Affirmed and Opinion filed October 25, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00132-CR

BENITO MARTINEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court of Law No. 1
Harris County, Texas
Trial Court Cause No. 9926497

O P I N I O N

Appellant was charged by information with the offense of driving while intoxicated. After the trial court denied his pretrial motion to suppress, appellant pleaded guilty. The trial court found appellant guilty and assessed punishment at 180 days' confinement. The sentence was suspended for one year, and appellant was placed on community supervision.

In a single issue, appellant contends the trial court erred in denying his motion to suppress because the police officer subjected appellant to an unreasonable search and seizure in that the detaining officer did not have sufficient articulable facts to support the initial detention of appellant. We affirm.

We review a trial court's decision on a motion to suppress by applying the abuse of discretion standard. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). In a suppression hearing, the trial court is the sole trier of fact and the judge of the credibility of witnesses and the weight to be given their testimony. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). We afford almost total deference to the trial court's ruling on application of law to fact questions, also known as mixed questions of law and fact, if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We review *de novo*, however, determinations of reasonable suspicion and probable cause. *Id*. at 87. Because the facts are undisputed here, resolution of the issue of reasonable suspicion to stop does not turn on credibility and demeanor, and therefore we will review the trial court's judgment *de novo*. *Oles*, 993 S.W.2d at 106; *Guevara v. State*, 6 S.W.3d 759, 763 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd).

A police officer may stop and briefly detain a person for investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The relevant inquiry is not whether the particular conduct is innocent or guilty, but rather the degree of suspicion that attaches to the particular noncriminal acts. *Brooks v. State*, 830 S.W.2d 817, 820 (Tex. App.—Houston [1st Dist.] 1992, no pet.). Circumstances may justify temporary detention for the purpose of investigation. *Id.* In *U.S. v. Sokolow*, Chief Justice Rehnquist noted that in evaluating the validity of a stop, the reviewing court must consider the totality of the circumstances—the whole picture. 490 U.S. 1, 8 (1989).

> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as fact finders are permitted to do the same—and so are law enforcement officers.

Id.

The *Woods* court, which we are constrained to follow, held that the reasonableness of a temporary detention must be examined in terms of the totality of the circumstances, and will be justified when the detaining officer has specific articulable facts, which taken together with rational inferences from those facts, lead him to conclude the person detained is, has been, or soon will be engaged in criminal activity. 956 S.W.2d at 38.

Officer Kaufman had been sent to a parking lot behind an apartment complex by a dispatch call, indicating that an "[i]ndividual may be possibly hitting vehicles in the back of the complex." When the officer arrived approximately three minutes after the call, he observed appellant attempting to park a car. The officer testified that appellant pulled into and out of a single parking space about five times. The officer said that there was nothing unusual about the space, which was "very easily accessible." He also testified he believed the inability to park a vehicle under those circumstances to be "unusual." The officer suspected appellant was intoxicated. The officer approached the car, asked appellant to exit, and detected the odor of alcohol on appellant's breath and observed that appellant's eyes were bloodshot and that his balance was poor.

Applying the standard articulated in *Woods*, Officer Kaufman could have reasonably inferred from appellant's poor parking performance that appellant was incapable of driving the vehicle because he was incapacitated, thus posing a danger to himself and others. Because the conduct was out of the ordinary, it warranted a closer look. The officer's articulable facts regarding appellant's inability to park his vehicle, coupled with reasonable inferences therefrom, gave the officer reasonable suspicion to detain appellant briefly to investigate whether appellant was intoxicated. *See Held v. State*, 948 S.W.2d 45, 51 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd) (finding that officer's observation of driver's legal but irregular driving sufficient to raise reasonable suspicion that driver may be intoxicated). Accordingly, we overrule appellant's sole issue. Because appellant has not raised any issues regarding the existence of probable cause to effect his arrest, and we find

Officer Kaufman had reasonable suspicion to detain appellant, we hold the trial court did not abuse its discretion in denying appellant's motion to suppress.

We affirm the trial court's judgment.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed October 25, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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