facts and circumstances. *Hoag v. State*, 728 S.W.2d 375, 379 (Tex. Crim. App. 1987). Factors taken into account include: (1) need to gain control over the suspect, (2) the use of force, (3) displaying weapons or use of handcuffs, (4) length of detention, (5) admonitions of the detaining officer, (6) reasonable perception of the detainee as to his status, (7) the opinion of the detaining officer as to the status of the detention, and (8) the overall intrusiveness of the detention. *See Amores v. State*, 816 S.W.2d 407, 412 (Tex. Crim. App. 1991); *Nargi v. State*, 895 S.W.2d 820, 822 (Tex. App.–Houston [14th Dist.] 1995), *pet. dism'd improv. granted*, 922 S.W.2d 180 (Tex. Crim. App. 1996).

Officer Boyd instructed Officer Boyce to stop the appellant. Officer Boyce described the stop of appellant as a detention. Boyce asked appellant to stop and did not use any force. He then performed a limited pat down search, which was not as intrusive as a search incident to an arrest. The record does not show that any officer displayed a weapon. Appellant was not handcuffed prior to his arrest. Appellant did not testify at the motion to suppress hearing, so the record does not show his perception as to his status. After considering all of the facts and circumstances, we hold that the police detained appellant.

We must now determine whether the police had reasonable suspicion to detain appellant. When reviewing an investigative detention under either state or federal law, it is accepted 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." *Johnson v. State,* 912 S.W.2d 227, 235 (Tex. Crim. App. 1995), *citing Crockett v. State*, 803 S.W.2d 308, 311 (Tex. Crim. App. 1991). The circumstances must support a reasonable suspicion that the person detained "actually is, has been, or soon will be engaged in criminal activity." *Id.* An officer must have specific articulable facts that, in light of his experience and general knowledge and reasonable inferences from the facts, would justify the intrusion on the citizen. *Gurrola v. State,* 877 S.W.2d 300, 302 (Tex. Crim. App. 1994). Reasonable suspicion is more than a hunch, but less than proof of wrongdoing by a preponderance of the evidence. *Holladay v. State,* 805 S.W.2d 464, 469 (Tex. Crim. App. 1991).

Officer West and Collingsworth knew they were looking for Charles' drug dealer. When they approached appellant, he was leaving a duplex where Officer West had retrieved narcotics from on several occasions. Appellant then made contact with Charles. After the two talked, appellant went into the duplex. Although, neither officer saw whether the two exchanged money for drugs, based on all of the circumstances, the police had reasonable

suspicion to believe that an exchange may have taken place. Therefore, the officers could detain appellant for investigation and perform a pat down search for safety purposes.

Under these circumstances we find the trial court did not abuse its discretion in denying appellant's motion to suppress. We overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed November 18, 1999.
Panel consists of Justices Draughn, Lee, and Hutson-Dunn.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.