

Interesting Cases - October, 2011

Officer lacked RS to stop vehicle leaving neighborhood despite the late hour (1 a.m.) and despite officer's hunch that the occupants were part of a burglary ring. *Turner v. State*, 2011 WL 4953438 (Tex.App.-Dallas Oct 18, 2011) (NO. 05-10-01225-CR) “[D] was not pulling out from a dark area behind a business that had been closed for an hour. Rather, he was parked on a neighborhood street, turned on his light, and pulled away from the curb as [officer] pulled onto the streetIn fact, [officer] could not give an exact date as to whether or not there had been any recent car thefts, but he estimated there may have been five in the neighborhood within the past year. While he did testify the number of occupants in the car could indicate a burglary ring because such rings usually travel in groups, he did not see a look out, he did not see anyone running from the house towards the car or wearing dark clothes, nor did the car appear to be weighted down with stolen merchandise. Thus, his testimony that [D] and his occupants might be part of a burglary ring was based on nothing more than a mere suspicion or a hunch, rather than articulable facts.”

D deemed intoxicated at the time of the accident, despite negative results of blood-alcohol test and despite expert testimony that D's drunken-like demeanor is consistent with the symptoms of D's mental disorders. *Kiffe v. State*, 2011 WL 4925986 (Tex.App.-Hous. (1 Dist.) Oct 13, 2011) (NO. 01-10-00746-CR) D admitted to taking certain prescription drugs such as valium on a regular basis (including the night before the accident) but not necessarily on the day of the accident. Regarding the expert testimony, “[the expert] testified that other reasons could explain all of the symptoms observed by [officer and other eye-witnesses]....The jury could have reasonably chosen to place greater weight on the testimony of the witnesses, who observed [D] on the day of the offense, than [the expert], who observed him months later.”

PC existed to obtain warrant to search residence where confidential informant (CI) bought cocaine despite brief period of time during which officer could not see CI while CI was conducting controlled buy. *State v. Griggs*, 352 S.W.3d 297 (Tex.App.-Hous. (14 Dist.) Oct 25, 2011) (NO. 14-11-00084-CR) D also argued (unsuccessfully) that the affidavit in support of the warrant provided, at most, PC to believe that cocaine would be found on the person of the suspected party but not in the residence. Rejecting said argument, the court wrote: “The suspected party was present at [the residence] when the informant arrived to purchase narcotics, conversing with the informant at the front door of the residence and retreating into the residence to retrieve the requested cocaine....[D] argues that ‘[t]he sale of drugs outside a house can be likened to the discovery of drugs outside a house in the garbage.’....But the illegal drugs sold to the informant in this case were retrieved from within the residence, not from the suspected party's person or from a garbage can on the curb.”

Officer lacked RS to justify investigatory stop of vehicle, concluded court, despite officer's observation of left tires of D's vehicle cross highway's white center stripe coupled with anonymous caller's tip reporting dangerous driving by a vehicle matching D's vehicle. *State v. Sanders*, 2011 WL 4828817 (Tex.App.-San Antonio Oct 12, 2011) (NO. 04-11-00392-CR) “Law enforcement ‘generally cannot rely alone on a police broadcast of an anonymous phone call to establish reasonable suspicion.’....Although [officer] testified [D's] pickup straddled the white center stripe multiple times, he stated he agreed with defense counsel that the video recording only shows the pickup straddle the line once. The video recording does not show [D's] pickup drift completely into the left lane, but rather only shows the pickup's left tires cross the center stripe. Therefore, there is evidence in the record to support the trial court's finding that the ‘single movement whereby the left wheels of [D]'s vehicle drifted into an adjacent lane of traffic is insufficient to show that [D] ‘changed lanes’ or had an intent to change lanes which would require the use of a turn signal.”

Sufficient to support conviction for aggravated assault was evidence that D was driving a construction truck with a trailer 68 miles per hour in a construction area in which a safe speed would have been 30 m.p.h. (although no speed limited was posted). *Rodriguez v. State*, 352 S.W.3d 548 (Tex.App.-Beaumont Oct 12, 2011) (NO. 09-10-00432-CR) “Although there were no posted speed limit signs for the construction traffic in the portion of the zone that was not open to the public, the record contains the testimony of witnesses who stated that a speed of thirty miles-per-hour would be a safe speed for the construction traffic.”

Sufficient evidence to support DWI, concluded court, despite testimony from the manager of the bar from which D was driving home that “[D] commonly mumbles and giggles and talks to herself as a result of her prior head injury.” *Zill v. State*, 2011 WL 4611495 (Tex.App.-Hous. (1 Dist.) Oct 06, 2011) (NO. 01-10-00679-CR) “Although [D's] behavior during the traffic stop may have been consistent with a head injury, her behavior also constitutes recognized evidence of intoxication....The jury was fully entitled to believe [officer] that [D] was intoxicated and disbelieve [D's] alternative explanation that her prior head injuries caused her behavior.”

Reversing conviction “because evidence of flight alone, even upon a showing of authority, is insufficient to establish reasonable suspicion.” *Castillo v. State*, 2011 WL 4830168 (Tex.App.-San Antonio Oct 12, 2011) (NO. 04-10-00893-CR) “In this case, there was evidence that three officers were going to a location where they believed individuals would be present who would try to flee. No evidence was presented, however, to establish the officers' purpose for going to the location. Flight alone is insufficient to justify an investigatory detention...”

Deemed sufficient for RS of DWI was officer’s observation of D driving the wrong direction through the drive-through lane at Burger King and nearly hitting the drive-through menu coupled with information obtained from anonymous caller complaining about D’s erratic driving. *Zibafar v. State*, 2011 WL 4610793 (Tex.App.-Hous. (1 Dist.) Oct 06, 2011) (NO. 01-10-01139-CR) “An officer generally cannot rely only upon a police broadcast of an anonymous telephone call to establish probable cause or reasonable suspicion. However, an anonymous tip, corroborated by the officer's personal observations, may be sufficient to give an officer reasonable suspicion to detain an individual.” Here, in addition to the above-referenced observations at the drive-through, “[w]hen [officer] initially approached [D’s] car, [officer] saw [D] pour liquid out of a Styrofoam cup onto the floorboard of his car. When he reached [D’s] car, [officer] detected an odor of alcohol in the car.”

The presence of persons other than D in the residence provided sufficient evidence to support officers' belief that D would be in the residence when they attempted to execute the arrest warrant. *Walker v. State*, 2011 WL 4840714 (Tex.App.-Beaumont Oct 12, 2011) (NO. 09-10-00434-CR, 09-10-00435-CR, 09-10-00436-CR, 09-10-00437-CR) “In support of this contention, [D] relies on the holding in [*Green v. State*]. [The *Green* court] [i]n analyzing the second prong of the Payton test, the court reasoned that the officer knew nothing of Green's employment status or habits and knew nothing about the make or model of Green's car to determine whether he was present in the apartment. Additionally, the officer's testimony was devoid of any suggestion that he saw lights on inside the apartment or that he had detected any kind of movement within. The court explained ‘that nervous behavior by the person answering the door [must] be coupled with some other indicia, however minor, that the suspect is present in order to generate a reasonable belief the suspect is home.’ However, the instant Court distinguished *Green* on the following grounds. Here, the officers identified at least two persons in D’s residence after announcing their presence, one who looked out of the window and another person who answered the door (neither of whom were D). “When one [of them] made a sudden move toward the rear of the home upon seeing the police officer at the door, [officer] believed that [D] was present and that the lady may be attempting to warn him of the officers' presence. Further, the record does not indicate that the officers had any information to suggest conclusively that [D] was not at home....[W]e hold that the trial court could reasonably conclude that the officer had formed a reasonable belief that [D] was within the residence.”

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