Affirmed and Opinion filed December 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-01194-CR

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JUAN GONZALEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 784,669

O P I N I O N

Juan Gonzalez appeals his bench trial conviction for possession with intent to deliver at least 400 grams of cocaine. The trial court assessed his punishment at 25 years imprisonment and a $1.00 fine. In one point of error, appellant contends that the police were not justified in seizing appellant and searching his bag because they (1) lacked reasonable suspicion to make and investigative detention, and (2) had no probable cause to arrest, which made the search invalid. We affirm.

I. BACKGROUND.

On June 3, 1998, Officers Hans Meisel and Armando Gonzales, were working narcotics investigations in plain clothes at the Houston bus station. Meisel observed appellant standing in line to purchase a ticket, and appellant appeared very nervous because he was trembling, constantly turning around, looking all over the bus terminal, and avoiding eye contact with anyone. Meisel went outside and got Gonzalez, and the two officers went back in the station and observed appellant sitting in the waiting area. Meisel noticed that appellant was still shaking and nervously scanning the area. After appellant observed Gonzalez's "fanny pack,"[1] he did a "double take," then went to the rear of the bus station and watched the officers. Based on his training and five-years experience in narcotics, Meisel suspicioned that appellant could be a narcotics trafficker. While the officers were still watching him, appellant got up and went out the door.

The officers followed, appellant turned and saw them, and then started walking fast, "almost like running." Appellant walked rapidly to the street corner, and jumped in the backseat of a taxi. The taxi driver jumped out of his cab, and screamed for appellant to get out. Appellant got out of the cab, and the officers approached appellant, identifying themselves as police officers. Meisel then detained appellant and handcuffed him for safety purposes. Meisel stated he thought appellant might be hijacking the cab driver, and was concerned that appellant might have a weapon in the backpack he was carrying. Meisel stated that suspects under similar circumstances in the past have become violent, and he was concerned for the safety of himself, Officer Gonzalez, and the people in the station. The driver told Meisel that appellant had gotten in the taxi and said, "let's go for a ride."

The officers took appellant back into the bus station, and appellant gave the officers his name and birth date. Appellant did not have any identification with him, and the officers telephoned their office and ran a warrant check. Meisel was advised there was a warrant out of

[1] A "fanny pack" is a small pouch with a belt attached, and is usually worn by an undercover officer to carry and conceal his gun. A "fanny pack" can be worn in front, on the officer's side, or back.

Dallas County on a "Juan Gonzalez" with the same birth date. Appellant had a ticket to Dallas. Thinking he had a valid warrant, Meisel arrested appellant, searched his bag and recovered one kilogram of cocaine. The following day, Meisel was advised that appellant's fingerprints did not match the subject wanted on the arrest warrant, even though they had the same name and birth date.

II. DISCUSSION.

A. The Investigative Detention. Appellant contends that the officers were not justified in detaining appellant because they did not have reasonable suspicion to stop him. Because they did not have reasonable suspicion to investigate, appellant contends the subsequent warrantless arrest and search were invalid.

Appellant filed a motion to suppress which was carried with the bench trial. After hearing the testimony of the chemist, the two officers, and appellant, the trial court overruled appellant's motion to suppress, found him guilty, and assessed his punishment.

In reviewing a trial court's ruling, an appellate court must determine the applicable standard of review. *See Guzman v. State*, 955 S.W.2d 85, 87 (Tex.Crim.App.1997). "The amount of deference a reviewing court affords to a trial court's ruling on a 'mixed question of law and fact' (such as the issue of probable cause) often is determined by which judicial actor is in a better position to decide the issue." *Id.* If the issue involves a witness' credibility and demeanor, compelling reasons exist for allowing the trial court to apply the law to the facts. *See id.* However, if the issue is whether an officer had probable cause, under the totality of the circumstances, the trial judge is not in an appreciably better position than the reviewing court to make that determination. *See id.* "In a recent decision, the United States Supreme Court held that, although great weight should be given to the inferences drawn by the trial judges and law enforcement officers, determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal." *Id.* (citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). The reason for this rule is that "'probable cause and

reasonable suspicion acquire content only through application.'" *Id.* We will review appellant's contentions de novo.

In this case, Meisel initially observed appellant for several minutes. Appellant was visibly trembling, constantly looking around the bus terminal, and avoiding eye contact with anyone. Meisel brought Gonzalez in from outside, and they both observed appellant sitting in the waiting area acting the same way. When appellant observed Gonzalez's "fanny pack," he was startled, and went to the back of the waiting room for a few minutes. Appellant then quickly walked out the door, and after looking back and seeing the officers following him, he ran to the taxi and jumped in it. The cab driver then jumped out screaming for appellant to get out. When Meisel observed the cab driver jump out of his cab screaming, Meisel thought appellant might be hijacking the cab. The driver told Meisel that appellant jumped in the cab and said, "let's go for a ride." Meisel stated that he and Gonzalez then approached appellant, and identified themselves. Meisel then handcuffed appellant for safety purposes because he feared appellant might have a weapon in his backpack. Meisel stated appellant was not under arrest at that point, but he was being detained until they could check his identification and further investigate. They took appellant back into a room in the bus station where appellant produced no identification. Meisel called the warrant section, gave them appellant's name and birthdate, and then determined there was a warrant out of Dallas on a person with the same name and birth date. Meisel arrested appellant under the authority of that warrant, and then searched appellant's bag, finding the cocaine.

An investigative detention implicates constitutional concerns, although it is less of an intrusion on a person's Fourth Amendment right against unreasonable searches and seizures than an arrest. *Terry v. Ohio*, 392 U.S. 1, 26, 88 S.Ct. 1868, 1882, 20 L.Ed.2d 889 (1968). A detention occurs if, in light of all the circumstances surrounding an encounter between a police officer and an individual, the officer's conduct would communicate to a reasonable person that he is not free to go, or not free to refuse the officer's requests. *Florida v. Bostick*, 111 S.Ct.2382, 2387 (1991); *Reyes v. State*, 899 S.W.2d 319, 323(Tex.App.-Houston(14th Dist.) 1995, pet. ref'd). Because a detention is a limitation on an individual's freedom, an officer

must have specific, articulable facts that the person being detained has committed, or is about to commit a crime. *Florida v. Rodriguez*, 105 S.Ct. 308, 310 (1984); *Florida v. Royer*, 103 S.Ct.1319, 1324 (1983); *Terry*, 88 S.Ct. at 1879. Thus, to detain an individual, an officer needs to have some articulable facts relating to a crime, but need not meet the standard necessary to arrest an individual. As the United States Supreme Court said in *Rodriguez*, "[s]uch a temporary detention for questioning . . . is reviewed under the lesser standard enunciated in [*Terry*], and is permissible because of the "public interest involved in the suppression of illegal transactions in drugs or of any other serious crime.'" *Rodriguez*, 105 S.Ct. at 310 (quoting *Royer*, 103 S.Ct. at 1324-25); *Reyes*, 899 S.W.2d at 323.

The facts in this case are similar to those in *Reyes*; this court determined that all of the factors enumerated by Officer Stewart, including appellant's flight after an initial consensual encounter with the officer, gave the officer reasonable suspicion to justify appellant's detention. *Reyes*, 899 S.W.2d at 325. In that case, Officer Stewart, an experienced narcotics officer, noticed appellant in the Houston bus station when appellant approached the doors of the station. *Id.* at 321. Stewart noticed appellant was better dressed than the average traveler, and was carrying an "extremely heavy" large suitcase with an inappropriately large brass lock. *Id.* Appellant appeared very nervous, and kept looking over his shoulder and around the station, as if to see if anyone was watching him. *Id.* Appellant bought a one-way ticket to New York City with two $100 bills from a large roll of money, and filled out a luggage tag for the suitcase with only "Jose Garcia–NewYork City," and no street address. *Id*. Based on fifteen years experience as a narcotics officer, Stewart suspected appellant of being a narcotics courier, and decided to talk to him. *Id*. Stewart approached appellant, showed his identification, and asked to speak to him. *Id*. Appellant looked at the identification, and said he would talk to the officer after he paid his cab driver, who was waiting in front of the station. *Id.* As soon as appellant paid the cab driver, he "broke and ran." *Id.* Not until appellant ran from the officers after he paid his cab fare, and they yelled for him to stop, did the officers attempt to detain appellant. *Id.* When the officers caught appellant, they arrested him for evading detention. A search of appellant's suitcase revealed sixteen semiautomatic pistols and a kilogram of marijuana. *Id.*

This court held that the factors enumerated by Stewart as to observations of appellant when he came in the station, together with appellant's flight after paid the cab, gave Stewart reasonable suspicion to detain. *Id.* at 325. "Flight undoubtedly was the straw that broke the camel's back and sealed appellant's fate." *Id.* at 324 (footnote omitted). *See e.g.*, *Washington v. State*, 660 S.W.2d 533, 535 (Tex.Crim.App.1983) (stating that flight from a law enforcement officer can, in appropriate circumstances, provide the key ingredient justifying action by a police officer). *See also Muniz v. State*, 672 S.W.2d 804 (Tex.Crim.App.1984) (stating furtive actions and flight at the approach of law officers, when coupled with the officer's specific knowledge relating the suspect to a crime, are proper factors to be considered in the decision to make an arrest).

Flight alone may not justify an investigatory detention. *See Gurrola v. State*, 877 S.W.2d 300, 303 (Tex.Crim.App.1994) (stating mere flight does not justify an investigative detention); *Salcido v. State*, 758 S.W.2d 261, 264 (Tex.Crim.App.1988) (holding detention illegal when only articulable fact was that appellant ran when officers told him he was suspected of selling heroin). However, flight from a show of authority is a factor in support of a finding that there is reasonable suspicion that a person is involved in criminal activity. *Salazar v. State*, 893 S.W.2d 138 (Tex.App.--Houston [1st Dist.] 1995, no pet. h.). *See also State v. Como*, 821 S.W.2d 742, 745 (Tex.App.--Beaumont 1992, pet. ref'd) (finding officer had reasonable suspicion when car's license plates were altered and men standing by the car fled after seeing the police car); *Clarke v. State*, 785 S.W.2d 860, 869 (Tex.App.--Fort Worth 1990), *aff'd on other grounds*, 811 S.W.2d 99 (1991) (finding reasonable suspicion when defendant fit the description of home intruder and he began running when he saw the officer).

In this case, Meisel was an experienced narcotics officers, and observed appellant in the bus station trembling, and furtively glancing around the station. Appellant reacted when Officer Gonzalez came in with a "fanny pack," and went to the rear of the bus station. Neither officer ever approached appellant, and he walked out of the bus station. The officers followed, and appellant looked over his shoulder, and ran to the cab and jumped in. The cab driver immediately jumped out and screamed at the appellant. At this point, as in *Reyes*, the officers

had reasonable suspicion to detain. *Reyes*, 899 S.W.2d at 324. "Flight undoubtedly was the straw that broke the camel's back and sealed appellant's fate." *Id.* Additionally, Meisel testified that the cab driver's jumping out of his cab indicated appellant might be attempting to hijack the cab. Not knowing what appellant had done that caused this violent reaction on the part of the cab driver, Meisel was further justified in handcuffing appellant during his investigative detention for his safety. Officers may use such force as is reasonably necessary to effect the goal of the stop: investigation, maintenance of the status quo, or officer safety. *United States v. Sokolow*, 109 S.Ct. 1581 (1989); *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex.Crim.App.1997). The court of criminal appeals has held that we will follow the federal *Terry* standard with respect to temporary investigative stops and have found no reason to employ a more stringent standard under the Texas Constitution with respect to such stops. *Davis v. State*, 829 S.W.2d 218, 220 (Tex.Crim.App.1992).

Meisel testified he was not arresting appellant when he handcuffed him. The officer's testimony is a factor to be considered, along with the other facts and circumstances of the detention, in determining whether an arrest has taken place. *Rhodes*, 945 S.W.2d at 117; *Amores v. State*, 816 S.W.2d 407, 412 (Tex.Crim.App.1991).

Taking into account all of the facts articulated by Officer Meisel, including appellant's flight, we hold that Meisel had reasonable suspicion to justify appellant's detention. Appellant's contention under his sole point of error, that the officers did not have reasonable suspicion to detain him, is overruled.

B. Probable Cause to Arrest. Appellant contends that there was no probable cause for his warrantless arrest, and the Dallas warrant furnished the officers by their warrant section was invalid because it was for the wrong person. Appellant did not raise this contention in his motion to suppress nor did he raise it at the bench trial. His sole argument was addressed to lack of evidence to support reasonable suspicion to detain. Appellant has waived this contention, and has preserved nothing for our review. TEX. R. APP. P. 33.1(a); *Etheridge v. State*, 903 S.W.2d 1, 16 (Tex.Crim.App.1994).

In any case, appellant's contentions that the invalid warrant furnished no probable cause for his arrest is without merit. It is well established an arrest is not invalid merely because an officer relies on reasonably trustworthy information which later proves to be erroneous. See 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 3.5(d) at 272 (3d ed. 1996) ("[Q]uite clearly information sufficient to establish probable cause is not defeated by an after-the-fact showing that this information was false . . . ."); *see also State v. Mayorga*, 901 S.W.2d 943, 946 (Tex.Crim.App. 1995) (citing *Arizona v. Evans*, 115 S.Ct. 1185(1995)); *Dancy v. State*, 728 S.W.2d 772, 783 (Tex.Crim.App.1987) ("A misstatement in an affidavit that is merely the result of simple negligence or inadvertence, as opposed to reckless disregard for the truth, will not render invalid the warrant based on it."), *cert. denied*, 484 U.S. 975, 108 S.Ct. 485, 98 L.Ed.2d 484 (1987); *Brown v. State*, 986 S.W.2d 50, 52 (Tex.App.–Dallas 1999, n.pet.h.)(holding NCIC computer information furnished officers on stolen car was *reasonably* trustworthy; the officers had probable cause to arrest based on this information, even though it later proved erroneous). Accordingly, we conclude the outstanding warrant information available to the officers here established probable cause for appellant's warrantless arrest. Therefore, the search of appellant was conducted incident to a lawful arrest, and the trial court did not err in failing to suppress the cocaine discovered during the search. *See Brown*, 986 S.W.2d at52. We overrule appellant's sole point of error.

We affirm the judgment of the trial court.

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Bill Cannon
Justice

Judgment rendered and Opinion filed December 23, 1999.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn[2].

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

[2] Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.