Affirmed and Opinion filed December 6, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-01213-CR

TIMOTHY ALLEN MARSH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 834,943

O P I N I O N

Timothy Allen Marsh, appellant, pleaded guilty to the felony offense of possession of a controlled substance, and was sentenced to nine months' incarceration. He appeals, claiming the trial court erred in denying his motion to suppress. We affirm.

On January 28, 2000, Tomball Police Department Officer Richard Grassi, Jr. observed appellant's vehicle momentarily drive off a roadway onto the shoulder near a gravel driveway. Suspecting that the driver might be intoxicated, Officer Grassi followed appellant's car and saw it again veer off the roadway onto the shoulder as it failed to properly negotiate a right-hand turn, narrowly avoiding a ditch along the side of the road.

As appellant continued to drive down the road, he failed to stay in his lane, and Officer Grassi stopped the car.

As the officer approached the car and began speaking with appellant through the open driver's-side window, he noticed a beer can with a crushed burned top next to appellant in the car. The officer immediately recognized this as a common way to smoke marijuana or crack cocaine, and asked appellant to get out of the car. Office Grassi administered several field sobriety tests, which appellant completed successfully. However, he noticed that appellant was not speaking clearly, and asked him to open his mouth. The officer saw two rocks of crack cocaine, which appellant then swallowed.

Officer Grassi placed appellant under arrest. A field test of the substance on the top of the burned beer can tested positive for cocaine, as did a swab of appellant's mouth taken at the police station.

Appellant filed a motion to suppress, alleging that Officer Grassi lacked reasonable suspicion to stop his car. The motion was denied after an evidentiary hearing. Appellant then pleaded guilty to the offense and brought this appeal, requesting our review of the suppression ruling under two points of error.

In his first point of error, appellant alleges that as Officer Grassi lacked reasonable suspicion to stop his car, the detention and arrest were unreasonable and unlawful, requiring suppression of the evidence.

Where the historical facts of the case are not disputed and the trial court was not in a better position to decide the reasonableness of the stop from those facts, we review the trial court's ruling on the motion to suppress *de novo*. *Aviles v. State*, 23 S.W.3d 74, 76 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). A police officer may stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that the person detained actually is or has been engaged in criminal activity. *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997). With regard to investigatory

detentions for suspicion of driving while intoxicated, the Texas Court of Criminal Appeals has set forth the totality of the circumstances test as the current reasonableness standard for reviewing warrantless arrests. *Hulit v. State*, 982 S.W.2d 431, 438 (Tex. Crim. App. 1998).

Appellant contends that our determination of the reasonableness of his stop should be controlled by *Hernandez v. State*, 983 S.W.2d 867, 869 (Tex. App.—Austin 1998, pet. ref'd). In *Hernandez*, an officer immediately stopped a vehicle after observing it drift briefly over the white line dividing two lanes of traffic traveling in the same direction. The Austin court of appeals held that this single brief instance of drifting slightly into an adjacent lane of traffic did not by itself provide the officer with reasonable suspicion that a criminal traffic offense had been committed. *Hernandez* is distinguishable from the facts of this case, as here appellant did appreciably more than "briefly drift" into an adjacent lane. Officer Grassi set forth at least three incidents, that when taken together support his suspicion that appellant was intoxicated.

Unlike *Hernandez*, the record here establishes that Officer Grassi stopped appellant for suspicion of intoxication, not for running off the road or crossing into an adjacent lane of traffic, and that he provided objective articulable facts that, under the totality of the circumstances, would lead an officer to suspect intoxication. The remainder of appellant's cases cited in his brief concern the validity of traffic stops for "ticketable" moving violations and have no application to the facts of this case. Even if a vehicle's particular movement does not directly violate a traffic law, a driver is not given free reign to drive erratically in the absence of other traffic. Even if the officer does not observe an inherently illegal act, when he observes other factors the officer may stop the driver based on a reasonable suspicion that the driver may be intoxicated. *See Gajewski v. State*, 944 S.W.2d 450, 452 (Tex. App.—Houston [14th Dist.] 1997, no pet.). We overrule appellant's first point of error.

In his second point of error, appellant contends that his motion to suppress should have been granted as the community caretaker doctrine is inapplicable to his case. We need not reach this issue, as we have already upheld the validity of Officer Grassi's detention of

appellant under appellant's first point of error.

The judgment is affirmed.

/s/ Scott Brister
Chief Justice

Judgment rendered and Opinion filed December 6, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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