Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00573-CR

PALMER LEE WALTERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 797,968

O P I N I O N

Appellant was indicted for possession of cocaine, more than four grams but less than 200 grams. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(d) (Vernon Supp. 2000). After a bench trial, he was found guilty. The judge assessed punishment at eight years in prison. Because sufficient evidence supports the judgment and because neither the arrest nor the seizure of evidence was unlawful, we affirm.

I. Background

At approximately 8:30 p.m. November 13, 1998, Harris County sheriff's deputies Jerry Maddox and David Morrison were on patrol in the 9000 block of Bayou Ridge in Humble when they saw a dark colored truck turn from Border Street westbound onto Bayou Ridge. The deputies testified that the truck was driving without headlights. The driver of the truck, appellant, turned into a driveway, parking partially on the roadway. The driveway and house were later identified as belonging to appellant's mother, Deborah Walters. The deputies activated their overhead emergency lights and a spotlight. Appellant exited the truck and started walking up the driveway. Deputy Maddox called to appellant to stop. Appellant looked back and saw the deputy, whom appellant knew. Appellant continued to walk to the house. Appellant testified that he told Maddox that he, appellant, had not done anything. Appellant told the deputy to leave him alone. Appellant continued walking onto the yard toward the door. Maddox testified that three times he told appellant to stop. Maddox followed appellant into the yard and came within approximately five feet of appellant when he saw appellant throw an object with his right hand. Maddox testified that he never lost sight of the object that left appellant's hand and landed on the ground. Maddox then made contact with appellant and handcuffed him. While the deputy was handcuffing appellant, Morrison approached. Maddox told Morrison about the object on the ground. Maddox testified that he had no doubt that the plastic bag Morrison recovered was the object thrown by appellant.

Morrison and Maddox testified that although it had been misty and drizzling all evening, the bag they retrieved was dry and clean, except for the bottom where it had landed in the mud. In the bag were twenty-four rocks of what later was proved to be crack cocaine. The deputies also recovered $700 in cash from appellant. Appellant stipulated that the bag contained cocaine weighing more than four grams and less than 200 grams by aggregate weight, including any adulterants and dilutants.

Appellant's mother testified that she saw appellant arrive and that shortly before his arrival, she heard noises like someone running through her yard. She testified that it was too dark to identify the people but that the same two men often ran through her yard. Appellant's fiancee, Andtrica Howard, testified that she was at Ms. Walter's home that night and that before appellant's arrival, she too heard noises, ran to the door, and saw three to five men running through the yard. A neighbor, Vernon Austin, testified he was barbecuing in his back yard at the time. His testimony agreed with that of the two women. Appellant testified and denied throwing anything to the ground. All four defense witnesses testified that appellant's headlights were on as he drove down the street.

II. Discussion

A. Sufficiency of the Evidence

In his first point of error, appellant complains the evidence was insufficient to prove the elements of the indictment beyond a reasonable doubt.

When we review the legal sufficiency of the evidence, we review the evidence, either direct or circumstantial, in the light most favorable to the judgment to determine whether any rational trier of fact could have found the elements of the offence beyond a reasonable doubt. *Turner v. State*, 805 S.W.2d 423, 427 (Tex. Crim. App. 1991). The trier of fact is the sole judge of the credibility of a witness and may believe or disbelieve all or any part of a witness's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App.1986). Where a defendant is charged with unlawful possession of a controlled substance, the State must prove that the defendant exercised actual care, custody, control, or management over the contraband and that he knew the matter possessed to be contraband. *Grant v. State*, 989 S.W.2d 428, 433 (Tex. App.—Houston [14th Dist.] 1999, no pet.). To prove knowing possession, the State must present evidence affirmatively linking the accused to the controlled substance. *Palmer v. State*, 857 S.W.2d 898, 900 (Tex. App.—Houston [1st Dist.]

1993, no pet.). The link between the accused and the controlled substance need not be so strong that it excludes every other outstanding reasonable hypothesis except the accused's guilt. *Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1995). Links establishing the accused's knowledge of and control over the contraband can include the contraband's being in open or plain view and its proximity to the accused. *Brazier v. State*, 748 S.W.2d 505, 508 (Tex. App.—Houston [1st Dist.] 1992, pet. ref'd).

Appellant argues that the State failed to link the drugs found in the front yard to him. Appellant notes that Deputy Maddox testified that when he saw appellant throw an object to the ground, the deputy at that moment could not identify the object. Maddox also testified that the area was so dark he could not see well without artificial light. Appellant argues that his mother, his fiancee, and a neighbor all testified that before appellant's arrival, they heard someone else in the yard.

Whether other people were in Ms. Walter's yard before appellant's arrival is a question left to the fact finder. Maddox testified that there was no one in the area when the deputies arrived about fifteen minutes before appellant. Although Maddox testified he could not identify the object thrown by appellant, the deputy stated that he saw appellant throw the object to the ground and that he followed the object's movement until it landed. Within seconds, Deputy Morrison arrived and retrieved the object. Evidence showed it had been raining that evening and that the object was dry except for where it had landed on the ground. In *Noah v. State*, 495 S.W.2d 260, 263-64 (Tex. Crim. App. 1973), evidence was found sufficient to link contraband to the accused where the accused was seen to throw a package from his car by an officer who stopped the accused's car and walked back to the spot where he had seen the accused throw the package three to five minutes earlier. The officer recovered the package of drugs in an area in which there were no other packages. Here, a rational fact finder could have linked beyond a reasonable doubt the cocaine in the plastic bag to appellant. We overrule appellant's first point of error.

B. Arrest

In appellant's second point of error, he complains that the evidence used to convict him was the product of an illegal arrest.

As a general rule, a law officer must obtain an arrest warrant before taking a person into custody. *Dejarnette v. State*, 732 S.W.2d 346, 349 (Tex. Crim. App. 1987). An officer may arrest a party without a warrant if the officer has probable cause and the arrest falls within one of the statutory exceptions to the warrant requirement of articles 14.01 and 14.03 of the Code of Criminal Procedure. *Stull v. State*, 772 S.W.2d 449, 451 (Tex. Crim. App. 1989). A peace officer is authorized to detain an individual found committing certain traffic violations. *See* TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1977) (stating that officer may arrest offender without warrant for any offense committed in officer's view); TEX. TRANSP. CODE ANN. §§ 543.001 & 543.004 (Vernon 1999) (authorizing arrest for traffic violations); *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982). The officers testified that appellant was driving without headlights after dark, a violation of traffic regulations. *See* TEX. TRANSP. CODE ANN. § 547.302(a)(1)(Vernon 1999).

Appellant argues his arrest was unlawful because (1) the deputies testified that they usually would only issue a citation for a no-headlight offense and (2) the arrest took place on private property, his mother's front yard.

As for the pretext-stop argument, so long as a traffic stop is objectively valid, the ulterior motive of the officer does not render the stop unlawful under either the state or federal constitutions. *See Crittenden v. State*, 899 S.W.2d 668, 674 (Tex. Crim. App. 1995) (state constitution); *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992) (federal constitution). The traffic stop for driving without headlights was objectively valid. The officers were entitled initially to detain appellant for the traffic offense that they witnessed.

Nor was the arrest rendered invalid by its having occurred on private property. In

order to determine the lawfulness of an officer's entry we must examine whether an individual by his conduct exhibits an actual subjective expectation of privacy and whether that expectation is one that society is prepared to recognize as reasonable. *Oliver v. United States*, 466 U.S. 170, 177, 104 S. Ct. 1735, 1740-41, 80 L. Ed. 2d 214 (1984). The capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection has a legitimate expectation of privacy in the invaded space. *Crunk v. State*, 934 S.W.2d 788,793 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd). A sidewalk, driveway or entrance to a home offers implied permission to the public, including law enforcement officers, to enter those areas to approach the front door. *See Cornealius v. State*, 900 S.W.2d 731, 733-34 (Tex. Crim. App. 1995) *and Bower v. State*, 769 S.W.2d 887, 897 (Tex. Crim. App. 1989).

After appellant exited his truck, he walked up the driveway to his mother's house, continuing through the yard toward the door. Deputy Maddox called out to appellant three times to stop and followed appellant up the driveway and onto the yard to detain him. Although there was some evidence that a "keep out" sign had been posted on the front gate, there was no evidence that the driveway gate was closed. We do not construe the posting of a "keep out" sign on the front gate as making an otherwise lawful entry unlawful or as prohibiting every otherwise lawful approach. The deputy's initial entry onto the driveway and onto the yard was not an intrusion within the purview of the Fourth Amendment. *See also United States v. Bustamante-Saenz*, 894 F.2d 114, 118 (5th Cir. 1990) (stating that where law officers did not enter defendant's home in order to arrest him, but rather waited until he emerged from house to do so, Fourth Amendment not violated).

The deputy had the authority to enter the driveway and then the yard to detain appellant for a traffic violation. The initial traffic detention was not unlawful. The evidence gathered in the process of detaining appellant was not the product of an unlawful arrest. We overrule appellant's second point of error.

C. Search and Seizure

In appellant's third point of error, he complains that the evidence used to convict him was obtained through an unlawful search and seizure.

Appellant argues that Maddox came onto the property of appellant's mother to arrest him for a traffic violation. After Maddox arrested appellant, the deputies had no authority to remain on the property to search for drugs. Appellant argues further that although Maddox testified he saw appellant throw an object to the ground, Maddox could not identify the object and had no probable cause to search for drugs. Appellant also argues that even if a court were to assume he had thrown an object to the ground, such actions could not constitute abandonment because his mother's yard was private property.

When the police take possession of abandoned property, there is no seizure under the Fourth Amendment. *Hawkins v. State*, 758 S.W.2d 255, 257 (Tex. Crim. App.1988). The evidence shows that before Deputy Maddox seized appellant, appellant threw the plastic bag onto the ground. The evidence was not, therefore, seized as a result of the arrest but recovered from the ground where appellant threw it before the arrest. Appellant's probable cause related arguments have no bearing where there is no seizure under the Fourth Amendment.

As for appellant's private property argument, we do not consider whether the ground upon which the object fell was privately or publicly owned. Rather, we consider whether appellant has abandoned the expectation of privacy in the object. In examining the issue, the *Hawkins* court quoted *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir.1973), as follows:

> The issue is not abandonment in the strict property sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the

time of the search.

Hawkins, 758 S.W.2d at 258. Here, appellant threw down the object in his mother's yard while being following by a law officer. Appellant's actions demonstrate that he was abandoning his reasonable expectation of privacy with regards the object. The evidence recovered in the plastic bag was not obtained through an unlawful search or seizure. *See also Rosalez v. State*, 875 S.W.2d 705, 720 (Tex. App.—Dallas 1993, pet. ref'd) (stating where appellant threw down box containing marihuana onto his own property while fleeing law officers, appellant relinquished his interest in box in such manner that he could no longer retain reasonable expectation of privacy), *and Taylor v. State*, 820 S.W.2d 392, 395 (Tex. App.—Houston [14th Dist.] 1991, no pet.) (stating appellant abandoned cocaine by throwing it from window of car parked on private property). We overrule appellant's third point of error.

III. Conclusion

Having overruled appellant's three points of error, we affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed March 1, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
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