NO. 12-15-00263-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

ROBBIE ALONZO DUDLEY, APPELLANT	*§*	***APPEAL FROM THE 3RD***
V.	*§*	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	*§*	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Robbie Alonzo Dudley appeals his conviction for possession of a controlled substance. In one issue, Appellant challenges the denial of his motion to suppress. We affirm.

BACKGROUND

According to the record, an officer found Appellant in possession of a plastic bag that appeared to contain methamphetamine residue. The residue tested positive for methamphetamine in an amount less than one gram. Appellant pleaded "not guilty" to possession of a controlled substance and "true" to two enhancement allegations. The jury convicted Appellant of possession of a controlled substance and assessed a punishment of imprisonment for three and one-half years.

MOTION TO SUPPRESS

In his sole issue, Appellant contends the trial court improperly denied his motion to suppress evidence of the methamphetamine found on his person. He argues that his consent to search was limited to a search for weapons and did not encompass a search for illegal items.

Facts

Appellant sought suppression of the plastic bag that contained methamphetamine residue. At a pretrial hearing, defense counsel alerted the trial court to the suppression motion. The trial court did not rule on the pretrial motion to suppress, but carried it with trial. On the day of trial, before evidence was presented, defense counsel again alerted the trial court to his motion. The State responded that if the motion were carried with trial, the trial court would hear sufficient evidence regarding the suppression issues. Without elaboration, the trial court chose to carry the motion with trial.

At trial, Sergeant Marcus Lara testified that he responded to a call at a residence, but when he arrived, he discovered there was only a verbal dispute between Appellant and another individual. Appellant told Lara he was leaving the residence and Lara offered to give Appellant a ride. Appellant accepted the offer, and Lara asked for consent to search Appellant's person before allowing Appellant to ride in the patrol car. Appellant consented to a search of his person. In Appellant's jeans pocket, Lara discovered a clear plastic bag containing residue that Lara recognized as methamphetamine. Lara placed Appellant in handcuffs and tested the residue with a field test kit, which yielded a positive result for methamphetamine.

Appellant had no objection when the State sought admission of photographs depicting the plastic bag. Sergeant Lara testified that the residue constituted a usable amount, and he opined that the bag probably contained a larger quantity at some point. When the State attempted to offer the actual plastic bag into evidence, Appellant "renew[ed] the same objection we made in our Motion to Suppress." The trial court overruled the objection.

Preservation

To preserve error regarding illegally seized evidence, the defendant must file a motion to suppress and obtain a ruling thereon or timely object when the state offers the evidence at trial. ***Ratliff v. State***, 320 S.W.3d 857, 860 (Tex. App.—Fort Worth 2010, pet. ref'd). If a motion to suppress has not been ruled on when the evidence is offered at trial, the defendant must object when the evidence is offered to preserve error. ***Sanders v. State***, 387 S.W.3d 680, 686 (Tex. App.—Texarkana 2012, pet. struck). If the defendant waits until the state offers the evidence at trial, the defendant must object to the evidence before a witness gives substantial testimony about it. ***Ratliff***, 320 S.W.3d at 861. A ruling obtained after an officer has testified before the jury regarding facts sought to be suppressed does not preserve error since the ruling is untimely.

Sanders, 387 S.W.3d at 686. A narrow exception arises when the trial court carries the motion with trial and makes specific comments directing the defendant to wait until all the evidence is presented before obtaining a ruling from the trial court. ***Garza v. State***, 126 S.W.3d 79, 84-85 (Tex. Crim. App. 2004); *see* ***Sanders***, 387 S.W.3d at 686.

Appellant's mere filing of the motion to suppress did not preserve error. *See* ***Sanders***, 387 S.W.3d at 686. Because the trial court carried the motion with trial, Appellant was required to object at the appropriate time. The record does not indicate that the trial court instructed Appellant to wait to object or to wait until all evidence was presented to urge his motion. Appellant did not object until Sergeant Lara had already offered substantial testimony regarding the complained-of evidence. Photographs of the plastic bag were also admitted into evidence without objection. Thus, Appellant's objection to admission of the plastic bag was untimely. *See* ***id***. Moreover, the record does not indicate that Appellant presented his motion to suppress at any other appropriate time and obtained a ruling on the motion. *See* ***Ratliff***, 320 S.W.3d at 860 (trial court must have expressly or implicitly ruled on the request, objection, or motion, or the complaining party must have objected to the trial court's refusal to do so.). Under these circumstances, we conclude that Appellant has failed to preserve his sole issue for appellate review. *See* ***Sanders***, 387 S.W.3d at 686; *see also* ***Ratliff***, 320 S.W.3d at 861. We overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the trial court's judgment.

GREG NEELEY
Justice

Opinion delivered June 24, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 24, 2016

NO. 12-15-00263-CR

ROBBIE ALONZO DUDLEY,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 31874)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.