NO. 12-16-00170-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

COLIN RAY BLISSITTE, APPELLANT	***§***	***APPEAL FROM THE 114TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Colin Ray Blissitte appeals from his conviction for possession of a controlled substance. In one issue, Appellant contends the trial court erred in overruling his suppression motion. We affirm.

BACKGROUND

At a bench trial, Officer Edgar Zapata of the Tyler Police Department testified that on September 29, 2015, he was on enhanced patrol in response to a complaint concerning illegal drug activity from the property manager of an apartment complex. According to the information Officer Zapata received from another officer, Apartment A-101 was suspected of being the focus of the drug activity.

When Officer Zapata entered the apartment parking lot, he saw a vehicle parked with its lights on "right in front of" Apartment A-101. Officer Zapata thought it suspicious that the parked car still had its lights on, because, in his experience, people engaged in drug transactions do not "shut off their cars in case they want to be in and out and be gone[.]"

As Officer Zapata approached the vehicle, Appellant alighted from the front passenger seat and went to meet Officer Zapata. He found Appellant's conduct suspicious because when someone has drugs in a vehicle, the person will come greet the officer to keep the officer away

from the vehicle. The person in the driver's seat remained in the vehicle. Officer Zapata requested consent to search Appellant's person, and Appellant agreed. He found a small amount of marijuana in Appellant's pocket. Zapata also discovered a clear plastic baggy, which contained a white powdery substance, on Appellant's person. Officer Zapata arrested Appellant.

Because Appellant had exited the vehicle with drugs on his person, Officer Zapata believed there might be drugs in the vehicle. A search of Appellant's vehicle led to the discovery of syringes, Band-Aids, and a metal cylinder that contained both methamphetamine and marijuana. Neither Appellant nor the vehicle's other occupant consented to the search.

The trial court found Appellant guilty of felony possession of a controlled substance. After finding it "true" that Appellant had been convicted twice previously of a felony, the trial court assessed Appellant's punishment at imprisonment for life. This appeal followed.

MOTION TO SUPPRESS

In his sole issue, Appellant insists that the trial court erred in overruling his suppression motion, because it was unreasonable to believe the vehicle in which Appellant had been a passenger contained contraband.

Standard of Review

A trial court's denial of a motion to suppress is generally reviewed for abuse of discretion. ***Oles v. State***, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). In reviewing a trial court's ruling on a motion to suppress, appellate courts give "almost total deference to a trial court's determination of the historical facts that the record supports[.]" ***Guzman v. State***, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Appellate courts also afford the same level of deference to a trial court's ruling on both application of law to fact questions and mixed questions of law and fact when "resolution of those ultimate questions turns on an evaluation of credibility and demeanor." ***Id***. We review the record in the light most favorable to the trial court's ruling and sustain that ruling if reasonably correct on any theory of law applicable to the case. ***State v. Ross***, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000); ***Guzman***, 955 S.W.2d at 89.

Applicable Law

The Fourth Amendment forbids unreasonable searches and seizures by government officials. U.S. CONST. amend. IV. A defendant alleging a Fourth Amendment violation must produce evidence that defeats the presumption of proper police conduct and shifts the burden of

proof to the State. ***Russell v. State***, 717 S.W.2d 7, 9 (Tex. Crim. App. 1986), *disapproved on other grounds by* ***Handy v. State***, 189 S.W.3d 296, 299 n.2 (Tex. Crim. App. 2006). "A defendant meets his initial burden of proof by establishing that a search or seizure occurred without a warrant." ***Id***. The burden then shifts to the State to prove that an exception to the warrant requirement applies.

The automobile exception to the warrant requirement authorizes the warrantless search of a vehicle if there is probable cause to believe the vehicle contains evidence of criminal activity. ***Arizona v. Gant***, 556 U.S. 332, 347, 129 S. Ct. 1710, 1721, L. Ed. 2d 485 (2009). It is reasonable for an arresting officer to believe that further contraband or similar evidence relevant to the crime for which the occupant has just been arrested might be found in the vehicle from which he had just alighted. ***Thornton v. U.S***., 541 U.S. 615, 632, 124 S. Ct. 2127, 2137-38, 158 L. Ed. 2d 905 (2004) (Scalia, J., concurring). If these circumstances exist, an officer may search the entirety of the vehicle including any closed containers capable of holding the object for which there is probable cause to search. ***Gant***, 556 U.S. at 345-46, 129 S. Ct. at 1720-21.

Discussion

In this case, Officer Zapata approached a vehicle parked directly in front of an apartment that was suspected of being a site for drug sales. Appellant exited the vehicle to meet Zapata. Officer Zapata asked Appellant's consent to search his person and Appellant consented. During that search, Zapata first found a clear plastic bag "that contained what is commonly referred to as a roach, which is [what is] left of a marijuana cigarette, and still contained a usable amount." He also found a clear plastic baggy that contained "residue" of a "white powdery substance." Officer Zapata arrested Appellant.

Appellant's possession of drugs on his person when he exited the vehicle gave the arresting officer probable cause to believe that there might be more evidence in the vehicle relevant to the crime for which Appellant had just been arrested. *See* ***Thornton***, 541 U.S. at 632, 124 S. Ct. at 2138. Under such circumstances, Zapata could search the entirety of the vehicle. *See* ***Gant***, 556 U.S. at 345, 129 S. Ct. at 1721. The search yielded syringes, Band-Aids, and a metal cylinder that contained methamphetamine and marijuana. Viewing the evidence in the light most favorable to the trial court's ruling, we conclude that the trial court did not err in denying Appellant's motion to suppress the evidence seized as a result of Zapata's search of the

vehicle. *See* ***id***.; *see also* ***Thornton***, 541 U.S. at 632, 124 S. Ct. at 2138; ***Guzman***, 955 S.W.2d at 89. Accordingly, Appellant's sole issue is overruled.

DISPOSITION

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

BILL BASS
Justice

Opinion delivered April 28, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Bass, Retired J., Twelfth Court of Appeals, sitting by assignment.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 28, 2017

NO. 12-16-00170-CR

COLIN RAY BLISSITTE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1531-15)

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.

Bill Bass, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Bass, Retired J., Twelfth Court of Appeals, sitting by assignment.