Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00628-CR

Braden Daniel **PRICE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CR10496
Honorable Catherine Torres-Stahl, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: May 8, 2019

REVERSED AND REMANDED

Braden Daniel Price pled guilty to possession of fifty-six pounds of marijuana after the trial court denied his motion to suppress. Price presents one issue on appeal challenging the trial court's denial of his motion. Specifically, Price contends the search of his suitcases violated his constitutional rights. We sustain Price's issue and reverse the trial court's judgment.

BACKGROUND

San Antonio Police Detective Carl Bishop was contacted by an officer with the Austin Police Department regarding a tip received from a reliable informant that Price went out-of-state

to purchase marijuana and would be flying into San Antonio carrying the drugs. Detective Bishop confirmed Price would be arriving on a flight to San Antonio, set up a surveillance, and requested a canine unit. When Price's plane landed, the canine alerted on two suitcases labeled with Price's name.

Detective Bishop observed Price retrieve the two suitcases and roll them out the exit door. Detective Bishop and other officers approached Price and placed him in handcuffs. Price and his suitcases were taken to a secure office at the airport. Once inside the office, Price was arrested and read his *Miranda* rights. After Price invoked his right to remain silent, one of the officers searched the suitcases and seized the marijuana.

STANDARD OF REVIEW

We review a ruling on a motion to suppress using a bifurcated standard of review. *Lerma v. State*, 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018). "Although we give almost total deference to the trial court's determination of historical facts, we conduct a *de novo* review of the trial court's application of the law to those facts." *Love v. State*, 543 S.W.3d 835, 840 (Tex. Crim. App. 2016) (internal quotation omitted).

DISCUSSION

Price does not challenge the lawfulness of his arrest. *See Florida v. Royer*, 460 U.S. 491, 506 (1983) (noting positive alert by canine to presence of controlled substance in luggage justifies arrest on probable cause). Instead, Price asserts his suitcases "could not be opened in the absence of his consent or a search warrant." The State responds the officers "could search [Price's] luggage incident to his lawful arrest because the bags were immediately associated with him."

"In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). One established exception to the warrant requirement is the search-incident-to-arrest exception. *State*

v. Rodriguez, 521 S.W.3d 1, 10 (Tex. Crim. App. 2017). A search that is "proximate in time and place to the arrest, that is limited to the person of the arrestee and the area within his reach is a permissible search incident to arrest." *Carrasco v. State*, 712 S.W.2d 120, 122 (Tex. Crim. App. 1986). A search incident to arrest extends to "objects immediately associated with the person of the arrestee or objects in an area within the control of the arrestee." *Id*. at 123.

Price quotes the following language from *United States v. Chadwick*, to assert the search of his suitcases was not a valid search incident to his arrest:

> Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

433 U.S. 1, 15 (1977), *abrogated on other grounds*, *California v. Acevedo*, 500 U.S. 565 (1991). In *Carrasco*, however, the Texas Court of Criminal Appeals narrowly read *Chadwick*, noting "the search occurred over an hour after the arrest and after the defendant had already been placed in jail and the repository in question had been removed to another building." 712 S.W.2d at 122. In a later opinion, the court further asserted the *Chadwick* court "held that the evidence obtained from the search must be suppressed because the footlocker 'was property not immediately associated with the arrestee' at the time of the search." *State v. Granville*, 423 S.W.3d 399, 411 (Tex. Crim. App. 2014). Therefore, our analysis in this case turns on whether the rolling suitcases were "immediately associated" with Price at the time of his arrest. If they were not, the videotape of the events that transpired between the time Price was handcuffed and the searching of his suitcases established that the suitcases were reduced to the officers' "exclusive control, and there [was] no longer any danger that [Price] might gain access to the [suitcases] to seize a weapon or destroy evidence." *Chadwick*, 433 U.S. at 15. Accordingly, unless the suitcases were "immediately

associated" with Price, their search would not be justified under the search-incident-to-arrest exception to the warrant requirement.

The Texas Court of Criminal Appeals has distinguished between a purse, which has been held to be "immediately associated" with a person, and luggage. *See Stewart v. State*, 611 S.W.2d 434, 438 (Tex. Crim. App. 1981) ("As a matter of common usage, a purse is an item carried on an individual's person in the sense that a wallet or items found in pockets are and unlike luggage that might be characterized as 'a repository for personal items when one wishes to transport them,' *Arkansas v. Sanders, supra*, a purse is carried with a person at all times."). In its brief, the State relies on the Fort Worth court's decision in *State v. Drury*, upholding the search of a tin can the defendant was holding at the time of his arrest. 560 S.W.3d 752, 754, 759 (Tex. App.—Fort Worth 2018, pet. ref'd). However, the Fort Worth court also drew a distinction with regard to luggage, reasoning, "Among other things, purses, wallets, and certain types of bags have been held to be immediately associated with an arrestee, while luggage, guitar cases, a sealed cardboard box, and a foot locker—among other things—have not." *Id*. at 755; *see also Adams v. State*, 643 S.W.2d 423, 425-26 (Tex. App.—Houston [14th Dist.] 1982, no pet.) (holding search of pouch in luggage which was in the sole custody and control of police to be illegal). Accordingly, we hold Price's suitcases were not "immediately associated" with his person; therefore, the warrantless search of the suitcases was not authorized as a search incident to Price's arrest.

In *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984), the Texas Court of Criminal Appeals suggested a different analysis that could be used to uphold the trial court's denial of the motion to suppress in the instant case. *See State v. Cortez*, 543 S.W.3d 198, 203 (Tex. Crim. App. 2018) (noting trial court's ruling on a motion to suppress can be upheld "if we conclude that the decision is correct under any applicable theory of law"). In *Lalande*, the court was reviewing the El Paso court's holding that the warrantless search of an airline shoulder bag was constitutionally

permissible as a search incident to an arrest. 676 S.W.2d at 116. Noting "the problem of drawing the line on what is 'immediately associated' with an arrestee," the court held "that once it becomes unequivocally clear that the item is to accompany the detainee [into custody], the right of inspection accrues immediately, and is not limited to inspections carried out within the station itself." *Id*. at 118. Here, it was unequivocally clear that Price's suitcases would accompany him into custody; therefore, under the reasoning in *Lalande*, the search would be permissible. *See id*.

The analysis in *Lalande*, however, cannot be reconciled with the rejection of the doctrine of inevitable discovery by the Texas Court of Criminal Appeals in *State v. Daugherty*, 931 S.W.2d 268, 273 (Tex. Crim. App. 1996). In *Daugherty*, the court held illegally obtained evidence is not admissible simply because the evidence "would have been 'obtained' eventually in any event by lawful means." 931 S.W.3d at 270. Similarly, the fact that the suitcases would have been inventoried when they accompanied Price to jail did not authorize their search at the airport office. Therefore, the trial court erred in denying the motion to suppress. And, "[i]t has long been the rule in Texas that, when a defendant pleads guilty after a trial court denies a motion to suppress and when the evidence subject to the motion could have given the State leverage in the plea bargaining process, then harm is established." *Marcopoulos v. State*, 548 S.W.3d 697, 708 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd); *see also McNeil v. State*, 443 S.W.3d 295, 303-04 (Tex. App.—San Antonio 2014, pet. ref'd) (same).

CONCLUSION

Because the trial court abused its discretion in denying Price's challenge to the search of his suitcases, Price's issue is sustained, and the judgment of the trial court is reversed.

Patricia O. Alvarez, Justice

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