

**Affirmed and Memorandum Opinion filed January 7, 2010.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-08-00869-CR**

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**WILLIE JONES, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 184th District Court  
Harris County, Texas  
Trial Court Cause No. 1165388**

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**MEMORANDUM OPINION**

Appellant Willie Jones appeals his conviction for possession of cocaine challenging the trial court's ruling on his motion to suppress. We affirm.

**I. Background**

Shortly before midnight on May 2, 2008, Officer Matthew Rippey and his partner conducted a traffic stop on a vehicle that had defective brake lamps. The driver stopped in

a parking lot and appellant, who was a passenger in the vehicle, jumped out of the car and fled. Officer Rippey told appellant to stop and return to the vehicle, but appellant ignored him. Appellant jumped several fences in a residential area until he finally stopped in a back yard. When he stopped, the officers ordered appellant to remove his hands from his pockets. After repeated requests, appellant removed his hands from his pockets, and, as he did so, threw a crack pipe to the ground. After restraining appellant, the officers searched the yard and found the crack pipe.

At trial, appellant sought to have the crack pipe suppressed on the grounds that appellant did not commit an offense in the officers' presence and, as a passenger in the vehicle, was entitled to walk away from the traffic stop. The trial court held a hearing outside the presence of the jury at which Officer Rippey testified that he requested that appellant return to the vehicle for his and his partner's safety. The trial court denied appellant's motion to suppress the crack pipe. Following the trial court's ruling, appellant objected to the Officer Rippey's "continued testimony . . . on the basis of what we went over in the hearing outside the presence of the jury[.]"

During Officer Rippey's testimony before the jury, the State introduced the crack pipe into evidence. Appellant objected to its admission on the grounds that no chain of custody had been established. The trial court neither ruled on appellant's objection, nor admitted the crack pipe into evidence at that time. During the chemist's testimony, the State again introduced the crack pipe into evidence as State's Exhibit 1. At that time, appellant's counsel affirmatively stated, "No objection to State's 1, Your Honor." Therefore, the crack pipe was admitted into evidence without objection.

On appeal, appellant raises two issues in which he asserts the trial court erred in denying his motion to suppress because (1) the crack pipe was discovered as the result of an illegal warrantless arrest, and (2) he was illegally detained after the traffic stop.

## II. Standard of Review

The appropriate standard of review for a suppression ruling is a bifurcated review, giving almost total deference to the trial court's findings of fact, but conducting a de novo review of its application of law to those facts. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). The denial of a motion to suppress should be upheld if the ruling is reasonably supported by the record and correct on any theory of the law applicable to the case. *Laney v. State*, 117 S.W.3d 854, 857 (Tex. Crim. App. 2003).

## III. Discussion

Initially, the State asserts that appellant failed to preserve error by affirmatively stating he had no objection to the admission of State's Exhibit 1. When a pretrial motion to suppress evidence is overruled, the defendant need not object at trial to the same evidence in order to preserve error on appeal. *Moraguez v. State*, 701 S.W.2d 902, 904 (Tex. Crim. App. 1986). However, when the defendant affirmatively asserts during trial that he has "no objection" to the admission of the complained-of evidence, he waives any error in the admission of the evidence despite the pretrial ruling. *Swain v. State*, 181 S.W.3d 359, 368 (Tex. Crim. App. 2005).

Here, defense counsel sought to preserve error by requesting a hearing outside the presence of the jury at the beginning of trial. He further requested a continued objection to the officer's testimony about the crack pipe. The crack pipe, however, was not admitted during the officer's testimony, but was admitted during the chemist's testimony after defense counsel affirmatively stated he had no objection to the evidence. Further, courts have held that even if defense counsel files a motion to suppress and requests a running objection, error may still be waived by an affirmative statement of "no objection" when the evidence is introduced. *See Valdez v. State*, No. 07-03-0014-CR, 2003 WL 22069532 (Tex. App.—Amarillo 2003, no pet.) (memo. op.); *Wilson v. State*, No.

08-01-00319-CR, 2003 WL 1564237 (Tex. App.—El Paso 2003, no pet.) (memo. op.). Other courts have found an exception to this rule, however, when the trial court expressly states on the record that it considers the issue to be preserved for appeal. *See Shedden v. State*, 268 S.W.3d 717, 730 (Tex. App.—Corpus Christi 2008, pet. ref'd) (holding that affirmative statement of “no objection” by counsel did not waive error where motion to suppress was denied, running objection was obtained, and trial court “expressly represented to [appellant’s] counsel that it considered the suppression issue preserved for appeal”); *Bouyer v. State*, 264 S.W.3d 265, 268 (Tex. App.—San Antonio 2008, no pet.) (holding that despite statement of “no objection” to evidence sought to be suppressed, error was not waived because “the trial court clearly did not construe [appellant’s] ‘no objection’ as a waiver of his motion to suppress”). The record in this case does not reflect any indication by the trial court that it considered the suppression issue preserved for appeal in spite of defense counsel’s assertion of “no objection.” Therefore, the limited exception to the waiver rule does not apply. Because appellant failed to preserve error with regard to suppression of the crack pipe, we overrule his two issues.

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Yates, Seymore, and Brown.

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