Affirmed and Opinion filed June 21, 2001.

In The

Fourteenth Court of Appeals

NOS. 14-00-00395-CR
14-00-00397-CR

SADAR CADE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 816,604 & 816,605

O P I N I O N

Appellant, Sadar Cade, was indicted separately for the offenses of tampering with a governmental document and forgery. After the cases were consolidated for trial at his request, a jury found appellant guilty and sentenced him to four years on the tampering charge and two years on the forgery charge. On appeal, appellant claims that, because he was stopped illegally, the trial court abused its discretion in denying his motion to suppress the evidence seized and introduced at trial. Alternatively, he claims that even if the stop was permissible, the consent to search his automobile was obtained by duress and fraud or, further, that the search exceeded the consent. We affirm.

I. Background

During the course of a six-month-long investigation into a forgery ring operating out of Houston, United States Secret Service agents received a tip from a confidential informant that appellant and another individual, identified only as Ned, would be out "crooking" on June 23, 1999. The informant also told agents that Ned's car would be parked at appellant's house. At the motion to suppress hearing, Agent Marlon Harris testified that he understood "crooking" to mean appellant and Ned would be passing counterfeit checks. Harris also testified that this informant had provided reliable information before this day "on many occasions."[1] In the preceding six months, Agent Harris testified he received information from at least six sources—some arrestees—detailing appellant's involvement as the ringleader, starting in January, when appellant's relative, who was also arrested, identified appellant as the ringleader of the counterfeiting operation. In early February, after appellant returned a rental car, agents searched it and discovered approximately 30 to 35 driver's licences, each with appellant's picture, but each also bearing another's personal identifying information and an unspecified number of altered money orders and checks with names matching those on the licenses.

Acting on the confidential informant's tip, the agents set up surveillance at appellant's house. Ned's car was parked at the house. When appellant and Ned arrived in appellant's car, Ned got into his car, followed appellant to another location, parked his car there, and re-entered appellant's car. The two men then drove away. A surveillance team, consisting of multiple cars, followed. As the agents followed appellant and Ned, appellant's erratic driving suggested to them that appellant knew he was being followed.[2]

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[1] Later, Harris testified that this informant had provided information on 12 to 15 occasions involving at least six investigations, including one other involving appellant.

[2] Testimony described appellant's erratic driving as including driving between 15 and 40 m.p.h. in 30 and 35 m.p.h. zones; turning down dead-end roads; making U-turns from the right lane of Montrose Boulevard into oncoming traffic; and turning down a street, immediately pulling into a driveway, then reversing

Eventually, appellant pulled into a gas station. Believing appellant knew the agents were following him, one of the agents, Kevin Vermillion, decided to approach appellant's vehicle. The other agent, Taylor Booth, remained at the passenger side of their van. Vermillion, with his sidearm drawn, approached appellant's car and ordered appellant to place his hands on the steering wheel. Appellant complied, and Vermillion holstered his weapon. Vermillion then told appellant that he was being followed because he matched the general description of a bank robbery suspect they were investigating. No such investigation was underway. Vermillion then asked appellant if he would step outside of his vehicle and proceeded to engage him in conversation. Within a short while, appellant leaning casually against his car, Vermillion asked appellant if he could search his car, so as to eliminate appellant as a suspect in the "robbery". Appellant agreed and signed an authorization. Vermillion told appellant that, among other items, he and his partner were looking for currency from the robbery. Upon searching the car, they found four altered driver's licenses and between 18 and 20 forged checks. These items were found in a wallet wedged between the center consol and the driver's seat. Because of the ongoing nature of their investigation, agents testified that initially they did not intend to arrest appellant, but upon being told by Houston Police Officers, who were part of Harris's arrest team, that appellant had numerous outstanding arrest warrants, appellant was placed under arrest.

II. Permissibility of Detention

In his first point of error, appellant complains that, because the initial detention by agents Vermillion and Booth was illegal, the trial court abused its discretion in overruling his motion to suppress. We review the trial court's ruling on a motion to suppress under an abuse of discretion standard. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). The trial court is the sole judge of the credibility of witnesses and the weight to be given to their testimony. *Taylor v. State*, 604 S.W.2d 175, 177 (Tex. Crim. App. 1980). As the Court of Criminal Appeals articulated in *Guzman v. State*, we give "almost total

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direction back to where he came from.

deference to a trial court's determination of historical facts" and review *de novo* its application of the law of search and seizure to those facts. 955 S.W.2d 85, 88–89 (Tex. Crim. App. 1997). Where, as here, the trial court does not make explicit findings of fact, we review the evidence in a light most favorable to the court's ruling. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999).

Appellant concedes that, when Vermillion and Booth initially approached his car, he was not under arrest. The State concedes that appellant was temporarily detained within the meaning of *Terry v. Ohio*, 392 U.S. 1 (1968). A valid *Terry* search rests upon the officer's ability to "point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Carmouche v. State*, 10 S.W.3d 323, 329 (Tex. Crim. App. 2000) (quoting *Terry*, 392 U.S. at 21). A warrantless intrusion is justified if the officer has a reasonable suspicion that the defendant either has committed a crime or is about to do so. *Williams v. State*, 621 S.W.2d 609, 612 (Tex. Crim. App. 1981). Reasonable suspicion is a degree of certainty short of probable cause.

The evidence amply supports the trial court's ruling and the State's position that the agents' surveillance of appellant, coupled with the information they received from their confidential informant and the rational inferences from both, amounted to a reasonable suspicion that appellant was about to commit a crime. In *Carmouche*, although the Court of Criminal Appeals ultimately reversed the conviction, it nevertheless found, on similar facts, that the initial detention of the defendant was justified.[3] 10 S.W.3d at 328–29. There, police were tipped off by a confidential and reliable informant that Carmouche and the female informant would be traveling from Houston to Nacogdoches later that day carrying about 10 ounces of cocaine. *Id*. at 326. Because Carmouche was renting the car they would be riding in, the informant was unable to provide a description of the vehicle.

[3] The case was reversed because a videotape contradicted officers' testimony that the defendant consented to the search and, thus, failed to support the trial court's ruling to that effect. 10 S.W.3d at 332–33.

Id. The informant agreed, however, to ask Carmouche to stop at a specific gas station in Corrigan, where police would have a surveillance team in place. *Id*. The court concluded that the warrantless detention of Carmouche's vehicle was "constitutionally justified based upon the informant's tip that appellant was transporting cocaine, her previous history of providing reliable information to authorities and the events at the gas station which served to corroborate her information."[4] *Id.* at 328.

Here, the confidential informant knew appellant and Ned would be together. The informant had proven reliable in the past. The agents were investigating a forgery ring. They knew, from their six-month investigation, including the February search of a car rented and returned by appellant, that appellant was in possession of falsified identification cards and/or driver's licenses. They also knew, from up to six other sources, that appellant was the ring leader. Finally, based on appellant's unusual driving pattern and the agents' experience, the agents concluded that appellant knew he was being followed and was either trying to elude them or find out who they were. Accordingly, we hold that the trial court did not abuse its discretion in finding that the agents identified specific and articulable facts to support their reasonable suspicion that appellant was either engaging in criminal activity or about to do so.[5] Appellant's first point of error is overruled.[6]

III. Voluntariness of Consent

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[4] Interestingly, the court does not describe "the events at the gas station" other than to confirm that, as agreed, Carmouche and the informant arrived there at about the scheduled time. *Id*. at 326.

[5] Appellant claims that because the agents initially drew their guns, ordered appellant to place his hands on the steering wheel, and removed the keys from the car, the detention was illegal. We disagree. The show of force is irrelevant to the issue of whether a detention is lawful. It is relevant, however, in deciding whether appellant's consent to search was voluntary.

[6] Appellant contends that, because Agent Booth testified he was unaware of any reason a warrant could not be obtained, the *detention* was illegal. But Booth's testimony was directed at after appellant was detained. Sure, agents could have obtained a warrant to search appellant's car. That does not mean they were precluded from obtaining appellant's consent, a point we now address.

In his second point of error, appellant contends that his consent was invalid because it was obtained by "fraud," *viz.*, the lie about the robbery investigation. Appellant further contends that this is a case of first impression. We disagree with both contentions.

Consent is valid only if it is freely given. *Paulus v. State*, 633 S.W.2d 827, 850 (Tex. Crim. App. 1981). Whether consent was given voluntarily is determined from a totality of the circumstances. *Johnson v. State*, 803 S.W.2d 272, 286 (Tex. Crim. App. 1990). Those circumstances boil down to six factors: (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) his awareness of his or her right to refuse consent; (5) his education and intelligence; and (6) his belief that nothing incriminating will be found. *Broussard v. State*, 978 S.W.2d 591, 594 (Tex. App.—Tyler 1997, pet. ref'd) (citing *United States v. Galberth*, 846 F.2d 983, 987 (5th Cir. 1988)). No one factor is dispositive on the issue of voluntariness. *Id.*

The questioning here resembles the situation in *Galberth*. The questioning occurred in a public area. *See Galberth*, 846 F.2d at 987. The agents engaged appellant in a casual conversation. *See id.* Appellant was not handcuffed. Nor was he placed under arrest until after it was learned he had outstanding arrest warrants, something which did not occur until after the search was completed. Appellant testified he calmed down after Vermillion told him they were investigating a bank robbery. Another witness testified that, after appellant calmed down, there came a point when no one paid attention to him. Appellant signed a consent to search form, which Vermillion testified he explained to appellant. Appellant testified as to his understanding of what he was "authorizing" when he signed the consent to search form. Vermillion testified that appellant agreed to the search after being asked only once. Appellant's testimony suggests he was aware of his right to refuse consent, using words such as "allowing" the agents to search his car and testifying that, had he known what they were really looking for, he would not have consented. This testimony also indicates that he did not expect evidence of a bank robbery to be in his car. Other evidence at the motion to suppress hearing also militates in favor of the trial court's

finding that appellant's consent was given voluntary. For instance, although initially confrontational, the agents quickly holstered thei weapons and appellant and the agents began talking outside his vehicle. Also, appellant testified that, "I know I didn't rob a bank, you know, so I don't have anything to worry about." Appellant's second point of error is overruled.

IV. Scope of Consent

In his final point of error, appellant contends that, even if his consent was given voluntarily, the search exceeded the consent given. Hardly. Appellant was told by the agents that they were looking for evidence of a bank robbery. He even testified that he was told the agents were looking for "anything" relating to a bank robbery, and certainly money is the object of most bank robberies. Therefore, money from the bank would be evidence. It is not unusual for money to be found in a wallet. The fact that the money was supposedly placed in a "bank bag" at the time of the robbery is of no consequence, for it would not be unreasonable for an officer to believe one who just robbed a bank would not keep the money in the bank's bag. Appellant's final point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed June 21, 2001.

Panel consists of Justices Fowler, Wittig, and Draughn.[7]

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

[7] Justice Joe L. Draughn sitting by assignment.