Affirmed and Opinion filed February 14, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00345-CR

KENNETH WAYNE JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 845,359

O P I N I O N

Kenneth Jones appeals his arrest and conviction for possession with intent to deliver cocaine. In two issues, appellant contends the two searches of his car violated his protection against unreasonable searches under the Texas Constitution. We affirm.

Background

Deputy Christine Kendricks detained appellant for speeding in a school zone on May 22, 2000. Appellant presented a Texas identification card to Officer Kendricks, rather than a driver's license. Kendricks arrested appellant after learning his driver's license had been

suspended. Kendricks then called for a wrecker and, at appellant's request, allowed appellant to pay to tow his car to a private residence. After appellant had paid the wrecker driver, Kendricks and her partner, Officer Wooten, decided to inventory appellant's vehicle. The officers found a bottle with liquid in it and a set of weight scales under the driver's seat. Approximately $2,500 in cash was found in the trunk. Kendricks testified she believed, based on these discoveries, the car contained additional contraband and asked that the wrecker driver return appellant's money and tow the car to the Constable's Annex.

A canine unit investigated the car at the annex. The dog alerted to the trunk and clawed at the drivers seat. Cocaine was found in the crease of the driver's seat. Kendricks told the dog handler he did not need a search warrant because the search was part of an inventory of the car.

This was appellant's second trial. The jury deadlocked in the first. At the beginning of the second trial, appellant presented an oral motion to suppress. The State argued the search was a valid inventory of appellant's vehicle. No other legal basis for the search was offered. The trial court overruled the motion. No findings of fact or conclusion of law were filed.

Issues

Appellant contends both the first and second searches of his car violated Article I, Section 9, of the Texas Constitution.[1] Therefore, appellant argues the crack cocaine should not have been admitted at trial. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23 (Vernon Supp. 2002) (No evidence obtained in violation of the Texas constitution shall be admitted against the accused in a criminal case.). Following appellant's designation, we address each search

[1] Appellant does not mention his rights under the United States Constitution. We do not assume his rights under the two constitutions are the same. *Hulit v. State*, 982 S.W.2d 431, 435-36 (Tex. Crim. App. 1998) (Texas Constitution may afford less protection than U.S. Constitution) (citing *Heitman v. State*, 815 S.W.2d 681, 690 n.22 (Tex. Crim. App. 1991)). However, lacking Texas authority distinguishing the Texas and U.S. Constitutions, we rely upon United States Supreme Court cases as permissive authority. *Id.*

in a separate issue.

Standard of Review

Where no findings of fact are filed, we review the evidence supporting a ruling on a motion to suppress in the light most favorable to the ruling. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). Findings of fact necessary to support the ruling are assumed so long as they are supported by the record. *Id.* We must therefore uphold the ruling if the record supports any applicable legal theory.[2] *Id*. at 855-856.

I. Roadside Search

In his first issue, appellant contends the roadside search conducted by officer Kendricks cannot have been an inventory pursuant to lawful impoundment. We agree. Impoundment after custodial arrest is lawful only if there is no reasonable alternative to ensure the protection of the vehicle. *Yaws v. State*, 38 S.W.3d 720, 723 (Tex. App.—Texarkana 2001, pet. ref'd) (citing *Benavides v. State*, 600 S.W.2d 809, 811 (Tex. Crim. App. 1980)). Here, officer Kendricks created a reasonable alternative to impoundment by arranging to have appellant's vehicle towed to a private residence.

However, a search of the passenger compartment of a vehicle is also proper if made incident to arrest. *Pettigrew v. State*, 908 S.W.2d 563, 570 (Tex. App.—Fort Worth 1995, pet. ref'd) (citing *United States v. Belton*, 453 U.S. 454, 460 (1981)). As in *Belton*, here appellant does not question the validity of his arrest. The search of appellant's car was conducted contemporaneously with his arrest. *See, e.g., State v. Ballard*, 987 S.W.2d 889, 892 n.3 (Tex. Crim. App. 1999) (irrelevant whether arrest occurs before or after the search). *See also Belton*, 453 U.S. at 462-63, 465 (rejecting J. Brennan's suggestion, in dissent, of a narrow temporal limitation on search incident to arrest). We therefore follow well-settled

[2] Appellant submits our decision in *State v. Aguirre*, 5 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 1999, no pet.) that prevents the State from arguing on appeal new grounds for the validity of the searches. Appellant's interpretation of *Aguirre* is incorrect. *See State v. Mercado*, 972 S.W.2d 75, 77 (Tex. Crim. App. 1998) (distinguishing review when State is appellant versus appellee).

law and hold Officer Kendricks' first search was lawful as incident to appellant's arrest.

Appellant's first issue is overruled.

II. Search at the Annex

In his second issue, appellant contends the search at the annex was unlawful because no exigency prevented the investigating officers from obtaining a search warrant. Appellant relies upon *Maldonado v. State*, 528 S.W.2d 234, 240 (Tex. Crim. App. 1975) (holding search unlawful under similar circumstances because exigent circumstances not present). *Maldonado* has been expressly overruled. *See State v. Guzman*, 959 S.W.2d 63 (Tex. Crim. App. 1998) (citing *Chambers v. Maroney*, 399 U.S. 42, 52 (1970)).

Under Texas law, no exigency is required to authorize a search of an automobile. *See id.* Nor does Texas law require that a search be authorized by a warrant. *Hulit*, 982 S.W.2d at 436-37 (rejecting federal method of requiring warrant, then diluting requirement via exceptions). The only requirement for a valid search under Texas law is probable cause. *Id.* Probable cause exists when the facts and circumstances within the officer's knowledge would permit a prudent man to believe a person has committed or is committing an offense. *Joseph v. State*, 3 S.W.3d 627, 633-34 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Here, prior to the second search, Officers Kendricks and Wooten had found a set of portable weight scales, bottles of liquid suspected to contain drugs, together with bundles of small bills.[3] Texas courts have found probable cause under similar circumstances. *See, e.g., Villareal v. State*, 703 S.W.2d 301, 305 (Tex. Crim. App. 1985). In *Villareal*, the Court held probable cause to search a car's trunk existed where the passenger compartment contained a small scale with white powder on it. The fact that the white powder was later determined to be legal was held immaterial in assessing the validity of the initial search. *Id*. Here, the fact the liquid in the bottles contained legal, rather than illegal drugs, is immaterial.

[3] One of the bundles contained one hundred one-dollar bills.

Under these circumstances, we hold the discovery of the scale, bottles, and bundles of cash was sufficient to enable a reasonable person to believe appellant was committing or had committed a felony. Therefore, the crack cocaine was properly admitted into evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23 (Vernon's Supp. 2002). Appellant's second issue is overruled.

Accordingly, the judgment below is affirmed.

/s/ Eva M. Guzman
Justice

Judgment rendered and Opinion filed February 14, 2002.
Panel consists of Justices Yates, Edelman, and Guzman.
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