Affirmed and Opinion filed December 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00294-CR

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THOMAS CRAIG TAKACS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 7
Harris County, Texas
Trial Court Cause No. 96-44361

O P I N I O N

Thomas Craig Takacs, the appellant, was charged by information with driving while intoxicated. Appellant subsequently entered a plea of guilty pursuant to a plea bargain agreement. In accord with the plea agreement, the trial court found appellant guilty and sentenced him to 180 days in jail, probated for two years, and a fine of $750. In five points of error, appellant contends the trial court erred in failing to (1) grant his motion to suppress and (2) declare Section 724.061 of the Transportation Code unconstitutional. We affirm.

Prior to trial, appellant alleged that his arrest was not supported by probable cause and was, therefore, unlawful. Appellant filed a motion to suppress evidence obtained as a result of the arrest, and the motion was heard on stipulated evidence. According to the stipulation, Officer Miller, of the Houston Police Department, was dispatched to a report of a motor vehicle accident in the 8200 block of the Katy Freeway at 1:27 a.m. on October 12, 1996. At the scene witnesses identified appellant as a driver of the vehicle involved in the accident. Miller put appellant in the back seat of his police car to complete the accident investigation.

Officer Jaime arrived a short time later. He took appellant out of the police car to begin a DWI investigation. Based upon appellant's demeanor, the failure of the field sobriety tests, and the odor of an alcoholic beverage, Officer Jaime formed the opinion that appellant had lost the normal use of his mental and physical faculties due to the introduction of alcohol into his body. Officer Jaime arrested appellant for driving while intoxicated at 1:45 a.m. Officer Jaime subsequently took appellant to the Houston Police Department for further investigation, including videotaping and a blood alcohol test request.

In his first three points of error, appellant complains the stipulated facts on which the trial court heard the suppression motion are too conclusory to establish probable cause under the federal and state constitutions and under Chapter 14 of the Code of Criminal Procedure, dealing with warrantless arrests. *See* TEX. CODE CRIM. PROC. ANN. arts. 14.01-14.06 (Vernon 1977 & Supp. 1999). However, the complaint is made for the first time on appeal.

To preserve a complaint for appeal, a party must show he timely complained to the trial court and stated the grounds for the ruling he sought from the trial court with sufficient specificity to make the trial court aware of the complaint. *See* TEX. R. APP. P. 33.1(a)(1)(A); *Bell v. State*, 938 S.W.2d 35, 54-55 (Tex. Crim. App. 1996) (objection stating one legal basis may not be used to support a different legal theory on appeal), *cert. denied*, 118 S.Ct. 90 (1997); *Macias v. State*, 959 S.W.2d 332, 338 (Tex. App.–Houston [14th Dist.] 1997, pet. ref'd).

As a general proposition, a stipulation is regarded as a contractual agreement between the parties. *See Howeth v. State*, 645 S.W.2d 787, 789 (Tex. Crim. App. 1983). It is not a device for attacking an unsuspecting opponent. Thus, if there is an ambiguity in a stipulation, it is to be resolved in favor of the party in whose interest the stipulation was made. *See St. Paul Guardian Ins. Co. v. Luker*, 801 S.W.2d 614, 620 (Tex. App.–Texarkana 1990, no writ); *Firestone Tire & Rubber Co. v. Chipman*, 194 S.W.2d 609, 610 (Tex. App.–San Antonio 1946, no writ).[1] Here, the State had the burden of proving facts establishing reasonable suspicion or probable cause. Accordingly, the stipulation relieved the prosecution of this burden, and it was in the State's interest that such a stipulation was presumably made.

Appellant's counsel has unsuccessfully attempted, in several cases, to submit a motion to suppress on stipulated evidence and then, for the first time on appeal, challenge the adequacy of the stipulation. *See Mathieu v. State*, 992 S.W.2d 725, 727-28 (Tex. App.–Houston [1st Dist.] 1999, no pet h.); *Maxcey v. State*, 990 S.W.2d 900, 901-03 (Tex. App.–Houston [14th Dist.] 1999, no pet.); *Rowland v. State*, 983 S.W.2d 58, 59 (Tex. App.–Houston [1st Dist.] 1999, no pet.). A defendant cannot agree to submit a case on stipulated evidence, prepare the stipulation, submit it into evidence, and then attack it for the first time on appeal on the grounds the stipulation is too conclusory. *See Rowland*, 983 S.W.2d at 59. Thus, where a stipulation summarily asserts the defendant was initially stopped because he was not wearing a seat belt, the defendant cannot thereafter challenge, for the first time on appeal, the sufficiency of the stipulation because it failed to expressly say the officer personally observed the infraction. *See Moore v. State*, 981 S.W.2d 701, 705 (Tex. App.–Houston [1st Dist.] 1998, pet. ref'd). "Without a showing that the officers' conclusions were *not* based on their personal observations, the stipulations will be viewed in the light most favorable to the trial court's judgments." *Id*.

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[1] See also *O'Conner v. State*, 401 S.W.2d 237, 238 (Tex. Crim. App. 1966); *Bender v. State*, 739 S.W.2d 409, 412 (Tex. App.–Houston [14th Dist.] 1987, no pet.) (holding that stipulations are to be reasonably and liberally construed with a view of effectuating the parties intentions).

Appellant specifically contends the stipulation fails to show how the police learned of the accident. However, it is not relevant to this probable cause determination how Officer Miller learned of the accident. The officers while investigating an accident in a public place developed evidence of a criminal offense.

Appellant also complains the stipulation failed to establish the time of the accident and, thus, the State failed to show he was intoxicated while driving. The officers were dispatched to the scene of an accident, where witnesses identified appellant as the driver of the vehicle involved in the accident. The trial court could have inferred from the stipulated evidence that appellant was intoxicated at the time of the accident and thus was intoxicated while driving. Moreover, the officers had probable cause to establish public intoxication, which would justify an arrest. *See Elliott v. State*, 908 S.W.2d 590, 592 (Tex. App.–Austin 1995, pet. ref'd); *Reynolds v. State*, 902 S.W.2d 558 (Tex. App.–Houston [1st Dist.] 1995, pet. ref'd); *Segura v. State*, 9826 S.W.2d 180, 185 (Tex. App.–Dallas 1992, pet. ref'd).

Appellant further complains the stipulation failed to establish how the witnesses at the scene obtained their information that appellant was the driver involved in the accident. The court could infer that witnesses who identified appellant as the driver saw the events in question.

Appellant also complains the stipulation failed to show that Officer Miller had adequate grounds to detain him for investigation. Several witnesses at the scene told Officer Miller that appellant was driving the vehicle involved in the accident. Officer Miller was authorized to detain appellant to maintain the status quo while investigating the accident. Moreover, when police smelled alcohol on appellant, they were authorized to investigate whether he was intoxicated. *See Mohmed v. State*, 977 S.W.2d 624, 628 (Tex. App.–Fort Worth 1998, pet. ref'd) (odor of marihuana emanating from car driven by defendant is sufficient to support reasonable suspicion to detain defendant); *State v. Brabson*, 899 S.W.2d 741, 747 (Tex.

App.–Dallas 1995) (excessive horn honking and strong odor of alcohol justified intoxication investigation), *aff'd*, 976 S.W.2d 182 (Tex. Crim. App. 1998).

Appellant further complains the stipulation failed to establish the arresting officer had sufficient training, experience, or competence with which to determine he was intoxicated. The parties stipulated that Officer Jaime based his arrest on appellant's demeanor, his performance in field sobriety tests, and the odor of an alcoholic beverage. The court could have inferred the officer had sufficient training to make the determination. Even a layman can offer an opinion regarding whether a person is intoxicated. *See Howard v. State*, 744 S.W.2d 640 (Tex. App.–Houston [14th Dist.] 1987, no pet.). Accordingly, appellant's first three points of error are overruled.

In his fourth point of error appellant complains the trial court erred in failing to find section 724.061 of the Transportation Code unconstitutional. *See* TEX. TRANSP. CODE ANN. § 724.061 (Vernon Pamph. 1999). He argues the statute violates federal due process in that (1) it does not require a proper relevance predicate before introduction and (2) it is impermissibly vague. These contentions have been previously raised and rejected by this Court. *See Maxcey*, 990 S.W.2d at 904. *See also Moore*, 981 S.W.2d at 707-09; *McClain v. State*, 984 S.W.2d 700, 703 (Tex. App.–Texarkana 1998, pet. ref'd). Appellant's fourth point of error is overruled.

In his final point of error appellant contends the police did not properly advise him of the consequences of taking or refusing a breath test and that the trial court erred in failing to suppress the fact that he refused to submit to taking a breath test. Appellant alleges that the officer told him that if the test revealed a blood-alcohol content of 0.10 percent or greater, his license would be suspended for sixty days. Appellant contends the officer should have advised him that if the evidence shows he had a blood-alcohol content of 0.10 percent or greater *while driving*, his license would be suspended for sixty day. Appellant raises this complaint for the first time on appeal. Thus, the trial court never had an opportunity to consider or address his

contentions. Appellant has failed to preserve his complaint for appellate review. *See* TEX. R. APP. P. 33.1(a); *Little v. State*, 758 S.W.2d 551, 564 (Tex. Crim. App. 1988).

Appellant's final point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed December 23, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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