Affirmed and Opinion filed February 14, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00474-CR

MICHAEL ANTHONY ROMO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 852,765

O P I N I O N

In two issues, Michael Romo appeals his conviction and twenty-year sentence for robbery. First, appellant contends the introduction of evidence relating to an unadjudicated offense for crack cocaine possession was improper. Second, appellant argues the court erroneously permitted cross-examination of his mother regarding her knowledge of an aggravated robbery appellant committed as a juvenile. We affirm.

Background

Appellant was charged with aggravated robbery of Joseph Dark committed on August 12, 2000. While free on bond awaiting trial, appellant was arrested again and charged with crack cocaine possession. During sentencing, the State introduced evidence of this unadjudicated offense. Appellant argued the evidence was inadmissible because the cocaine had been seized illegally. The facts surrounding the seizure are described below under a separate heading.

As a juvenile, appellant was convicted of aggravated robbery. The complainant in that case was Marcelino Perez. On direct examination during sentencing, appellant's mother testified she knew her son had received probation in the robbery of Mr. Perez and that the probation had been revoked. She also indicated appellant told her he robbed Mr. Perez and that she knew "all about her son." Appellant's mother testified she had been to court with her son every time he had been "in trouble," though she did not know how many times she had been to court. Following this testimony, the prosecutor sought to impeach appellant's mother by quizzing her about her knowledge of her son's role in the robbery of Mr. Perez. The prosecutor's impeachment is set forth below in the body of our resolution of appellant's second issue. The jury convicted appellant of the lesser charge of robbery. Punishment was assessed at twenty years. No findings of fact were filed.

Circumstances of Crack Possession

The trial court held a hearing on the circumstances of the crack arrest outside the presence of the jury. Officers Fuller and Kwiatkowske arrested appellant. They testified they were riding with two other officers on February 8, 2001, in an unmarked van. The officers were conducting what they referred to as "jump-outs." The officers were wearing jackets they commonly referred to as "raid jackets." Large lettering on the jackets indicates the wearer is a member of the Houston Police Department. According to Officer Fuller, "jump-outs" consist of traveling in an unmarked van to "known narcotics areas." When the

officers see what they believe to be narcotics activity, they stop, exit the van and investigate.

As the van arrived at an intersection, two males, who had been standing together in the middle of the road, broke away from each other. One of the individuals, appellant, began walking away from the van, while the second individual, on a bicycle, circled the van in an attempt to look inside. Appellant continued to watch the van closely as he walked. Seconds later, the officers exited the van. As they exited, Fuller saw appellant try to put something in his mouth. Fuller testified this action was consistent with his extensive experience watching drug pushers try to swallow their contraband. In his attempt to swallow the drugs, appellant dropped some crack on the ground. Officers Fuller and Kwiatkowske immediately detained appellant and recovered the discarded crack.

Issues

In his first issue, appellant contends the introduction of the evidence of the extraneous offense was erroneous because the drugs had been obtained in violation of his Fourth Amendment rights. *See generally Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (evidence obtained through search violating Fourth Amendment not admissible). Specifically, appellant contends he was detained without reasonable suspicion. In his second issue, appellant complains of the State's cross-examination of his mother about her knowledge of the aggravated robbery appellant committed while a juvenile. We address each issue in turn.

Discussion

I. Admission of Pending Crack Possession Charge – Issue One

A. Standard of Review

The appropriate standard for reviewing a trial court's ruling on a motion to suppress evidence was articulated in *Guzman v. State*, 955 S.W.2d 85 (Tex Crim. App. 1997). In *Guzman*, the Court stated that it would apply a bifurcated standard of review, giving "almost total deference to a trial court's determination of historical facts" and reviewing *de novo* the court's application of the law of search and seizure. *Id.* at 88-89. Findings of fact were not

filed in the case at bar. We therefore review the evidence in a light most favorable to the trial court's ruling. *See State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999).

B. Detention

Appellant argues he was detained the moment officers Kwiatkowske and Fuller exited the van. Appellant places particular emphasis upon the fact the officers were attired in raid gear. However, whether officers wear raid gear has been held immaterial under nearly identical circumstances. *See Sheppard v. State*, 895 S.W.2d 823, 824-825 (Tex. App.—Corpus Christi 1995, pet. ref'd). As a general rule, police officers may approach citizens and talk with them without any suspicion as long as a stop is not effected. *Davis v. State*, 740 S.W.2d 541, 543 (Tex. App.—Houston [1st Dist.] 1987, pet. ref'd). A police officer may approach a citizen without probable cause or reasonable suspicion to ask a citizen questions or even to request a search. *See Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995) (citing *California v. Hodari D.*, 499 U.S. 621, 628 (1991)); *State v. Shamsie*, 940 S.W.2d 223, 225 (Tex. App.—Austin 1997, no pet.). Detention occurs only when a reasonable person would believe he or she is not free to leave and that person has either yielded to the officer's show of authority or been physically forced to yield.). *Id.* at 235-36.

We first consider whether appellant yielded to the show of authority prior to his dropping the crack. When the van entered the street on which appellant and the other male were talking, appellant began to walk away from the van. The other male rode his bicycle around the van. Appellant looked back over his shoulder and kept an eye on the van as he continued to walk away from the van. At this point, appellant's movement was not limited by the officers. Officer Fuller testified that as he exited the van he saw appellant go to his mouth with his hand and drop what appeared to be crack cocaine. The officers said nothing to appellant prior to physical detention. Officer Fuller's contact with appellant occurred only after he saw the crack fall to the ground. Here, as in *Johnson*, the record indicates appellant continued to move away from the officers at all times prior to dropping the crack. Under such circumstances, Texas law holds appellant has not yielded to authority. *See Johnson*, 912

S.W.2d at 235-36. We therefore hold appellant was not detained until the officers physically restrained him, a point in time after appellant had dropped the crack.

Next, we determine whether appellant voluntary abandoned the crack cocaine. In his brief, appellant concedes that if there was no detention or if the alleged detention was lawful then he abandoned the crack when he dropped it on the ground. Voluntary abandonment of property occurs if (1) the defendant intended to abandon the property, and (2) his decision to abandon the property was not due to police misconduct. *Brimage v. State*, 918 S.W.2d 466, 507 (Tex. Crim. App. 1996); *Hawkins*, 758 S.W.2d at 258; *Comer*, 754 S.W.2d at 659. Because we hold appellant was not detained before appellant dropped the crack on the ground, appellant's Fourth Amendment rights were not violated when the officers recovered the crack appellant abandoned. *Crawford v. State*, 932 S.W.2d 672, 673 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd) (throwing down crack prior to detention is abandonment); *Harmon v. State*, 951 S.W.2d 530, 535 (Tex. App.—Beaumont 1997, no pet) (throwing down crack after lawful detention is abandonment). Evidence of appellant's unadjudicated offense for crack possession was therefore properly admitted during sentencing. *See Mapp v. Ohio*, 367 U.S. at 655.

We overrule appellant's first issue.

II. Extraneous Offense – Issue Two

In his second issue, appellant alleges the prosecutor committed reversible error by reading details of an extraneous offense from the offense report during the cross-examination of appellant's mother. The contested cross-examination is:

> Q: And, Mrs. Romo, isn't it true that your son went up to the complaining witness, Mr. Marcelino Perez, and says, Give me your money or I'll kill you? Isn't that true?
> . . . [witness never answers]
> Q: Did your son tell you what he did in that aggravated robbery, Mrs. Romo?
> A: No.
> [objection sustained]
> Q: Mrs. Romo, you're the mother of Michael Romo; and you're telling these twelve citizens when he was charged with aggravated robbery, a first degree felony, using a firearm, you did not ask him the facts and whether one of the

complainants was hurt in that case? You didn't ask him anything about it? Is that what you're telling us?
A: No. whatever it was he told me, I believed him.
Q: All right. My question is, did he tell you that he walked up to Marcelino Perez and told him–
[series of objections overruled]
. . .
Q: Did he tell you, Mrs. Romo, that he said to the complainant, Mr. Marcelino Perez, Give me your money or I will kill you, while he pointed a firearm at Mr. Perez? Did he tell you that?
[objection overruled]
Q: Did he tell you that after he got Mr. Perez's wallet, he reached into his pockets to take additional money and an additional pager? Did he tell you that, Mrs. Romo?
A: No.
[objection overruled]
Q: Mrs. Romo, did he tell you his buddy, the co-defendant, then took a knife and cut the complaining witness's hands? Did he tell you that, Mrs. Romo?
[objection overruled]
A: No.
. . .
Q: Did he tell you that he was arrested with a gun and knife in the car with he and his friend, Mr. Perez, and the complainant's property? Did he tell you that?
A: No. He didn't.
Q: Did he tell you when he was arrested by the police officer, L.G. Gay, he lied about his name? Did he tell you that?
[objection overruled]
A: No, he didn't.
Q: But your son was very honest and up front with you, isn't he?
A: Yes.

While the prosecutor apparently based her questioning on the police report documenting the prior offense, the record does not support appellant's contention that the prosecutor either read directly from the report itself or offered the report into evidence.

Additionally, we note Texas law permits either party to offer evidence of a juvenile felony-offense, of a defendant's character, or of his criminal record. *See* TEX. CODE CRIM. PROC. ANN. art. 36.07(3) (Vernon 1994). Aggravated robbery is a felony. *See* TEX. PENAL

CODE ANN. § 29.03(b) (Vernon 1994). It was therefore not error to allow the prosecutor's questioning of appellant's mother. We overrule appellant's second issue.

Accordingly, the judgment below is affirmed.

/s/ Eva M. Guzman
Justice

Judgment rendered and Opinion filed February 14, 2002.

Panel consists of Justices Yates, Edelman, and Guzman.

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