

Affirmed and Opinion filed January 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00904-CR

JERAL LYNN CLARK, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 777,477**

OPINION

Appellant was convicted by a jury of felony cocaine possession with intent to deliver. The jury sentenced him to twenty years imprisonment. On appeal, appellant asserts that the trial court erred by overruling his motion to suppress evidence recovered by police during his arrest. Finding that the trial court did not err, we affirm its judgment.

Two Houston Police Department narcotics officers were returning to the station after finishing a bicycle detail. As they neared the parking lot of the Community Food Store near downtown, a place where drug transactions frequently occur, they noticed a man standing next to a car, apparently talking to the two men inside. They decided to move in for a closer look.

As they neared the car, they noticed the man outside the car hand a manilla envelope to appellant, who was seated in the passenger seat. They also noticed that appellant was handing money to the man outside the car. Based on the location and actions they were witnessing, both officers believed they were witnessing a drug transaction. When they approached the vehicle, the man standing outside the vehicle put the manilla envelope in the waistband of his pants. One officer handcuffed him and retrieved the envelope.

The second officer went to the car and ordered appellant and the other passenger to keep their hands where he could see them. They refused and continued to move around, prompting the officer to draw his weapon and repeat his order. Appellant, however, still continued to move his hands around between his legs. Eventually, appellant complied by removing his hands from between his legs and putting several beige-colored chunks of a substance into his mouth. The officer, believing the chunks to be crack cocaine, ordered appellant to remove them. Appellant refused, prompting the officers to force open appellant's mouth to remove the chunks. These chunks tested positive for cocaine and weighed five grams. The officers arrested appellant and charged him with possession of cocaine with intent to deliver.

Appellant filed a pretrial motion to suppress the crack cocaine, claiming that the drugs were the fruits of an unlawful arrest. The trial court denied this motion and he was subsequently convicted.

In his sole point of error, appellant asserts that the officers lacked probable cause to support the arrest, making the seizure of the drugs illegal. Specifically, appellant argues that the officers' experience and observations alone are an insufficient basis for probable cause for the arrest.

In reviewing a trial court's ruling on a motion to suppress, we should afford almost total deference to a trial court's determination of the historical facts supported by the record. *See Guzman v. State*, 955 S.W.2d 85, 95-96 (Tex. Crim. App. 1997); *Dorsey v. State*, 964 S.W.2d 701, 703 (Tex. App.–Houston [14th Dist.] 1998, pet. ref'd). We also view the evidence presented at trial in the light most favorable to the trial court's ruling. *See Guzman*, 955

S.W.2d at 89. We afford the same amount of deference to the trial court's rulings on mixed questions of law and fact if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. *See id.* at 95-96. However, de novo review of these mixed questions of law and fact may be applied where their resolution is not restricted to an evaluation of credibility and demeanor. *See id.*

Dispositive of appellant's point of error is this court's opinion in *Sanders v. State*, 855 S.W.2d 151 (Tex. App.–Houston [14th Dist.] 1993, pet. ref'd). There, a Houston Police Department officer was patrolling an area known for its high occurrence of drug sales when he saw the suspect approach the driver's side of a van, making a throwing motion toward the van when the officer approached. *See id.* at 152. Believing that he had witnessed a drug transaction, the officer approached the suspect and told him, "Come over here." *Id.* The suspect responded by throwing money and a matchbox containing crack cocaine into his mouth. *See id.* The officer forced the suspect to spit out the money and cocaine and arrested him. *See id.*

Based on the officer's testimony that he had made numerous drug-related arrests, had seen many drug transactions, and knew the reputation of the area for drug transactions, we held that the officer had a reasonable, articulable suspicion sufficient to support the initial detention. *See id.* at 152-53. We further held that once the suspect put the contraband into his mouth, the officer was justified in seizing the suspect without a warrant to prevent the destruction of the evidence. *See id.* at 153.

Here, the facts supporting the officer's reasonable suspicion are much stronger, even rising to the level of probable cause supporting appellant's arrest. The officers saw appellant giving money to someone in exchange for a manila envelope in an area known for its high volume of drug transactions. The officers testified that drug dealers are known to use manila envelopes for drug transactions. The officers witnessed drug transactions almost daily. Further, when the officers approached the vehicle, appellant and the others began to act suspiciously and appellant refused to comply with the officers' orders. Based on these facts,

we conclude that the officers had sufficient probable cause to arrest appellant, making the seizure of the crack cocaine legal.

We affirm the judgment of the trial court.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed January 13, 2000.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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