Affirmed and Opinion filed February 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00615-CR and 14-98-00616-CR

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LEON DAVID TARTOKOV, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause Nos. 776,236 and 776,237

O P I N I O N

Leon David Tartokov was indicted on possession of a controlled substance and possession of marijuana charges. When his motion to suppress evidence was denied, he pleaded guilty and was sentenced to two years, probated for four years. Appellant contends in three points of error that the trial court erred in denying his motion to suppress. We affirm.

The starting point for our analysis is *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997). The *Guzman* analysis applies to all motions to suppress evidence. *Loserth v. State*, 963 S.W.2d 770, 771 (Tex. Crim. App. 1998).

Guzman requires us to give almost total deference to a trial court's determination of the historical facts when those facts are supported by the record. *Id.* at 89. Similarly, a reviewing court must afford almost total deference to a trial court's determination of mixed questions if their ultimate resolution turns on an evaluation of credibility and demeanor. *Id.* at 89. A mixed question turns on credibility and demeanor if the testimony of one or more witnesses, if believed, is *always* enough to add up to what is needed to decide the substantive issue. *Loserth v. State*, 963 S.W.2d at 770, 773 (emphasis in original). Questions outside this category are not entitled to this almost total deference, although inferences drawn by trial judges and law enforcement officers are still entitled to great weight by the reviewing court. *Guzman*, 955 S.W.2d at 87 (citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). The issues which we confront today, the issues of probable cause and reasonable suspicion, require a determination from the totality of the circumstances and are reviewed *de novo*. *Guzman*, 955 S.W.2d at 87; *State v. Ensley*, 976 S.W.2d 272, 274-75 (Tex.App.—Houston [14th Dist.] 1998, pet. ref'd).

FACTS

Houston Police Officer Brian Brassell was summoned to the parking garage of a Houston Holiday Inn to recover a stolen vehicle. When he arrived, the hotel's security guard told him three young men were acting suspiciously:

> [OFFICER BRASSELL]: He observed a pickup truck and a Mustang come into the parking lot and I don't know, the exact [sic] two males got out of the Mustang with a box and approached a male in the pickup truck. The male in the pickup truck got out with a white bag, looked like a trash bag. He said put it in the box then all three of them walked into the hotel real fast and he said they were looking behind them like they were nervous.

Armed with this information, Brassell went to the pickup truck which the security guard said was involved in the transaction. He found the passenger door ajar, and saw a small baggie of a white substance sitting on the center console which later tested positive for cocaine. Brassell said the back seat floorboards were covered with what appeared to be loose marihuana. At that point, Brassell summoned other officers to the scene.

Brassell said he was talking to the security guard about finding the suspects, since they did not have a room number, when appellant and Mark Dyson walked out of the hotel and up to the pickup truck. Brassell said he approached and asked them, "[W]here is your friend with the box[?]" and that appellant replied with a room number. Brassell had other officers detain the pair while he and another officer went up to the room. Brassell said the odor of marihuana was apparent more than ten feet from the room. When he knocked, Mike Ehlert opened the door; Brassell said he could see the box in question, which contained marihuana, and a baggie of white powder sitting on a table top.

Appellant argues that the security guard's report to Brassell of suspicious activity was not sufficient to rise to the level of "reasonable suspicion." We disagree.

The case of *Amores v. State*, 816 S.W.2d 407 (Tex. Crim. App. 1991) is instructive. There an officer responding to a "burglary in progress" call saw Amores sitting in his car in the parking lot of an apartment building. When the officer drove in, Amores tried to drive out but was blocked by the police car. *Id.* at 410. The officer ordered him out of the car, made him lie on the ground, and handcuffed him. At that point the officer checked the vehicle and found an illegal weapon under the driver's seat. *Id.* Finding that Amores was arrested and not merely detained, the court of criminal appeals then examined whether probable cause existed for a warrantless arrest. The court found that the weapon could not supply the requisite probable cause because it was found after Amores was handcuffed. *Id.* at 412-413. The court also found that the burglary report could not justify a warrantless arrest because the caller did not identify herself; in other words, the investigating officer could not rely on the trustworthiness of the information because he did not know its source. *Id.* at 414-415.

Assuming for purposes of this opinion that appellant was arrested when Brassell ordered them detained, we find ample evidence to justify his arrest. Brassell testified that he knew the hotel security guard to be a reliable source of information. Acting on this information, Brassell found contraband in plain view. Appellant was identified as one of the participants in the suspicious transaction, and walked to a vehicle which the guard said was involved in the transaction. When Brassell asked appellant where his

"friend with the box" was, appellant knew what he was talking about and told him where Ehlert was. The box in question was later found to contain more than eight pounds of marihuana.[1]

We find that, at the time of appellant's detention, the facts and circumstances of which the officer knew were sufficient to justify an arrest. Since the police were justified in arresting appellant, they were justified in searching him and acquiring the evidence which formed the basis of his guilty plea.

The judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Cannon, Draughn, and Lee.[*]

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

[1] A separate motion to suppress the evidence found in the hotel room is pending in another cause number.

[*] Senior Justices Bill Cannon, Joe L. Draughn, and Norman R. Lee sitting by assignment.