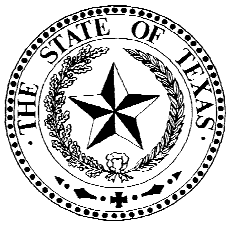
Affirmed and Opinion filed December 6, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01362-CR

ROGOBERTO GONZALES ARAUS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from 339th District Court
Harris County, Texas
Trial Court Cause No. 830,777

O P I N I O N

Rogoberto Gonzales Araus appeals a conviction for possession with intent to deliver a controlled substance weighing at least 400 grams[1] on the grounds that the trial court erred by denying appellant's motion to suppress evidence of approximately $6,000 cash that was seized from appellant's pocket without a warrant or probable cause, and pursuant to an illegal pat down search. We affirm.

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[1] A jury found appellant guilty and the trial court imposed punishment of 23 years imprisonment and a $10,000 fine.

Background

Based on a confidential informant's tip that Luis Echandi had been using a particular automobile for transporting narcotics, police officers had been watching that vehicle. On the day of appellant's arrest, officers observed appellant and Echandi engage in exchanges of parcels that suggested drug activity. At the request of the officers conducting that investigation, when appellant and Echandi parked their vehicle at an apartment complex, Officer Jost parked behind them in a marked patrol car. Upon seeing the police vehicle, appellant and Echandi exited their car and started to flee on foot but stopped within a short distance. Jost immediately handcuffed appellant, and while patting him down, felt a large, firm bulge in appellant's front pocket, that Jost thought could be a knife or small weapon. When Jost pulled the object from appellant's pocket, it turned out to be approximately $6,000 in bills wrapped tightly with rubber bands.[2]

Appellant filed a pre-trial motion to suppress, asserting that he was detained and arrested, and any evidence was seized, without a warrant, probable cause, or other lawful authority. However, the motion did not specify how the facts supported this general assertion. During the guilt innocence phase of the trial, the trial court held a hearing on appellant's motion to suppress evidence of the cash found during the pat down search. Appellant argued only that his detention amounted to an unlawful arrest because he was not free to leave. The court rejected appellant's claim of an unlawful arrest and ruled that there were sufficient facts to justify an investigative detention, a pat down search for weapons, and removal of the item felt in appellant's pocket. Accordingly, the trial court denied appellant's motion to suppress the evidence of the cash.

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[2] After obtaining Echandi's consent, the officers searched his car and found a hidden compartment between the rear seats and trunk containing a kilogram of cocaine. Appellant has not challenged the trial court's ruling that he lacked standing to contest the search of Echandi's car.

Suppression

On appeal, appellant's four points of error argue that Jost lacked probable cause to arrest him at the time of appellant's detention[3] and search because Jost did not have a warrant, nor did he or any of the investigating officers observe appellant commit an offense. Additionally, appellant asserts that a pat down search was not warranted because Jost did not have a reasonable basis to believe appellant was armed. Rather, appellant contends that as soon as he and Echandi arrived at the apartment complex and exited the car, Jost handcuffed them and proceeded to pat appellant down without conducting any preliminary investigation. Appellant further asserts that Jost's search exceeded the permissible scope of a weapons pat down because he did not immediately recognize the object in appellant's pocket before removing it.

Standard of Review

In reviewing a trial court's ruling on a motion to suppress, we give almost total deference to the trial court's determination of historical facts, but review *de novo* the court's application of the law of search and seizure to those facts. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000). In this case, because the trial court did not make findings of historical fact, we review the evidence in the light most favorable to the trial court's ruling and assume that it made implicit findings of fact that support its ruling as long as those findings are supported by the record. *See id*. at 855.

Investigatory Detention and Pat Down

Appellant sought to suppress evidence that he contends was obtained as a result of an illegal stop and search. However, because appellant failed to sustain his initial burden to adduce evidence showing that the stop and search were conducted without a warrant, he has

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[3] Appellant acknowledges, however, that probable cause is not needed to detain a suspect, only reasonable suspicion.

preserved no complaint regarding the legality of the detention, search, or arrest.[4] Similarly, because appellant challenges the pat down on grounds not presented to the trial court, his complaint regarding the pat down presents nothing for our review. *See Goff v. State*, 931 S.W.2d 537, 551 (Tex. Crim. App. 1996).

In addition, an officer is generally justified in briefly detaining an individual to investigate possible criminal behavior where the officer can point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Thus, a brief investigatory detention is authorized once a police officer has a reasonable suspicion to believe that an individual is involved in criminal activity. *Carmouche v. State*, 10 S.W.3d 323, 329 (Tex. Crim. App. 2000).

During such a detention, law enforcement personnel may conduct a limited search for weapons of a suspect's outer clothing, even in the absence of probable cause,[5] where the officer can point to specific and articulable facts which reasonably lead him to conclude that the suspect might possess a weapon. *Terry*, 392 U.S. at 26-27, 29-30; *Carmouche*, 10 S.W.3d at 329. In that regard, an officer's reasonable belief that a suspect is armed and dangerous may be predicated on the nature of the suspected criminal activity. *See Terry*, 392 U.S. at 28; *Carmouche*, 10 S.W.3d at 330. Because weapons and violence are frequently associated with drug transactions, an officer is reasonable in believing that a drug suspect may be armed and dangerous. *See Carmouche*, 10 S.W.3d at 330. The scope of such a

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[4] *See Russell v. State*, 717 S.W.2d 7, 9-10 (Tex. Crim. App. 1986); *Hogan v. State*, 954 S.W.2d 875, 877-78 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd); *Highwarden v. State*, 846 S.W.2d 479, 481 (Tex. App.—Houston [14th Dist.] 1993), *pet. dism'd, improvidently granted*, 871 S.W.2d 726, 726 (Tex. Crim. App. 1994) (noting that discretionary review had been granted (improvidently), among other grounds, on appellant's failure to produce sufficient evidence that she was arrested without a warrant)).

[5] The purpose of such a search is not to discover evidence of a crime, but out of concern for the safety of the officers, *i.e.*, to allow the peace officer to pursue investigation without fear of violence. *Terry*, 392 U.S. at 29-30; *Carmouche*, 10 S.W.3d at 329.

search extends only as far as necessary to determine whether the person is, in fact, carrying a weapon and to neutralize any threat of physical harm. *Terry v. Ohio*, 392 U.S. at 24 (1968).[6]

In this case, Jost had reasonable suspicion to initially detain appellant because not only had Jost received information from other officers that appellant and Echandi were suspected of narcotics trafficking, but appellant and Echandi immediately attempted to flee when Jost parked his marked patrol car behind their vehicle.[7] Furthermore, because Jost knew that he was dealing with someone suspected of drug trafficking, Jost was reasonable in believing that appellant could be armed and dangerous and was thus justified in patting appellant down for weapons. Lastly, upon feeling a large, firm bulge in appellant's pocket, Jost was justified in taking the object out of appellant's pocket to verify that it was not a weapon. Accordingly, appellant's four points of error are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 6, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.[8]

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

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[6] Contrary to appellant's argument, the plain feel doctrine does not apply to a weapons pat down. *See Minnesota v. Dickerson*, 508 U.S. 365, 373-76 (1993).

[7] *Cf. Illinois v. Wardlow*, 120 S.Ct. 673, 676 (2000) (holding that *Terry* stop is justified as to an individual who, in an area of heavy narcotics trafficking, makes unprovoked flight upon noticing the police).

[8] Senior Justice Don Wittig sitting by assignment.