In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00197-CR

LARRY EUGENE MAHORNEY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 50th District Court
Cottle County, Texas
Trial Court No. 2979, Honorable Juanita Pavlick, Presiding

July 28, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant, Larry Eugene Mahorney, was indicted for the third-degree felony offense of unlawful possession of a firearm by a felon, enhanced by two prior felony convictions.[1] The jury found appellant guilty, and the trial court assessed his punishment at confinement for twenty-five years. We affirm.

[1] *See* TEX. PENAL CODE ANN. § 46.04(a)(2).

BACKGROUND

A Cottle County sheriff's deputy initiated a traffic stop when he noticed that the registration on appellant's vehicle was expired. During the stop, the deputy discovered that in addition to no valid vehicle registration, appellant had no valid driver's license and no insurance on the vehicle. The deputy told appellant that appellant could not drive the vehicle, that the deputy was going to issue appellant a ticket, and that the vehicle would be impounded. Appellant informed the deputy that he had a firearm inside the vehicle. Appellant acknowledged that he had prior felony convictions and that he was not allowed to possess a firearm. The deputy then arrested appellant for the unlawful possession of a firearm by a felon.

ANALYSIS

Appellant raises five issues on appeal, four concerning the admission of evidence and one concerning the sufficiency of the evidence. We first address the sufficiency challenge and then the evidentiary challenges.

Sufficiency of the Evidence

In his fifth issue, appellant asserts that there was insufficient evidence to convict him without the inadmissible evidence challenged in his first four issues. In considering the sufficiency of the evidence, we must consider all the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citations omitted). "All the evidence" includes direct and circumstantial evidence and includes properly and improperly admitted evidence. *See*

Clayton v. State, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007); *see also Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016) ("Our review of 'all the evidence' includes evidence that was properly and improperly admitted.").

Appellant was convicted under section 46.04(a)(2) of the Texas Penal Code, which provides in part, "A person who has been convicted of a felony commits an offense if he possesses a firearm . . . at any location other than the premises at which the person lives." TEX. PENAL CODE ANN. § 46.04(a)(2). The record shows, and appellant does not dispute, that appellant was convicted of a felony offense in 2005. The record also shows that appellant told the deputy he had a firearm in his vehicle and that the deputy recovered said firearm from appellant's vehicle. Viewing the evidence in the light most favorable to the verdict and drawing all reasonable inferences therefrom, we find the evidence sufficient to support appellant's conviction. Accordingly, we overrule appellant's fifth issue.

Inventory Search Exception

In his first two issues, appellant argues that the trial court erred by admitting into evidence the weapon recovered by law enforcement because there was no probable cause for the State to search the vehicle.[2] Appellant maintains that this warrantless search and seizure thus violated his rights under the U.S. Constitution and the Texas

[2] Appellant also makes a passing reference to the alleged lack of reasonable suspicion for the traffic stop. However, he offers neither discussion nor legal authority related to his claim. Therefore, we consider the issue inadequately briefed and therefore waived. *See Herrera v. State*, No. 07-19-00368-CR, 2020 Tex. App. LEXIS 6093, at *5 (Tex. App.—Amarillo Aug. 3, 2020, no pet.) (mem. op., not designated for publication) (per curiam) (complaints not accompanied with substantive briefing or citation to pertinent authority are waived).

Constitution. The State responds that because the firearm was recovered pursuant to a lawful inventory search of the vehicle, it was admissible. We agree with the State.

We review the trial court's decision to admit evidence under an abuse of discretion standard. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019). A trial court abuses its discretion when it acts without reference to any guiding rules and principles or acts arbitrarily or unreasonably. *Id.*

Inventory searches of vehicles subject to impounding are consistent with the Fourth Amendment and are a "well-defined exception to the warrant requirement" in that "[t]he policies behind the warrant requirement are not implicated in an inventory search, nor is the related concept of probable cause . . . ." *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987) (citations omitted). Inventory searches "serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Id.* at 372. An inventory search is permissible under both the United States Constitution and Texas Constitution if conducted pursuant to a lawful impoundment. *Benavides v. State*, 600 S.W.2d 809, 810 (Tex. Crim. App. 1980); *Lagaite v. State*, 995 S.W.2d 860, 865 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd).

Here, appellant was stopped for a traffic violation. The deputy conducting the stop soon discovered that appellant did not have a valid driver's license and thus could not drive the vehicle lawfully. *See* TEX. TRANSP. CODE ANN. § 521.457. Additionally, no other individual could drive the vehicle lawfully because it had an expired registration and there was no proof of financial responsibility. *See id.* §§ 502.472, 601.051, 601.053. Under

the circumstances of this case, the decision to impound the vehicle was reasonable. *See Roberts v. State*, 444 S.W.3d 770, 777–78 (Tex. App.—Fort Worth 2014, pet. denied) (impoundment of vehicle reasonable where driver did not have valid driver's license, vehicle had expired registration, and there was no proof of financial responsibility). We further note that appellant has not disputed the propriety of the impoundment in this case.

The firearm at issue was discovered when the deputy began to inventory appellant's vehicle in order to impound it. Specifically, appellant informed the deputy that the firearm was located in the back floorboard of the vehicle after the deputy asked him about the presence of dangerous items in the vehicle. Because the firearm was discovered during an inventory search made pursuant to a proper impoundment, the trial court did not abuse its discretion in admitting the firearm into evidence. *See Jackson v. State*, 468 S.W.3d 189, 199 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (trial court did not err by denying motion to suppress evidence found during lawful inventory search). We overrule appellant's first two issues.

Miranda and Article 38.22 Warnings

In his next two issues, appellant contends that the trial court erred by admitting his statements into evidence because his statements were obtained in violation of *Miranda* and article 38.22 of the Texas Code of Criminal Procedure. *See Miranda v. Arizona*, 384 U.S. 436, 498–99, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); TEX. CODE CRIM. PROC. ANN. art. 38.22. Appellant contends that the arresting officer failed to give him any warnings,

including those warnings required by *Miranda* and article 38.22, before questioning appellant, which led to appellant's statements and the discovery of his firearm.[3]

The need for *Miranda* warnings arises when a person has been subjected to custodial interrogation. *See Miranda*, 384 U.S. at 444. Likewise, article 38.22 of the Texas Code of Criminal Procedure generally precludes the use of statements resulting from custodial interrogation absent compliance with certain procedural safeguards, including administering *Miranda* warnings. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22, § 3; *Gardner v. State*, 306 S.W.3d 274, 294 (Tex. Crim. App. 2009) ("The warnings required by *Miranda* and article 38.22 are intended to safeguard a person's privilege against self-incrimination during custodial interrogation."). "[T]he *Miranda* safeguards do not exist to protect suspects from the compulsion inherent in custody alone, nor do they protect suspects from their own propensity to speak, absent some police conduct which knowingly tries to take advantage of the propensity." *Jones v. State*, 795 S.W.2d 171, 176 n.5 (Tex. Crim. App. 1990). Thus, if a statement is not the result of custodial interrogation, neither *Miranda* nor article 38.22 requires its suppression. A defendant bears the burden of proving his or her statement was the product of custodial interrogation. *Gardner*, 306 S.W.3d at 294. "Interrogation" is questioning which a police officer should know is reasonably likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 301–02 & n.7, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).

[3] It is unclear which specific statements appellant believes should have been suppressed. Although his brief suggests that he is challenging all statements made during the traffic stop, we focus on his incriminating statement notifying the deputy of the firearm in the vehicle.

Here, after the deputy informed appellant that the vehicle would be impounded, he asked him, "Other than the air rifle, is there anything else that's sharp, or—?"[4] At that point, before the deputy finished his question, appellant stated there was a .22 rifle in the back floorboard.

The deputy asked about the presence of other items in the vehicle only after he had determined that appellant's vehicle had to be impounded. The deputy had no reason to know that his question would elicit an incriminating response. Further, his question is part and parcel of the impoundment process and is not considered interrogation. *See, e.g., Warren v. State*, 377 S.W.3d 9, 17 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (listing examples of when a defendant is not considered subject to interrogation, including routine questions, questions mandated by public safety concerns, and police practices seeking only physical evidence); *see also Chadwick v. State*, 766 S.W.2d 819, 821 (Tex. App.—Dallas 1988), aff'd, 795 S.W.2d 177 (Tex. Crim. App. 1990). As discussed above, inventory searches serve to protect the owner's property and to guard against danger. *Bertine*, 479 U.S. at 372.

We conclude that the deputy's question, asking about the presence of potentially dangerous items in the vehicle, was incident to the impoundment process and, hence, did not constitute interrogation. Moreover, as a general rule, persons temporarily detained pursuant to an ordinary traffic stop, as appellant was here, are not "in custody" for purposes of *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 82

[4] The deputy had previously noticed the presence of an air rifle in the vehicle when he was inspecting the vehicle's registration sticker.

L. Ed. 2d 317 (1984); *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). "A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest." *Hines. v. State*, 383 S.W.3d 615, 621 (Tex. App.—San Antonio 2012, pet. ref'd) (internal quotation omitted). We conclude that appellant did not meet his burden to establish that he was in custody in this case. *See id*. at 622–23.

Because appellant's statement regarding the presence of a firearm in his vehicle was not the result of custodial interrogation, the trial court properly allowed the evidence. We overrule appellant's third and fourth issues.

CONCLUSION

We affirm the judgment of the trial court.

Judy C. Parker
Justice

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