Affirmed and Opinion filed April 4, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-01373-CR

MARK JOSEPH BLAKE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 845,345

O P I N I O N

Appellant entered a plea of guilty to the offense of possession of a controlled substance. He was convicted and the trial court, pursuant to a plea bargain, assessed punishment at five years confinement in the Texas Department of Criminal Justice—Institutional Division. In a single point of error, appellant claims the trial court erred in denying his motion to suppress. We affirm.

Factual Background

Harris County deputy sheriffs Brian Seidel and Mitch Hatcher observed appellant driving a motorcycle with an expired registration. The officers confirmed the expired registration via a computer check and initiated a traffic stop. After appellant and the officers stopped their vehicles, the officers approached appellant and asked for his driver's license. Appellant said he did not have his driver's license with him. Appellant told the officers his name and date of birth and Seidel walked back to the patrol car where he confirmed that appellant had a New Mexico driver's license. Seidel also discovered the motorcycle was registered to someone other than appellant.

Hatcher remained with appellant and conducted a pat-down search. Hatcher explained the pat down search was necessary because appellant was stopped in a high crime area, did not produce a driver's license, and deceived the officers by giving a name different from that on the motorcycle registration. When Hatcher touched appellant's right front pants pocket, appellant knocked Hatcher's hand away. Before appellant knocked Hatcher's hand away, Hatcher felt a hard rock shaped substance in appellant's pocket. Hatcher suspected the rock was cocaine and seized it. Appellant was then placed into custody.

Appellant testified he never told the officers he did not have a driver's license, but told them he had a driver's license with him in the seat of the motorcycle. He further testified he did not knock Hatcher's hand away during the pat-down search. The trial court found the initial stop and the pat-down search that followed did not violate the Texas or United States Constitutions and denied the motion to suppress.

Jurisdiction

As a preliminary matter, the State contends this court lacks jurisdiction due to a defective notice of appeal. Because the trial court sentenced appellant in accordance with an agreed plea bargain and the punishment assessed did not exceed that recommended by the State and agreed to by appellant, appellant's notice of appeal must comply with Rule

25.2(b)(3)(B) of the Texas Rules of Appellate Procedure by specifying "that the substance of the appeal was raised by written motion and ruled on before trial." Although appellant's notice of appeal does not specify that his issue was raised by written motion and ruled on before trial, substantial compliance with rule 25.2(b)(3) may confer jurisdiction on a court of appeals to review nonjurisdictional challenges. *See Gomes v. State*, 9 S.W.3d 170, 172 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Appellant's notice of appeal contains a handwritten notation stating, "As to Motion to Suppress Only." In *Gomes,* this court held such a handwritten notation was sufficient to confer jurisdiction under rule 25.2(b)(3). *Id.* Therefore, appellant's notice of appeal confers jurisdiction on this court to review the trial court's decision to deny the motion to suppress.

Motion to Suppress

In his sole point of error, appellant challenges the trial court's ruling on his motion to suppress and contends Hatcher did not have specific articulable facts to justify the pat-down search. In a suppression hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). In reviewing the trial court's decision, an appellate court views the evidence in the light most favorable to the trial court's ruling. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). The reviewing court may not disturb supported findings of fact absent an abuse of discretion. *Etheridge v. State*, 903 S.W.2d 1, 15 (Tex. Crim. App. 1994).

An investigative detention is justified if the officer, based on specific and articulable facts, reasonably surmises the detained person may be associated with a crime. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880 (1968); *Davis v. State*, 829 S.W.2d 218, 219 (Tex. Crim. App. 1992). Appellant argues the search was unjustified under the *Terry* stop and frisk exception to the warrant requirement. A pat-down search during a detention, as was conducted here, is permissible when the officer suspects he is dealing with an armed and dangerous person. *Carmouche v. State*, 10 S.W.3d 323, 329 (Tex. Crim. App. 2000). The

officer must have a reasonable suspicion that activity out of the ordinary is occurring or has occurred. *Guevara v. State,* 6 S.W.3d 759, 763 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). The officer must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant the level of intrusion into the citizen's personal security that a search of the person entails. *Terry,* 392 U.S. at 21, 88 S.Ct. at 1879. The purpose of a limited search after an investigatory stop is to allow the peace officer to pursue investigation without fear of violence. *Carmouche,* 10 S.W.3d at 329.

Viewing the evidence in the light most favorable to the trial court's ruling, the initial stop and the subsequent frisk of appellant were proper. Officer Hatcher testified appellant was stopped in a high crime area known for drugs and prostitution. Roadside encounters between police and suspects are especially hazardous. *See Michigan v. Long,* 463 U.S. 1032, 103 S.Ct. 3469 (1983). Appellant's name was different from that on the registration and appellant did not produce a driver's license. Hatcher further testified that by giving a different name than that on the registration, he felt appellant was being deceptive. Under these circumstances, it was reasonable for the officer to fear that appellant was armed and dangerous such that a self-protective search was warranted. Therefore, the officer had specific articulable facts sufficient to constitute reasonable suspicion to justify the pat-down search. The trial court did not abuse its discretion in denying appellant's motion to suppress.

Moreover, the search of appellant was justified as a search incident to arrest. Probable cause for an arrest exists where, at that moment, facts and circumstances within the knowledge of the arresting officer, and of which he has reasonably trustworthy information, would warrant a reasonably prudent person in believing that a particular person has committed or is committing a crime. *Guzman v. State,* 955 S.W.2d at 89. Once an officer has probable cause to arrest, he may search the accused incident to the arrest. *Rogers v. State,* 774 S.W.2d 247, 264 (Tex. Crim. App. 1989). It is irrelevant that the arrest occurs immediately before or after the search, as long as sufficient probable cause exists for the

officer to arrest before the search. *State v. Ballard*, 987 S.W.2d 889, 892 (Tex. Crim. App. 1999).

Here, Officer Hatcher had probable cause to arrest appellant when Hatcher confirmed the expired registration. *See Atwater v. City of Lago Vista*, 534 U.S. 318, 354, 121 S. Ct. 1536, 1557 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."). Because Officer Hatcher had probable cause to arrest appellant, the search did not violate the Fourth Amendment or article 1, section 9 of the Texas Constitution. The trial court did not err in denying appellant's motion to suppress. Appellant's sole point of error is overruled.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed April 4, 2002.
Panel consists of Justices Yates, Seymore, and Guzman.
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