Affirmed and Opinion filed November 9, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00340-CR

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TERRELL LOUIS ROBINSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law no. 5
Harris County, Texas
Trial Court Cause No. 97-51860

O P I N I O N

After a bench trial, Terrell Louis Robinson was convicted of the misdemeanor charge of possession of marihuana. He was sentenced to two days in the Harris County Jail and a $600 fine. In three points of error appellant contends the trial court erred in not granting his motion to suppress and questions the sufficiency of the evidence to sustain his conviction. We affirm.

MOTION TO SUPPRESS

The appropriate standard for reviewing a trial court's ruling on a motion to suppress evidence was articulated in *Guzman v. State*, 955 S.W.2d 85 (Tex. Crim. App.1997). In that Fourth Amendment case, the Court indicated that it would apply a bifurcated standard of review, giving almost total deference to a trial court's determination of historical facts while reviewing *de novo* the trial court's application of the law of search and seizure. Id. at 88-89; *see also Carmouche v. State*, 10 S.W.3d 323, 327-328 (Tex. Crim. App. 2000).

In this case, the trial court did not make explicit findings of historical fact. We therefore review the evidence in a light most favorable to the trial court's ruling. *Carmouche*, 10 S.W.3d at 328. In other words, we will assume that the trial court made implicit findings of fact supported in the record that buttress its conclusion. We will review de novo the lower court's application of the relevant Fourth Amendment standards. *Guzman*, 955 S.W.2d at 89.

Houston Police Officer Michael J. Wright testified that he saw a man driving a new Lexus automobile without inspection sticker or license tag. The Lexus driver pulled into a McDonald's restaurant, left the car, and walked inside. Wright noticed that the man was wearing a jacket emblazoned with a distinctive emblem. When Wright followed, customers told him the man fled out another door. Wright began searching the area from his patrol car, spotted the man again on a street corner and again gave chase on foot. He again eluded Wright, who continued the search. While canvassing an apartment building in the area Wright stopped appellant as he came out of an apartment because he was about the same age, height and weight as the man he had been chasing, and because he appeared to be wearing the same pants. Appellant left the door to the apartment ajar, and Wright said he could smell a strong odor of freshly burned marihuana coming from the apartment. While Wright spoke with appellant, his partner knocked and entered the apartment. When Wright sensed that something was going on inside the apartment, he brought the suspect inside in order to maintain control of the situation. Once inside, Wright saw baggies containing a green leafy substance piled on a kitchen table.

Also on the table were a prescription medicine bottle with appellant's name on it and $602 in currency. Appellant said both the money and the apartment belonged to him.

On cross-examination Wright said the suspect was detained at that point, not arrested, and that this detention was to ensure the safety of both appellant and the officers. Based on Wright's testimony, the trial court overruled appellant's motion to suppress.

Appellant argues the conduct described by the officer as being his reason for the stop was consistent with legal activity, and that the officer did not have any reason for stopping appellant other than a "hunch" that he was connected with the Lexus. We disagree. Wright testified that he stopped appellant because "he matched the general description" of the driver of the Lexus. The trial court was entitled to conclude from this testimony that Wright had probable cause to detain appellant.

After encountering appellant, Wright testified he smelled a strong odor of freshly burned marihuana on appellant, saw that the door to the apartment was ajar, and that a strong smell of marihuana was coming out of this apartment. Upon his knock on the door, the door swung open to reveal contraband in plain view.

The officers did not have a warrant at the time they saw the marihuana. The question becomes whether the trial court erred by not excluding this evidence.

An unconsented police entry into a residential unit constitutes a search under *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). *See McNairy v. State*, 835 S.W.2d 101, 106 (Tex. Crim. App. 1991). A person normally exhibits an actual, subjective expectation of privacy in their residence, and society is prepared to recognize this expectation as objectively reasonable. *Id*. Appellant said the apartment was his residence. Thus, we find that the initial entry into appellant's home was a search.

In order for a warrantless search to be justified, the State must show the existence of probable cause at the time the search was made, and the existence of exigent circumstances which made the procuring of a warrant impracticable. *McNairy*, 835 S.W.2d at 106-107; *Delgado v. State*, 718 S.W.2d 718 (Tex. Crim. App.1986). The test for the existence of probable cause is "whether at that moment the facts and circumstances within the officer's

knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrested person had committed or was committing an offense." *Guzman v. State*, 955 S.W.2d 85, 90 (Tex. Crim. App. 1997); *see also Joseph v. State*, 3 S.W.3d 627, 634 (Tex. App.–Houston [14th Dist.] 1999, no pet.).

The Supreme Court has held that the probable cause inquiry must not become overly technical:

> [P]robable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observe as trained officers. We weigh not individual layers but the "laminated total . . ." In dealing with probable cause, . . . as the very name implies, we are dealing with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

Brinegar v. United States, 338 U.S. 160, 176 (1948); *Woodward v. State*, 668 S.W.2d 337 (Tex. Crim. App.1982) (opinion on rehearing).

In our case, police detained a man suspected of driving a stolen vehicle outside an apartment. Wright testified that a powerful odor of burned marihuana emanated from the vicinity of the apartment appellant had just exited. We note, first, that the smell of marihuana may in itself constitute probable cause. *Joseph*, 3 S.W.3d at 634. We next note that nothing prevents an officer from approaching the front door of a residence, knocking on the door and seeking to speak with those inside. *See Bower v. State*, 769 S.W.2d 887, 896-897 (Tex. Crim. App. 1989)(plurality op.); *see also Rodriguez v. State*, 653 S.W.2d 305, 307 (Tex. Crim. App. 1983)(finding that "[n]othing in our Constitutions prevents a police officer from addressing questions to citizens on the street; it follows that nothing would prevent him from knocking politely on any closed door. Further, nothing in the statutes or governing constitutional provisions requires any citizen to respond to a knock on his door by opening it"). Given the information available to Wright, and the circumstances surrounding the situation, we find that probable cause did exist, both for stopping appellant and in knocking at the door of the apartment. We next must determine if exigent circumstances existed such that the officers were justified in entering the apartment and seizing marihuana without a warrant.

Situations creating exigent circumstances usually include factors pointing to some danger to the officer or victims, an increased likelihood of apprehending a suspect, or the possible destruction of evidence. *See, e.g., Joseph*, 3 S.W.3d at 635; *Stewart v. State*, 681 S.W.2d 774 (Tex.App.—Houston [14th Dist.] 1984, pet. ref'd) (exigent circumstances justifying a warrantless entry include (1) rendering aid or assistance to persons whom the officers reasonably believe are in need of assistance; (2) preventing the destruction of evidence or contraband; and (3) protecting the officers from persons whom they reasonably believe to be present and armed and dangerous). The fact that another person is located in a place where an officer reasonably believes contraband is secreted may also constitute exigent circumstances. *See Vela v. State*, 775 S.W.2d 11, 13 (Tex. App.–Houston [1st Dist.] 1989, pet. ref'd); *cf. Cruz v. State*, 764 S.W.2d 302, 304 (Tex. App.–Houston [1st Dist.] 1988, no pet.) (exigent circumstances did not exist where officer could not have known there were others in a residence along with contraband).

Wright testified that, in response to the overwhelming smell of marihuana outside the apartment which appellant exited, his partner knocked on the door. When the door opened, contraband was seen in plain view, along with another person. This situation presented the officers with a classic case of exigent circumstances, in which there was both danger to the officers from those still inside the residence, and the possibility of contraband being removed or destroyed by the person remaining within. We therefore find that the trial court did not err in ruling this evidence admissible. Appellant's first point of error is overruled.

SUFFICIENCY

In appellant's second and third points of error he challenges the sufficiency of the evidence to support his conviction. The gist of his argument is that the state did not affirmatively link appellant to the marihuana.

A challenge to the legal sufficiency of the evidence is resolved by looking at the evidence in the light most favorable to the verdict to determine if a rational fact-finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App.1996). During a bench trial the trial court is the "exclusive judge of the credibility of the witnesses and the weight to be given to their testimony," and on appeal the judge's determination of the weight and credibility of the evidence will not be re-evaluated. *Joseph v. State*, 897 S.W.2d 374, 376 (Tex. Crim. App.1995); *Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App.1987). Therefore, we will review the trial judge's findings and verdict to determine whether the evidence was sufficient to support appellant's conviction.

When seeking a conviction for possession of a controlled substance, the state must affirmatively link the defendant to the drugs he allegedly possesses; however, this link need not be so strong that it excludes every other outstanding reasonable hypothesis other than the defendant's guilt. *Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1995). Appellant argues that because he was not in exclusive possession of the place where the marihuana was found, he could not be affirmatively linked to the marihuana. However, this merely requires a showing of additional independent facts and circumstances which affirmatively link the accused to the contraband. *Wiersing v. State*, 571 S.W.2d 188, Tex. Crim. App. [Panel Op.] 1977); *Long v. State*, 532 S.W.2d 591, 594 (Tex. Crim. App. 1973).

We find the state has made such a showing. Among the baggies of marihuana found in appellant's apartment were a prescription bottle with his name on it as well as more than $600 which appellant later claimed as his own. We find that this is sufficient evidence affirmatively linking appellant to the contraband to sustain appellant's conviction.

Appellant's third point of error challenges the factual sufficiency of the evidence. *See Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996). In conducting factual sufficiency review, the evidence is no longer viewed in the light most favorable to the verdict. *Id*. at 134.

The verdict will be set aside, and the cause remanded for a new trial, if contrary to the overwhelming weight of the evidence and therefore clearly wrong and unjust. *Id*. at 129. While the evidence is viewed without the prism of the light most favorable to the verdict, a reviewing court must be deferential to the fact finder. *Id*. at 133, 135; *De Los Santos v. State*, 918 S.W.2d 565, 569 (Tex. App.—San Antonio 1996, no pet.).

Appellant re-urges his arguments in the factual sufficiency context. We do not find that this verdict is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We therefore overrule his third point of error and affirm the judgment of the trial court.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed November 9, 2000.
Panel consists of Justices Sears, Cannon, and Hutson-Dunn*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.