Affirmed and Opinion filed November 29, 2001.

In The

Fourteenth Court of Appeals

NO. 14-01-00137-CR

RICKI CHERYL HAYNES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 846,833

O P I N I O N

Appellant, Ricki Cheryl Haynes, appeals her conviction of the offense of possession of a controlled substance. In three issues on appeal, appellant asserts the trial court erred in denying her motion to suppress evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the day in question, Deputy Hoyt was patrolling in an area known for narcotics. At the time of this incident, Deputy Hoyt was a ten year veteran of Harris County Sherriff's Department and had worked in the narcotics unit for approximately two years. He testified

that he pulled up behind appellant at a stop sign and they both made a right turn and entered the freeway. Detective Hoyt determined appellant was speeding so he followed her off of the freeway at the next exit and initiated a traffic stop. Deputy Hoyt testified that while he was attempting to stop her, appellant was making furtive movements, reaching and bending toward the floorboard, and watching him. Appellant pulled over on the right-hand side of the feeder road. When he approached, Deputy Hoyt said appellant was very nervous and avoided eye contact. Deputy Hoyt testified that, fearing for his safety, he asked appellant to exit her vehicle. As appellant was stepping out of her car, Deputy Hoyt saw a burnt brillo pad, commonly used as a filter for crack-cocaine, between the driver's seat and the door. Deputy Hoyt testified he was approximately a foot and a half away to two feet away from the vehicle when he saw the burnt brillo pad.

Appellant's version of the events differs from Detective Hoyt's. Appellant testified that when she pulled over she retrieved her driver's license and insurance card, got out of her car without being asked, and shut the door. Appellant then began walking toward the patrol car. According to appellant, Detective Hoyt told appellant to stop when she got a step or two past her vehicle. Then, he gave her a patdown, placed her in handcuffs, and put her in the back of his patrol car. Appellant testified that while she was in the back of the patrol car, Detective Hoyt searched her car.

STANDARD OF REVIEW

At a hearing on a motion to suppress, the trial judge is the sole fact finder and judge of the credibility of the witnesses. *Gajewski v. State*, 944 S.W.2d 450, 452 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (citing *Villareal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996)). Accordingly, the trial judge decides how much weight to give to a witness' testimony and may choose to believe or disbelieve any or all of a witness' testimony. *Id*. (citing *Green v. State*, 934 S.W.2d 92, 98 (Tex. Crim. App. 1996)). The trial court's ruling should not be disturbed absent an abuse of discretion. *Id*. Where the trial court does not make explicit findings of fact, we review the evidence in a light most

favorable to the trial court's ruling. *Carmouche v. State*, 10 S.W.3d 323, 327–28 (Tex. Crim. App. 2000). If the trial court found appellant's version of the events more credible, it would have been more likely to grant appellant's motion to suppress. Accordingly, we will view Detective Hoyt's testimony as more credible. *See Walter v. State*, 28 S.W.3d 538, 540 (Tex. Crim. App. 2000).

APPELLANT'S MOTION TO SUPPRESS

On appeal, appellant asserts the trial court erred in denying her motion to suppress because: (1) Deputy Hoyt was not justified in detaining appellant after the initial stop; (2) Deputy Hoyt was not justified in detaining appellant in order to conduct a weapons search that ultimately led to the discovery of the brillo pad; (3) Deputy Hoyt's seizure of the burnt brillo pad was unlawful because it was not in plain view at the time of the stop.

A routine traffic stop is a temporary investigative detention. *Berkemer v. McCarty*, 468 U.S. 420, 437–39 (1968); *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982). A violation of a traffic law constitutes sufficient grounds to justify a traffic stop. *Josey v. State*, 981 S.W.2d 831, 837 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd) (citing *Armitage*, 637 S.W.2d at 939; *Valencis v. State*, 820 S.W.2d 397, 400 (Tex. App.—Houston [14th Dist.]1991, pet. ref'd)). Because an officer's safety may be threatened by a driver's or passenger's access to weapons inside the vehicle, an officer may ask an individual to step out of the vehicle during this investigative stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 109–11 (1977) (stating that what may amount to a mere inconvenience to an individual cannot prevail when compared to an officer's safety).

An officer may conduct a reasonable search for weapons if he has a reasonable belief, based on articulable facts, he is dealing with an armed and dangerous individual. *Davis v. State*, 947 S.W.2d 240, 242–43 (Tex. Crim. App. 1997) (discussing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). In assessing the reasonableness, the court should evaluate the facts available to the officer at the time of the search and determine if a man of reasonable caution would

believe the action was appropriate. *Id*. The scope of the search is limited to areas where weapons may be hidden. *Ardoin v. State*, 955 S.W.2d 420, 422 (Tex. App.—Beaumont 1997, no pet.).

Furthermore, there is no expectation of privacy for items in plain view. *Horton v. California*, 496 U.S. 128, 133 (1990). If an officer has a right to be where he is and it is apparent an item in plain view is evidence, the officer may seize that item without violating an individual's Fourth Amendment rights. *Id*. at 136; *Walter*, 28 S.W.3d at 541 (discussing *Ramos v. State*, 934 S.W.2d 358, 365 (Tex. Crim. App. 1996)) .

1. Appellant's Detention

Although appellant does not argue the initial investigative stop was unlawful, she does argue Detective Hoyt unlawfully detained her beyond the scope of the initial detention by asking her to step out of her vehicle after she produced her driver's license. An investigative detention must be no longer than necessary to effectuate the purpose of the detention. *Collier v. State*, 843 S.W.2d 176, 177 (Tex. App.—Houston [14th Dist.] 1992, no pet.). Deputy Hoyt's investigation of appellant's traffic offense was not completed upon appellant's production of her license. Therefore, the purpose of the detention was not yet completed and appellant was not detained beyond the scope of the initial investigative stop. Because we believe the gravamen of appellant's complaint is really that Detective Hoyt did not have legal authority to ask appellant to exit her vehicle, we will proceed with our analysis.

In this case, Deputy Hoyt testified he stopped appellant because she was violating the posted speed limit laws. Appellant does not dispute that her violation gave Detective Hoyt sufficient grounds to stop her car. *See Josey*, 981 S.W.2d at 837. As part of this investigative stop, Deputy Hoyt was authorized by the law in asking appellant to step out of her car even after appellant produced her driver's license. *See Mimms*, 434 U.S. at 109–11; *Smith v. State*, 813 S.W.2d 599, 601 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd).

2. Weapons search

Deputy Hoyt testified the area was a known narcotics area, appellant was making furtive gestures, bending and reaching toward the floorboard. Detective Hoyt further testified that for his own safety he asked appellant to exit her vehicle. Although appellant disputes Deputy Hoyt's characterization of the events, the trial court is the sole judge of credibility at a motion to suppress and we will not disturb a court's ruling absent an abuse of discretion if it is supported by the record. *See Walter*, 28 S.W.3d at 540; *Gajewski*, 944 S.W.2d at 452 (citing *Green*, 934 S.W.2d at 98) . Accordingly, we find the trial court was entitled to believe Deputy Hoyt's testimony and conclude he had a reasonable belief, based on articulable facts, appellant might be armed and dangerous. *See, e.g., Graham v. State*, 893 S.W.2d 4, 7 (Tex. App.—Dallas 1994, no pet.) (holding an officer had reasonable suspicion based on articulable facts because appellant had a startled look on his face when the officer approached him and the officer witnessed appellant moving his hands toward the floorboard).

Furthermore, the brillo pad was not discovered in an area outside the scope of a reasonable search where weapons might be found. Detective Hoyt testified the brillo pad was between the driver's seat and door in plain view.

3. Plain View

The brillo pad was discovered in plain view. Deputy Hoyt testified that he saw the brillo pad when appellant was exiting her car. Although appellant argues the brillo pad was too small for Detective Hoyt to see in plain view, the trial court was entitled to believe Detective Hoyt's testimony to the contrary. *See Gajewski*, 944 S.W.2d at 452 (citing *Green*, 934 S.W.2d at 98). As stated above, Deputy Hoyt had sufficient grounds to initiate appellant's traffic stop, and thus was authorized by the law in requesting appellant to exit her car. Therefore, the first prong of the "plain view" doctrine is satisfied because Deputy Hoyt was entitled to be where he was when he saw the brillo pad. *See Ramos*, 934 S.W.2d

at 365 (discussing the first requirement for the "plain view" doctrine that the officer must have a lawful authority to be where he is). The second prong is also satisfied because Detective Hoyt testified that he knew immediately the brillo pad was burnt and this indicated to him it had been used for smoking crack-cocaine. *See id*. (discussing the second requirement that the evidentiary nature of the object must be immediately apparent).

CONCLUSION

The trial court did not err in denying appellant's motion to suppress. Accordingly, the trial court's decision is affirmed.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed November 29, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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