Affirmed and Opinion filed July 26, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00574-CR

KEITH WAYNE DOCKERY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 1
Fort Bend County, Texas
Trial Court Cause No. 83,971

O P I N I O N

A jury found appellant guilty of possession of marijuana and assessed punishment at a fine of one hundred dollars and thirty days' confinement in the Fort Bend County Jail. The trial court then placed appellant on community supervision for a period of twelve months. In three points of error, appellant challenges the trial court's denial of his motion to suppress. Appellant contends that the admission of marijuana found in appellant's vehicle should have been suppressed because 1) his surrender of the two marijuana cigars to the arresting officer was involuntary; 2) the marijuana cigars were the product of an unlawful search by the arresting officer; and 3) the marijuana cigars were obtained as a result of an unlawful detention.

We affirm.

I. Background

On July 29, 1999, Officer Elwood Matthews ("Officer Matthews") observed a vehicle being driven by appellant run a stop sign. Officer Matthews initiated a traffic stop. While obtaining appellant's driver's license and insurance, Officer Matthews observed two cigars in the open ashtray of appellant's vehicle. Officer Matthews testified at the suppression hearing that the cigars appeared to be hand-twisted. While Officer Matthews was standing at the rear of appellant's vehicle waiting for the check-by unit, he observed the passenger in the vehicle close the ashtray. Moreover, Officer Matthews testified that he smelled the odor of marihuana emanating from the vehicle.

After writing appellant a citation for running the stop sign and obtaining appellant's signature on the citation, Officer Matthews questioned appellant regarding the contents of the ashtray.

> Q. Okay. And what did you request?
>
> A. I asked him what was in the ashtray.
>
> Q. Okay. And did he answer your question?
>
> A. Yes, sir, he did.
>
> Q. What did he say?
>
> A. He said, "Cigars."
>
> Q. And what did you do next?
>
> A. I asked him if I could see them.
>
> Q. Okay. Do you recall your particular words?
>
> A. "Can I see them?"
>
> Q. And what did he do as a result of your request?

A. He opened the ashtray and handed them to me.

Officer Matthews testified that once his examination of the cigars revealed that they were marijuana cigars, appellant was arrested for possession of marijuana.

II. Motion to Suppress

In a hearing on a motion to suppress, the trial judge is the sole and exclusive trier of fact and judge of the credibility of the witnesses as well as the weight to be given to their testimony. *Guzman v. State*, 955 S.W.2d 85, 88 (Tex. Crim. App. 1997) (holding that appellate courts should afford almost total deference to a trial court's determination of historical facts, especially when such a determination is based on an evaluation of credibility and demeanor); *Green v. State*, 934 S.W.2d 92, 98 (Tex. Crim. App. 1996); *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *McAllister v. State*, 34 S.W.3d 346, 350 (Tex. App.—Texarkana 2000, pet. ref'd); *Graham v. State*, 893 S.W.2d 4, 6 (Tex. App.—Dallas 1994, no pet.); *Campbell v. State*, 864 S.W.2d 223, 225 (Tex. App.—Waco 1993, pet. ref'd). If the court's resolution of a controverted fact issue is supported by the record, a reviewing court should not disturb that decision. *Muniz v. State*, 851 S.W.2d 238, 252 (Tex. Crim. App. 1993); *Campbell*, 864 S.W.2d at 225.

A. Involuntary Consent

In his first point of error, appellant complains that his handing over of the cigars to Officer Matthews was involuntary. Specifically, appellant argues that because Officer Matthews was in uniform and armed, and he was subject to arrest, his act of giving Officer Matthews the cigars was non-consensual. We disagree.

Under the Fourth and Fourteenth Amendments, a warrantless search is per se unreasonable, subject only to a few specifically established and well- delineated exceptions. *Reasor v. State*, 12 S.W.3d 813, 817 (Tex. Crim. App. 2000). One such exception is a search conducted with the consent of the suspect. *Id*. For consent to be a valid exception, however, that consent must be voluntary. *Id*. Under article I, section 9, of the Texas Constitution, people

are protected against all unreasonable searches and seizures. *Id*. at 818. A search made after voluntary consent is not unreasonable. *Id*. The State must prove by clear and convincing evidence that a suspect's consent was voluntary. *Id*. When the issue of consent rests upon the trial court's evaluation of credibility, we afford its finding almost total deference. *Maldonado v. State*, 998 S.W.2d 239, 247 (Tex. Crim. App.1999).

It is undisputed that appellant, when asked by Officer Matthews to see the cigars in the ashtray, handed them over. We recognize that Officer Matthews was in uniform and armed, however, appellant does not assert, nor does the record reflect, that Officer Matthews ever brandished his firearm or threatened appellant with arrest. In fact, the record reveals that he questioned appellant regarding the ashtray's contents after the citation for running the stop sign had already been issued, and appellant, presumably, was free to go. There is no indication in the record that Officer Matthews engaged in any threatening or coercive behavior in order to obtain appellant's consent to examine the cigars found in appellant's ashtray. The limited record in this case does not support the conclusion, when judged objectively from all the circumstances surrounding the encounter, that a reasonable person would not have felt free to withhold consent. *Cf. State v. Daly*, 35 S.W.3d 237, 242 (Tex. App.--Austin 2000, no pet. h.). Accordingly, we overrule appellant's first point of error.

B. Unlawful Detention and Search

In appellant's second and third points of error, he complains that Officer Matthews obtained the marijuana as a result of an unlawful detention and search. Specifically, appellant argues that because he was detained, and Officer Matthews searched the contents of the cigars, after the ticket for running the stop sign had been issued, the marijuana was a product of an unlawful detention and search. We disagree.

A routine traffic stop is a detention and thus, must be reasonable under the United States and Texas Constitutions. *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App.1997). To be reasonable, a traffic stop must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983); *Davis*, 947 S.W.2d at

245. However, once the reason for the stop has been satisfied, the stop may not be used as a fishing expedition for unrelated criminal activity. *Ohio v. Robinette*, 519 U.S. 33, 41 (1996) (Ginsburg, J., concurring); *Davis*, 947 S.W.2d at 243. Rather, any continued detention must be based on articulable facts which, taken together with rational inferences from those facts, would warrant a man of reasonable caution in the belief that a continued detention was justified, i.e., that the detainee was or would soon be engaged in criminal activity. *Davis*, 947 S .W.2d at 244-45. In other words, once the purpose of the original detention has been effectuated, any continued detention must be supported by some additional reasonable suspicion, that is, something out of the ordinary is occurring and some indication that the unusual circumstance is related to a crime. *See id*.

It is undisputed that appellant was initially detained for running a stop sign, and once Officer Matthews issued him the citation the purpose of the initial detention had been satisfied. During the initial detention, however, Officer Matthews developed a reasonable suspicion based on new and additional articulable facts which justified the continued detention of appellant. During the suppression hearing, Officer Matthews testified that 1) he observed what appeared to be hand-twisted cigars in plain view in appellant's ashtray; 2) during the course of the detention of appellant for the traffic violation, Officer Matthews observed the passenger close the open ashtray; and 3) Officer Matthews smelled the odor of marijuana emanating form appellant's vehicle. Taken together, this testimony clearly supports a reasonable suspicion on behalf of Officer Matthews that appellant was in possession of marijuana, and a continued detention was justified. Accordingly, the trial court did not abuse its discretion in denying appellant's motion to suppress. We overrule appellant's second and third points of error.

III. Conclusion

Having overruled all of appellant's points of error, we affirm the judgment of the trial court.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed July 26, 2001.

Panel consists of Justices Edelman, Frost, and Murphy.[*]

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

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