Affirmed and Opinion filed December 7, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-01349-CR

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THE STATE OF TEXAS, Appellant

V.

TALUNDRIA WATSON, Appellee

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 37,385

O P I N I O N

In this accelerated appeal, the State of Texas challenges the trial court's order suppressing evidence obtained in a search following a traffic stop. We affirm.

Talundria Watson was indicted for felony possession of at least four hundred grams of cocaine and filed a motion to suppress evidence seized in the warrantless search of her car following a traffic stop. The trial court granted that motion, and the State now challenges the trial court's implied finding that there was insufficient probable cause to justify a search of appellee's vehicle.[1]

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[1] Appellee's brief argues that she had standing to contest the search of a car which she owned but in which she was a passenger at the time of the traffic stop. Because the State has not challenged appellee's standing to contest the search of her car, we do not address this contention.

In reviewing a ruling on a motion to suppress evidence, we afford almost total deference to the trial court's determination of historical facts[2] and its application of law to fact where those determinations are supported by the record and are based on an evaluation of credibility and demeanor. *See Loserth v. State*, 963 S.W.2d 770, 772 (Tex. Crim. App. 1998). A trial court's application of law to fact which is not based on an evaluation of credibility and demeanor is reviewed *de novo*. *See id*. In this regard, the fact that credibility and demeanor are factors, even important factors,[3] in the trial court's assessment does not necessarily mean that its resolution *turns* on an evaluation of credibility and demeanor. *See id*. Rather, a question turns on an evaluation of credibility and demeanor where, as here, the testimony of one or more witnesses, if believed, is enough to establish what is needed to decide the substantive issue. *See id*. at 773.

Despite the foregoing, at a suppression hearing, the trial court is the sole judge of the credibility of the witnesses and the weight of their testimony. *See, e.g., Wyatt v. State*, 23 S.W.3d 18, 23 (Tex. Crim. App. 2000). Thus, where suppression has been granted, the prevailing standards of review can produce contradictory results if denial of suppression would have been indicated by a *de novo* review of the State's uncontroverted evidence, but granting of suppression was justified if the trial court disbelieved any material portions of that evidence. *See State v. Ross*, 999 S.W.2d 468, 471, 473-74 (Tex. App.—Houston [14th Dist.] 1999, pet. granted). This court has therefore concluded that "the fundamental importance of the trier of fact's discretion to evaluate credibility and demeanor and to believe or disbelieve any witness's testimony, even if uncontroverted, persuades us that case law describing when a case turns on an evaluation of credibility and demeanor should not be interpreted to infringe on that discretion." *See id*. at 473-74 (holding that it was within the trial court's discretion to

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2 Where, as here, the trial court has not made explicit findings of historical fact, we assume the trial court made implicit findings of fact that are supported by the record and that buttress its conclusion, and we review the evidence in the light most favorable to its ruling. *See Carmouche v. State*, 10 S.W.3d 323, 327-28 (Tex. Crim. App. 2000).

3 For instance, the credibility of an arresting police officer would be weighed heavily by a trial court in a ruling on a motion to suppress evidence based upon an alleged lack of probable cause. *See Loserth*, 963 S.W.2d at 772.

disbelieve the State's uncontroverted evidence and grant the motion to suppress even though under a *de novo* review, the evidence was sufficient to establish probable cause).

In this case, appellee does not dispute that the testimony of the arresting officer, if believed, was sufficient to establish probable cause to search her automobile. However, a principle basis for the existence of probable cause was the officer's testimony at the suppression hearing that he had smelled burnt marijuana in appellee's car.[4] Because he had failed to mention this fact in the affidavits he filed to establish probable cause, appellee raised an issue concerning the officer's credibility. Because the evidence, if believed, would have otherwise supported a denial of appellee's motion to suppress, it can be inferred that the trial court's granting of suppression was based on a determination that the officer's testimony was not credible. As in *Ross*, we again conclude that it was within the discretion of the trial court to evaluate the credibility of the witness and decide accordingly. Therefore, the State's point of error is overruled, and the trial court's order granting Watson's motion to suppress is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 7, 2000.
Panel consists of Justices Anderson, Fowler, and Edelman.
Do Not Publish — TEX. R. APP. P. 47.3(b).

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4 *See Moulden v. State*, 576 S.W.2d 817, 820 (Tex. Crim. App. 1978) (holding that police officers had probable cause to search the vehicle based on detecting an odor of burnt marijuana in it).