Affirmed and Opinion filed March 15, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00463-CR

WILBURN DUNCAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 14
Harris County, Texas
Trial Court Cause No. 98-40440

O P I N I O N

Appellant was convicted by the trial court of the offense of unlawfully carrying a weapon. See TEX. PEN. CODE ANN. § 46.02 (Vernon Supp. 2000). Following its finding of guilt, the trial court assessed punishment at one year in the Harris County Jail and a $2500 fine. Raising two issues for review, appellant now argues that the trial court erred by denying his motion to suppress evidence seized by the police. We affirm.

Background

In the early morning hours of October 7, 1998, Harris County deputies Gwosdz and Anderson were routinely patrolling the Greenspoint area of northern Houston. During the course of this patrol, at approximately 3:15 a.m., the officers approached the Greenspoint Inn and pulled into its parking lot. As the officers continued their drive through the parking area, they saw a vehicle positioned near the middle of the lot, with its engine running, lights off, and front passenger door open. Shortly thereafter, the officers observed a black male run from the opposite side of the Inn and enter the parked vehicle. Becoming suspicious, both officers then walked toward the vehicle. In response, appellant, the driver of the vehicle, began to drive off, causing the two officers to step in his path. Appellant then stopped the vehicle and began responding to questioning when both officers detected a strong odor of alcohol. At this point, appellant exited the vehicle and submitted to a frisk by Anderson. After finding a gun hidden near his hip, the officers placed appellant under arrest for unlawful carrying of a weapon. Prior to trial, appellant filed a motion to suppress all evidence seized during the stop. The trial court carried this motion with the trial on the merits, subsequently denied the motion, and convicted appellant. We now turn to appellant's first issue for review.

Standard

We generally review a trial court's findings on a motion to suppress for abuse of discretion. *Cantu v. State*, 817 S.W.2d 74, 77 (Tex. Crim. App. 1991). However, when presented with a question of law based on undisputed facts, we apply a *de novo* review standard. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997) (holding that a *de novo* standard applies to motion to suppress involving mixed questions of law and fact not turning on credibility of witnesses). In this instance, the relevant facts are not in dispute and resolution of this appeal does not turn on an evaluation of the credibility or demeanor of a particular witness. Therefore, we must review the trial court's ruling *de novo*.

Reasonable Suspicion for Investigative Detention and Search

In his two issues for review, appellant argues that the trial court erred in overruling his motion to suppress evidence because the initial stop of his vehicle and subsequent weapon-search violated the Fourth Amendment of the United States Constitution and Article 1, Section 9 of the Texas Constitution. Where, as here, an appellant does not separately argue the existence of differences in protection against unreasonable search and seizure under the federal and state constitutions, we may deem the federal and state constitutional protections identical. *Narvaiz v. State*, 840 S.W.2d 415, 432 (Tex. Crim. App. 1992). Therefore, we will address appellant's claims under the U.S. and Texas Constitutions concurrently.

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 to justify an investigative detention, the officer must have reasonable suspicion. *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 have specific articulable facts which, premised upon his experience and personal knowledge, and when coupled with the 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 articulable facts used by the officer must create some reasonable suspicion that some activity out of the ordinary is occurring or has occurred, some suggestion to connect the detainee with the unusual activity, and some indication the

unusual activity is related to crime. *Id*. Based on this line of authority, appellant argues that the trial court erred in denying his motion to suppress as the arresting officer had no reasonable suspicion of criminal activity. We disagree.

At the suppression hearing, Gwosdz testified that he viewed appellant's vehicle resting in a parking lot with its engine running, front passenger door open, and lights off – all occurring at about 3 a.m. The officer then observed a man run to appellant's vehicle, enter it, and close the door. When the officer approached the vehicle to investigate, the appellant attempted to drive off. Stepping in front of the vehicle, the officer then asked the appellant whether he was a resident or guest at the hotel. After appellant answered that he was not, Gwosdz detected the strong odor of alcohol. In addition, Gwosdz testified that he considered the hotel a high-crime area as he had made several drug related arrests on the premises and knew of several vehicles stolen from its parking lot.

Viewed in the totality of the circumstances, we find that Gwosdz's testimony supported the existence of reasonable suspicion to temporarily detain appellant. First, flight from a show of authority is a factor in support of a finding that there is reasonable suspicion that a person is involved in criminal activity. *See Carey v. State*, 855 S.W.2d 85, 87 (Tex. App.—Houston [14th Dist.] 1993, writ ref'd). Likewise, Appellant's presence in a high crime area, while alone insufficient to justify a temporary detention, is a factor to be considered in the legality of a detention. *See Amorella v. State*, 554 S.W.2d 700, 702–03 (Tex. Crim. App. 1977). In *Amorella*, the Court found that an investigatory stop was justified where a police officer observed a vehicle with the lights on and motor running in a department store parking lot at 1:30 a.m. *Id*. The area was known to the police officer to be a high crime area. *Id*. The vehicle contained two individuals and the third was standing outside of the vehicle. *Id*. When the man outside the vehicle noticed the officer, he got into the vehicle and began to drive off, causing the officer to stop the vehicle. *Id*. Based on these facts, the *Amorella* Court held that the investigative stop was justified and that a reasonable suspicion of criminal activity existed. *Id*. at 702. In the same fashion, we hold

that Gwosdz was justified in temporarily detaining appellant. Appellant's first issue is overruled.

Having found that appellant's temporary detention was justified, we now examine appellant's related issue arguing that officer Anderson did not have either reasonable suspicion or probable cause to search him for weapons. In the course of an investigative detention, an officer may conduct a limited search for weapons where it is reasonably warranted for his safety or the safety of others. *Ramirez v. State*, 672 S.W.2d 480, 482 (Tex. Crim. App. 1984). A limited frisk or pat down for weapons for one's protection is authorized when an officer, under the circumstances at the time, can conclude on some objective, reasonable basis that his safety is in danger. *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *Salazar v. State*, 893 S.W.2d 138, 143-44 (Tex. App. —Houston [1st Dist.] 1995, pet. ref'd, untimely filed). The purpose of a limited search after an investigatory stop is not to discover evidence of crime, however, but to allow the peace officer to pursue investigation without fear of violence. *Wood v. State*, 515 S.W.2d 300, 306 (Tex. Crim. App. 1974).

To assess the reasonableness of Anderson's conduct in searching appellant, "specific and articulable facts" must appear in the record which, when taken together with rational inferences from those facts, would warrant a self-protective search for weapons. *Worthey v. State*, 805 S.W.2d 435, 438 (Tex. Crim. App. 1991). The record reflects that the investigative detention occurred around 3:15 a.m. in a parking lot located in a designated high crime area. Moreover, Anderson detected a strong odor of alcohol from appellant. *See Lippert v. State*, 664 S.W.2d 712, 721 (providing that one of the factors in determining the validity of a pat down involves whether the searched party was under the influence of alcohol). Based on these facts, we find that a reasonably prudent person in Anderson's situation would justifiably believe that his safety or that of others was in danger.

Accordingly, we overrule appellant's second issue and affirm the judgment of the trial court.

/s/ Charles Seymore
Justice

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Senior Chief Justice Murphy[1] and Justices Hudson and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.