Affirmed and Memorandum Opinion filed January 28, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01081-CR

MARCUS DIXON, Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 1190713

MEMORANDUM OPINION

Appellant Marcus Dixon was convicted by a jury of possession of less than one gram of cocaine. He challenges the trial court's denial of his motion to suppress, arguing that the physical evidence in this case, a glass pipe containing cocaine residue, was discovered during an investigative detention unsupported by reasonable suspicion. We affirm.

I. FACTS

At about 9:00 p.m. on May 5, 2008, Harris County Deputy Alden Clopton was patrolling in the area of a bus station at Webster and Main in Houston when he "observed two suspicious persons passing back and forth what appeared to [him] like a hand-to-hand narcotics transaction." Clopton, who testified that he watches that area because he has made many narcotics arrests there, recognized one of the men. Although the area is posted with "No Loitering" signs, Clopton passed these two men at least twice that evening, and in both instances they were standing next to a fence line passing something back and forth between them. Clopton "immediately zoned in to those two individuals, watching their hands." He pulled over within six feet of the men, turned on his overhead lights, and asked them to step over to the vehicle. Clopton testified that appellant, who immediately recognized him, addressed him by his nickname and attempted to distract the officer's attention. According to Clopton, appellant was hesitant to approach; appellant instead "was trying to walk behind the other individual and kept moving his hands towards his pockets." Clopton instructed appellant to place his hands flat on Clopton's patrol car, but appellant kept his hand in a cupped position. Believing appellant might have a weapon, Clopton turned appellant's hand over and found that appellant was holding a glass pipe. Clopton field-tested residue from the pipe, which tested positive for cocaine.

Appellant was arrested and charged with possession of less than one gram of cocaine. At appellant's trial, Clopton testified as described above. The glass pipe was offered into evidence, and Kay McClain, a drug analyst for the Harris County Medical Examiner's Office, testified that she also tested the residue in the pipe and found it to contain less than ten milligrams of cocaine. After the State rested, appellant made an oral motion to suppress the evidence on the grounds that at the time appellant was told to approach Clopton's vehicle, there was neither probable cause for appellant's arrest nor a sufficient basis for an investigatory detention. The trial court denied the motion, and the

jury convicted appellant of the charged offense. After considering appellant's criminal history, the trial court assessed punishment at twelve years' confinement. This appeal timely ensued.

II. ANALYSIS

In a single issue, appellant challenges the trial court's denial of his motion to suppress. To preserve a complaint for appellate review, the record must show that the complaint was made to the trial court by timely request, objection, or motion stating the specific grounds therefor. *See* TEX. R. APP. P. 33.1. To be timely, a motion to suppress must be presented before the evidence is admitted into evidence. *Nelson v. State*, 626 S.W.2d 535, 536 (Tex. Crim. App. 1981); *Sims v. State*, 833 S.W.2d 281, 284 (Tex. App.—Houston [14th Dist.] 1992, pet. ref'd). In this instance, appellant did not urge his oral motion to suppress based on an alleged unlawful stop until after the evidence had been admitted, the witness had been excused, and the State had rested its case. Accordingly, he has failed to preserve this issue on appeal. *See Nelson*, 626 S.W.2d at 446; *Sims*, 833 S.W.2d at 284; *Moody v. State*, No. 08-01-00030-CR, 2002 WL 1340959, *2 (Tex. App.—El Paso June 20, 2002, no pet.) (not designated for publication) (motion to suppress made after the evidence has been admitted does not preserve the issue for appeal); *Rodriguez v. State*, Nos. 05-98-01932-CR and 05-98-01933-CR, 2000 WL 146808 (Tex. App.—Dallas Feb. 11, 2000, no pet.) (mem. op., not designated for publication) (where evidence was admitted without a timely objection that it was unlawfully seized, a subsequent motion to suppress preserves nothing for review). We therefore overrule his sole issue on appeal.

III. CONCLUSION

Because appellant has failed to preserve his only argument for review, we affirm the trial court's judgment.

/s/ Margaret Garner Mirabal
Senior Justice

Panel consists of Chief Justice Hedges, Justice Anderson, and Senior Justice Mirabal.*

Do Not Publish — TEX. R. APP. P. 47.2(b).

* Senior Justice Margaret Garner Mirabal sitting by assignment.