Affirmed and Opinion filed December 23, 1999.

In The

Fourteenth Court of Appeals

———————————

NO. 14-97-00720-CR

———————————

CAROL D. FOWLER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 731,792

O P I N I O N

Carol D. Fowler appeals a conviction for possession of heroin on the ground that the trial court erred in denying his motion to suppress. We affirm.

Background

Houston Police Officer Mahoney arrested appellant after a computer check of appellant's license plate number disclosed outstanding warrants in appellant's name. Mahoney searched appellant's car and found ten packages of heroin in a closed manilla envelope. After he was charged with possession of heroin, weighing more than four grams and less than 200 grams, with intent to deliver, appellant filed a pretrial motion to suppress, which the trial court

denied after a hearing. Appellant then pled guilty with an agreed punishment recommendation. The trial court found appellant guilty and assessed punishment at 25 years in accordance with the recommendation.

Jurisdiction

As a preliminary matter, the State argues that this court lacks jurisdiction over the appeal because appellant's notice of appeal was untimely filed and was a general notice of appeal that is insufficient to confer appellate jurisdiction over a judgment rendered on a negotiated plea of guilty or nolo contendere.

Timeliness

The State contends that appellant's notice of appeal was late because it was due on June 19, 1997 but was not file-stamped until June 23, 1997 and no motion for extension of time was filed.[1]

A document received within ten days after the filing deadline is considered timely filed if it was: (1) sent to the proper clerk by United States Postal Service first-class, express, registered, or certified mail; (2) placed in a properly addressed and stamped envelope; and (3) deposited in the mail on or before the last day for filing. *See* TEX. R. APP. P. 9.2(b). A legible postmark affixed by the United States Postal Service is conclusive proof of the date of mailing. *See id*.

In this case, a copy of the envelope in which appellant mailed his notice of appeal is included in the record. It was sent by first-class mail, addressed to the district clerk of Harris County, and has a legible United States Postal Service postmark dated June 19, 1997. The district clerk's file stamp shows that it was received on June 20, 1997. Because appellant's notice of appeal thus satisfies the requirements of rule 9.2(b), it was timely filed.

---

[1] A court of appeals may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the notice is filed in the trial court and a motion reasonably explaining the need for an extension of time is filed. *See* TEX. R. APP. P. 26.3.

General Notice of Appeal

The State argues that appellant's general notice of appeal is insufficient to confer jurisdiction to appeal because it does not state that the trial court granted permission to appeal or specify that the complained-of-matter was raised by written motion and ruled on before trial.

Where an appeal is from a judgment rendered on a negotiated guilty plea and the punishment assessed does not exceed the agreed punishment recommendation, the notice of appeal must state that: (1) the appeal is for a jurisdictional defect; (2) the substance of the appeal was raised by written motion and ruled on before trial; or (3) the trial court granted permission to appeal. *See* TEX. R. APP. P. 25.2(b). An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. *See* TEX. R. APP. P. 25.2(d). After the appellant's brief is filed, a notice of appeal may be amended only on leave of the appellate court and on such terms as the court may prescribe. *See id*. However, rule 25.2(d) does not state that good cause must be shown to seek leave to file an amended notice of appeal after an appellant's brief has been filed. *See id*.

In this case, appellant filed an amended notice of appeal after he filed his brief. His motion for leave to file the notice was taken with the case. The State did not file a response or otherwise object to appellant's motion for leave or amended notice of appeal. Appellant's amended notice states that his motion to suppress was raised by written motion and ruled on before trial and that the trial court granted permission to appeal. These statements cure the alleged defect in the original notice. In the absence of any objection by the State or other reason to deny appellant's motion for leave to file his amended notice of appeal, we grant it and thereby overrule the State's jurisdictional challenge.

Motion to Suppress

Appellant's sole point of error argues that the trial court erred in denying his motion to suppress the evidence because it was obtained during a warrantless search of his vehicle which did not qualify as an inventory search incident to an arrest.

In reviewing a trial court's ruling on a motion to suppress, we afford almost total deference to trial courts' determinations of historical facts that the record supports and their rulings on application of law to fact questions, also known as mixed questions of law, when those fact findings and rulings are based on an evaluation of credibility and demeanor. *See Maldonado v. State*, 998 S.W.2d 239, 247 (Tex. Crim. App. 1999). We review *de novo* mixed questions of law and fact that do not turn on an evaluation of credibility and demeanor. *See Maestas v. State*, 987 S.W.2d 59, 62 (Tex. Crim. App. 1999), *cert. denied*, 120 S.Ct. 93 (1999). In reviewing a trial court's ruling, we view the evidence in the light most favorable to the ruling. *See State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999).

An inventory search of an automobile is permissible under the federal and state constitutions if it is conducted pursuant to a lawful impoundment of the vehicle. *See South Dakota v. Opperman*, 428 U.S. 364, 375 (1976); *Delgado v. State*, 718 S.W.2d 718, 721 (Tex. Crim. App. 1986). Impoundment is valid if police place the driver of the vehicle under custodial arrest and have no alternatives available than impoundment to ensure protection of the vehicle. *See Delgado*, 718 S.W.2d at 721. Factors the courts consider in determining the reasonableness of an impoundment following a custodial arrest include whether: (1) someone was available at the scene of the arrest to whom police could have given possession of the vehicle;[2] (2) the vehicle was impeding the flow of traffic or was a danger to public safety;[3] (3) the vehicle was locked;[4] (4) the detention of the arrestee would likely be of such duration as

---

2 *See Delgado*, 718 S.W.2d at 721.

3 *See Benavides v. State*, 600 S.W.2d 809, 812 (Tex. Crim. App. 1980).

4 *See Benavides*, 600 S.W.2d at 812.

to require police to take protective measures;[5] (5) there was some reasonable connection between the arrest and the vehicle;[6] and (6) the vehicle was used in the commission of another crime. *See Josey v. State*, 981 S.W.2d 831, 842 (Tex. App.–Houston [14th Dist.] 1998, no pet.). The State bears the burden to prove a lawful impoundment. *See Delgado*, 718 S.W.2d at 721.

In the present case, appellant argues that the search of his car cannot be justified as a lawful inventory search because there were alternatives to impounding his vehicle to assure its protection. However, there is no evidence that anyone was available at the scene of the arrest to whom Mahoney could have given possession of the vehicle. Although appellant had indicated that he wanted his brother to come pick up his car, appellant's brother was not at the scene at the time of the arrest and lived some distance away. Furthermore, because the car was located in a high crime area and the driver of the vehicle was under arrest, Mahoney testified that he felt the car should be moved for safekeeping.

Based on this evidence, the State adequately established that no reasonable alternative to impoundment was available to ensure protection of appellant's vehicle. Therefore, impoundment of appellant's car was lawful, and the inventory search of it satisfied the inventory search exception to the warrant requirement. Because appellant's point of error fails to demonstrate that the search of his vehicle was unlawful, it is overruled, and the judgment of the trial court is affirmed.

---

5 *See Gords v. State*, 824 S.W.2d 785, 788 (Tex. App.–Dallas 1992, pet. ref'd).

6 *See Benavides*, 600 S.W.2d at 812.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 23, 1999.

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

Do not publish — TEX. R. APP. P. 47.3(b).