

Affirmed and Opinion filed February 17, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00112-CR

HENRY MANNING, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 785,821**

OPINION

Appellant Henry Manning, convicted by the trial court of possession of a controlled substance with intent to deliver, raises four points of error on appeal. We affirm.

On the evening of appellant's arrest, four Houston Metro Police Officers, acting on a tip, were performing surveillance on a convenience store parking lot. According to the tipster, two men, one on a bicycle and one on foot, were dealing drugs in the store parking. The officers parked at an apartment complex across the street from the store and focused their attention on two men in the parking lot matching the description given by the informant.

The officers watched as a vehicle containing appellant and another person drove into the parking lot. Appellant exited the vehicle and began to converse with the man on the bicycle. The officers watched the two men make some sort of an exchange and, deciding they had witnessed a narcotics transaction, proceeded to the parking lot to make an arrest.

Upon arrival, the officers exited their vehicle and ordered everyone to stay still. The suspect on foot attempted to flee the scene when this order was given, throwing several rocks of crack cocaine as he fled. The officers quickly subdued him and the others, placing all in handcuffs. When placing handcuffs on appellant, the officers found over fifty rocks of crack cocaine in appellant's possession.

Appellant asserts four points of error. First, he argues that the trial court erred in overruling his motion to suppress since the officers arrested him without probable cause and without a warrant. Second, he contends that his motion to suppress should have been granted because the State failed to prove the authority of the arresting officers. Third, he asserts that it was error for the trial court to take judicial notice of the officers' jurisdiction. Finally, he argues that the evidence was legally insufficient to support his conviction. We affirm the judgment of the trial court.

Appellant argues that the trial court erred by overruling his motion to suppress since his arrest was not supported by probable cause. The trial court heard evidence on this issue and overruled appellant's motion. We find the trial court did not err in its ruling.

In reviewing the trial court's ruling on a motion to suppress, we show almost total deference to a trial court's determination of the historical facts, especially when the trial court's fact findings are based on an evaluation of the credibility and demeanor of the witnesses. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App.1997). The same amount of deference is shown to a 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.* Any mixed questions of law and fact not falling within this category is reviewed de novo. *See id.* When faced with a mixed question of law and fact, such as probable cause, the critical question under *Guzman* is whether the ruling "turns" on an evaluation of credibility and demeanor. *See Loserth v. State*, 963 S.W.2d 770, 773 (Tex. Crim. App.1998). Here, the judge's finding that

appellant's arrest was proper turned on an evaluation of the credibility and demeanor of the testifying officers. Thus, we review the decision to determine if the trial court abused its discretion.

Viewing the evidence in the light most favorable to the trial court's ruling as we must under *Guzman*, see 955 S.W.2d at 89, the evidence showed that the officers had witnessed Brandley and Gray, the two men with whom appellant conversed, engaging in drug sales earlier in the evening in the convenience store parking lot. The officers characterized this area as a high crime area with a large amount of drug traffic. Around 9:00 PM, the officers saw appellant pull into the parking lot of the convenience store and exit his vehicle. Someone in the vehicle handed him a purple Crown Royal bag. Appellant removed a pill bottle from the bag and removed several objects which he gave to Brandley by dropping them into his hand. The officers testified that they next saw Brandley give money to appellant in exchange for the objects. The officers testified that this conduct, including the use of the Crown Royal bag, was consistent with a drug sale. Based on their observations and their experience with drug sales, the officers believed that they had witnessed a drug transaction.

As the officers pulled into the parking lot behind appellant's vehicle, Officer Porter saw chunks of a substance he believed to be crack cocaine in appellant's hands. The officer exited the vehicle, secured appellant, and found his beliefs to be substantiated—appellant had fifty-four rocks of crack cocaine in his hand. The officer made appellant place the cocaine back into the pill bottle and arrested him. The officers testified that based on what they witnessed and the area they were in, they thought appellant, Gray, and Brandley might have weapons.

Probable cause exists when the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a man of reasonable caution to believe an offense has been or is being committed. *See Jackson v. State*, 745 S.W.2d 4, 10 (Tex. Crim. App. 1988). In finding probable cause, an officer can make intelligent, logical deductions based on what he observes. *See id.* Based on the officers' testimony, we believe that the trial court did not err in overruling appellant's motion to suppress since the officers had probable cause for appellant's arrest and the evidence seized pursuant to that arrest was admissible. Appellant's first point of error is overruled.

In his second point of error, appellant argues that the trial court erred in overruling his motion to suppress which alleged the State failed to prove the special jurisdiction of the arresting Metropolitan Transit Police Department officer. Again, finding no error in the trial court's ruling on appellant's motion to suppress, we overrule appellant's second point.

The general thrust of appellant's argument is that the State failed to prove that Officer Porter was within his jurisdiction as a Metro Police Officer, invalidating appellant's warrantless arrest. In support of his argument, appellant relies upon the fact that none of the Metro officers on the scene testified that they were Houston Metro police officers. Because the State failed to establish the officers were within their jurisdiction, appellant argues that his arrest is invalid because it was not made by a peace officer.

Although it is not normally necessary for the State to prove the jurisdiction of the arresting officer, this court has required it in instances where the arresting officer was a Metropolitan Transit Police Department officer whose jurisdiction was objected to by the defendant. *See State v. Norton*, 899 S.W.2d 303 (Tex. App.–Houston [14th Dist.] 1995, no pet.) (requiring the proof of jurisdiction where the defendant raises the objection in a motion to suppress).

The jurisdiction of the officers is immaterial to this case, however, since any person, police officer or civilian, could have arrested appellant. Article 14.01 allows any person who sees an offender commit a felony offense within his presence or view to arrest the offender without a warrant. TEX. CODE. CRIM. P. ANN. art. 14.01(a) (Vernon 1977). Since Officer Porter testified that he saw cocaine in appellant's hand, and possession of cocaine is a felony offense, *see* TEX. HEALTH & SAFETY CODE ANN. § 481.115 (Vernon Supp. 2000), whether or not he was in his jurisdiction is immaterial. Thus, the State was not required to prove Officer Porter's jurisdiction since he could have arrested appellant without a warrant outside of his jurisdiction.

We overrule appellant's second point of error.

Appellant's third point of error is related to his second. He complains that it was error for the trial court to take judicial notice of the officers' jurisdiction. Based on our finding that the officer's jurisdiction

is immaterial, any error by the trial court in taking judicial notice was harmless since it had no impact on appellant's conviction. Thus, appellant's third point of error is overruled.

Appellant argues in his fourth point of error that the evidence was legally insufficient to support his conviction since the State failed to provide evidence in the trial portion of its case linking appellant to the contraband he was charged with possessing. The trial court heard the motion to suppress with the bench trial "as a piece," according to the judge. After the trial court overruled appellant's motion, it used the testimony presented prior to its ruling on the motion to suppress, as well as testimony from the State's chemist presented after the motion was overruled, to find appellant guilty. Appellant argues that none of the evidence presented prior to the trial court's ruling on the motion could be considered in adjudicating him guilty. We disagree in light of the fact that the trial and hearing on the motion to suppress were taken up as a whole. Viewing the totality of the evidence in the light most favorable to the prosecution, *see Collier v. State*, 999 S.W.2d 779, 786 (Tex. Crim. App. 1999), we find that a rational trier of fact could have found appellant guilty of the charged offense beyond a reasonable doubt. Appellant's fourth point of error is overruled and the judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed February 17, 2000.

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

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