the Jasuta / Schulman report

Volume 33, Number 11 ~ Monday, March 24, 2025 (Report No. 1,556)

TIBA's Case of the Week

Fourteenth Court of Appeals (Houston)

Case Name: ***Nitin Kumar Madas v. The State of Texas***

- **OFFENSE**: Possession of a Controlled Substance <1 gram
- **COUNTY**: Navarro
- **C/A CASE No**. 14-23-00792-CR
- **DATE OF OPINION**: March 20, 2025 **OPINION**: Justice Tonya McLaughlin
- **DISPOSITION**: Trial Court Reversed
- **TRIAL COURT**: CCL; Hon. Amanda Putman
- **LAWYERS**: Damara Watkins (Defense); Aaron Lilly (State)

(**Background Facts**): The Corsicana Police Department's Narcotics Unit received information from a confidential informant about a suspected drug dealer. On November 15, 2021, in an unmarked patrol vehicle, officers had the suspected drug dealer under surveillance while parked in his vehicle in downtown Corsicana. The officers observed Appellant walk up to the suspect's vehicle, get in briefly, exit the vehicle, and then leave on foot. The officers watched Appellant walking on the wrong side of the road down Main Street, so they pulled up behind him and activated their lights. One of the detectives stepped out of his vehicle, identified himself, and detained Appellant for walking on the wrong side of the roadway. Appellant was asked to place his hands on the hood of the unmarked patrol vehicle while the detective performed a pat down of Appellant for safety. The assisting law enforcement officer was within arm's reach of Appellant during the pat down. No weapons were found.

[GS **31.053 Search & Seizure / Warrantless Searches or Seizures / Consent**]: While Appellant still had his hands on the hood, the detective asked if he could search Appellant's pockets. Appellant responded, "go ahead" and pulled his hands off the patrol vehicle toward his pockets. The detective, who was standing directly behind Appellant, forced Appellant's hands back on the hood of the police vehicle. The search commenced and the officer assisting at the scene discovered a small bag of methamphetamine inside of Appellant's watch pocket. The officers' body camera videos and dash cam video reflect that Appellant was calm, polite, and compliant at all relevant times. Appellant filed a motion to suppress arguing the evidence of drugs should be suppressed because it was found in an illegal search. The trial court denied Appellant's motion and, pursuant to a plea bargain. Appellant pled guilty. In his appeal, Appellant asserts the trial court erred by

denying his motion to suppress evidence because the investigating officers "violated Appellant's rights under the 4th Amendment in patting down Appellant without reasonable suspicion and searching his person without a without a valid warrant or voluntary consent or other recognized exception to the warrant requirement."

Holding (**Legal Justification for the Pat-down Search**): Appellant first argues that, while he was detained, the officers had no legal justification for the pat-down search that was conducted. It is undisputed that the encounter between Appellant and the investigating officer was not a consensual encounter and had escalated to an investigatory detention. *** The pat-down search or "stop and frisk" by law enforcement personnel amounts to a sufficient intrusion on an individual's privacy to implicate the Fourth Amendment's protections. See ***Terry v. Ohio***, 392 U.S. 1 (1968); ***Carmouche v. State***, 10 S.W.3d 323 (Tex.Cr.App. 2000)(see ☙, Vol. 8, No. 4; 01/31/2000). However, an officer is justified in engaging in a protective frisk if he reasonably suspects that the person who he has lawfully detained is presently armed and dangerous. ***Furr v. State***, 499 S.W.3d 872 (Tex.Cr.App. 2016)(see ☙, Vol. 24, No. 39; 09/26/2016). *** The trial court made findings of fact and conclusions of law in this case, including that the investigating officers "had sufficient reason to conduct a pat-down search for officer safety." The record supports the trial court's conclusion. The officers here were unfamiliar with Appellant. Based on his brief interaction with a suspected drug dealer, the investigating officers believed that Appellant was involved in a drug transaction even though they did not see one. Although their interaction with Appellant occurred in the middle of the day in the downtown area, the officers were unaware if Appellant had a weapon. The mere fact that Appellant was calm and compliant when he was detained does not eliminate any concerns for officer safety. *** Although the investigating officers suspected that Appellant was purchasing narcotics, not selling them, they did not have certainty as to his role. We conclude the trial court did not err by finding that the investigating officers legally and reasonably conducted a pat-down search for weapons and did not violate Appellant's constitutional rights.

Sidebars

(**John G. Jasuta**) While I agree with the outcome of this case, I am perplexed at the description of Appellant's criminal behavior in "walking on the wrong side of the road down Main Street . . .," thus leading to law enforcement's intervention. Neither opinion, however, states what that behavior was. Is Main Street one way for pedestrians? Was he walking on the roadway, or the side of the road? If so, aren't you supposed to walk against traffic? With apologies to Pfc. Louden Downey, I think this Appellant should being crying out, "What did I do wrong?" I sure would like to know.

(**David A. Schulman**) To the extent that the opinion doesn't explain what justified stopping Appellant (but see Transportation Code § 552.006 "USE OF SIDEWALK"), the opinion is deficient. Like John, I, too, would like to know what Appellant did wrong.

Holding (**Legal Justification for Search of Appellant Without a Warrant**): Appellant argues there was no warrant for the search of his person. He asserts that he did not freely and voluntarily consent to the search of his person or pockets, and without his voluntary consent, there was no justification for the search. In response, the State argues that Appellant's consent was freely given because it is unchallenged that Appellant told the officer to "go ahead" when one of the investigating officers asked if he could search Appellant's pockets. The State further maintains the investigating officer, although he did not inform Appellant of his right to refuse the search, did not threaten or intimidate Appellant. We agree with Appellant. *** At the hearing, the State's only theory for justifying the warrantless search was consent. *** The trial court made no express findings regarding the voluntariness of Appellant's consent. In the absence of express findings from the trial court regarding the voluntariness of Appellant's consent, we apply the general rule that the trial court made any implicit findings of fact supported by the record. ***Lerma v. State***, 543 S.W.3d 184 (Tex.Cr.App. 2018)(see ☙, Vol. 26, No. 04; 01/29/2016). *** Unlike in ***Carmouche***, the search of Appellant's pockets happened in the middle of the day. However, the fact that the search of Appellant's pockets occurred in broad daylight in downtown Corsicana does not significantly change the circumstances of the search. Appellant was alone with two plainclothes police officers, who although they did not have weapons in their hand, did have weapons on display on the front of their police vests. Despite the fact that the investigative detention had concluded without finding any weapons or contraband, the two investigating officers did not move. They were both within arm's reach, if not closer, of Appellant, restraining his movement and preventing him from turning around before he was asked to consent to a search of his person. They forced his hands on the hood of the vehicle. The situation, like that in ***Carmouche***, would not have led a reasonable person to conclude the search was optional. As discussed above, ***Carmouche*** is directly on point and is precedent we are obligated to follow. Therefore, we conclude that there was not clear and convincing evidence of the voluntariness of Appellant's consent.

> **Concurring / Dissenting Opinions**: Justice Chad Bridges dissented, arguing that, "on the implicit findings we must give deference to in this case," he "cannot go so far" as to say that the trial court abused its discretion.

Sidebars

(**David A. Schulman**) Presuming the current iteration of the CCA believes ***Carmouche*** to continue as "good law" (at 25 years old, it is, after all, an "ancient" decision), this decision will stand up.