**Affirmed and Opinion filed April 4, 2002.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-01-00400-CR**

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**WESLEY BERNARD HUNTER, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 262nd District Court**
**Harris County, Texas**
**Trial Court Cause No. 865,401**

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## O P I N I O N

Appealing his conviction of possession of a controlled substance, appellant Wesley Bernard Hunter challenges the trial court's denial of his motion to suppress. In a single point of error, appellant claims the police improperly impounded his car and exceeded the lawful scope of an inventory search in bad faith. We affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Houston Police Officer Margaret Stephens and her partner, Officer Mark Stahlworth, were patrolling a high-crime area when they saw appellant pull away from a house known as a "hot spot." The officers followed appellant for a few blocks. When appellant failed to stop at a stop sign and use his turn signal,[1] the officers activated their emergency lights, signaling appellant to pull over. Appellant pulled into a nearby gas station parking lot.

Officer Stahlworth asked appellant for his driver's license and for proof of insurance. After appellant was unable to produce either, the officers arrested him. The officers also arrested appellant's passenger, who had several outstanding arrest warrants. Officer Stahlworth did a cursory search of appellant and his vehicle, but found nothing. Officer Stephens, who also searched the passenger compartment of the car, found several crack cocaine rocks near the arm rest in the driver's side door.[2] The officers inventoried the contents of the car and then arranged to have it towed.

Appellant was indicted for possession of a controlled substance with the intent to deliver or manufacture a controlled substance, *i.e.* cocaine weighing more than four grams, but less than 200 grams. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112 (Vernon 2002). Prior to trial, the State abandoned the "intent to deliver" portion of the offense and the enhancement paragraphs contained in the indictment. Appellant pleaded not guilty and filed a motion to suppress the cocaine. The trial court denied appellant's motion and found appellant guilty as charged. Appellant was sentenced to seven years' confinement in the state penitentiary.

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[1] Officer Stahlworth testified that he followed appellant because he suspected drugs might be involved because of the neighborhood. However, Officer Stephens testified they were not following appellant, but simply stopped him after observing his traffic violations. The trial court, as the fact-finder, was entitled to believe one officer's testimony and disbelieve the contradictory testimony. *See Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990).

[2] Appellant claims the crack cocaine rocks were actually found in the "door panel."

## II. STANDARD OF REVIEW

We review the trial court's ruling on a motion to suppress evidence under an abuse of discretion standard. *Long v. State*, 823 S.W.2d 259, 277 (Tex. Crim. App. 1991). A trial court's ruling on a motion to suppress, if supported by the record, will not be overturned. *Hill v. State*, 902 S.W.2d 57, 59 (Tex. App.—Houston [1st Dist.] 1995, pet. ref'd). At a suppression hearing, the trial judge is the sole finder of fact. *Arnold v. State*, 873 S.W.2d 27, 34 (Tex. Crim. App. 1993); *Hill*, 902 S.W.2d at 59. The trial judge is free to believe or disbelieve any or all of the evidence presented. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990).

In reviewing a trial court's ruling on a motion to suppress, we afford almost total deference to the trial court's determination of the historical facts the record supports, especially when the trial court's findings turn on evaluating a witness's credibility and demeanor. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We afford the same amount of deference to the trial court's ruling on "application of law to fact questions," also known as "mixed questions of law and fact," if resolving those ultimate questions turns on evaluating credibility and demeanor. *Ross*, 32 S.W.3d at 856.

Review of a trial court's decision on a motion to suppress calls for the reviewing court to consider *de novo* issues that are purely questions of law, such as whether reasonable suspicion or probable cause existed at the time of the search or seizure. *Guzman*, 955 S.W.2d at 89. If the trial court's ruling is reasonably supported by the record and is correct on any theory of law applicable to the case, the reviewing court will sustain it upon review. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). This is true even if the decision is correct for reasons totally different from those espoused at the hearing. *Id.*

## III. ISSUES PRESENTED ON APPEAL

In his sole point of error, appellant contends the trial court erred in denying his motion to suppress. Appellant does not contest the lawfulness of the traffic stop; rather, he challenges the lawfulness of the search and impounding of his vehicle. Appellant claims the search of his car violated his rights under both the Texas and United States Constitutions because the police improperly impounded it. In the alternative, appellant argues that even if his car was properly impounded, the police exceeded the lawful scope of an inventory search and searched in "bad faith." The State argues that the search was authorized as a search incident to arrest and as an inventory search pursuant to departmental policy. We conclude that because the police had probable cause to arrest appellant for the traffic violations, the subsequent search of appellant's vehicle was constitutional as a search incident to a lawful arrest. Therefore, we need not address whether there are additional grounds upon which to uphold the trial court's ruling. *See Villarreal*, 935 S.W.2d at 138.

## IV. SEARCH INCIDENT TO ARREST

Appellant contends that because Officer Stahlworth did a cursory search of the vehicle and failed to find anything, Officer Stephens' search was not a search incident to arrest. Appellant also argues that characterizing the search as a search incident to arrest violates his constitutional rights under the Texas Constitution.

Appellant's argument that his search should not be characterized as a search incident to arrest is based on the fact that the Texas Constitution affords greater protection to searches incident to arrest than to inventory searches. *See Heitman v. State*, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991) (holding Article 1, section 9 of the Texas Constitution may provide more protection from searches and seizures than the Fourth Amendment of the United States Constitution). Inventory and impoundment of the vehicle are proper consequences of an arrest and do not violate the Texas Constitution. *Ward v. State*, 659 S.W.2d 643, 646 (Tex. Crim. App. 1983). In *Autran v. State*, 887 S.W.2d 31, 41-42 (Tex. Crim. App. 1994), the

Court of Criminal Appeals in a plurality opinion found that the inventory exception to warrantless searches does not apply to a search of a closed container found in the vehicle. In this case, the plastic bags of cocaine were found in the driver's side door, near the arm rest, not in a closed container. *See Perry v. State,* 933 S.W.2d 249, 252 (Tex. App.—Corpus Christi 1996, pet ref'd) (holding an ashtray was not a closed container). Appellant does not cite to any authority compelling us to extend the protection of article I, section 9 to items found in these circumstances. Thus, we disagree with appellant and find that his constitutional rights are not violated by characterizing this search as a valid search incident to a lawful arrest.

Once the officers made a valid custodial arrest of appellant, they were authorized to search the entire passenger compartment of the car appellant had been driving. *See New York v. Belton*, 453 U.S. 454, 460 (1981). The police are authorized to search all persons they lawfully arrest. *Chimel v. California,* 395 U.S. 752, 762–63 (1969); *see also Turner v. State*, 499 S.W.2d 182, 183 (Tex. Crim. App. 1973) (holding probable cause existed for arrest and search of car when officer observed the driver carrying a bag which the officer believed to be drugs based on detailed information given to him). Thus, once a person has been lawfully arrested, his privacy interests must yield, for a reasonable time and to a reasonable extent, to permit the police to search for weapons, means of escape, and evidence. *Oles v. State*, 993 S.W.2d 103, 107 (Tex. Crim. App. 1999). Moreover, a law enforcement officer may conduct a warrantless search of a motor vehicle if he has probable cause to believe the vehicle contains evidence of a crime. *Carroll v. United States*, 267 U.S. 132, 155–56 (1925); *Powell v. State*, 898 S.W.2d 821, 827 (Tex. Crim. App. 1994); *see also Josey v. State*, 981 S.W.2d 831, 845 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd.) (holding that warrantless search of a vehicle based upon probable cause, even in the absence of exigent circumstances, is lawful under Article I, section 9 of the Texas Constitution).

In *Belton,* the United States Supreme Court held that a search incident to a valid custodial arrest of a person or persons who are or recently have been in an automobile

extends to the entire passenger compartment and all containers found therein. 453 U.S. at 460. Because the entire passenger compartment of the automobile is the area within the arrestee's immediate control, an infringement on any privacy interests the arrestee may have is justified because the car constitutes the area into which an arrestee may reach in order to grab evidence or a weapon. *Id.* This case fits squarely within *Belton's* holding. Appellant's arrest was valid because it was based on: (1) his failure to stop at a stop sign; (2) his failure to use his turn signal before turning; and (3) his failure to produce either a driver's license or proof of insurance, upon request. *See* TEX. TRANS. CODE ANN. §§ 545.104, 544.010, 521.021, and 521.025 (Vernon Supp. 2002); *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982). Despite appellant's many contentions that Officer Stephens' testimony is inconsistent with that of Officer Stahlworth, the trial court is the sole trier of fact in a suppression hearing. *Johnson v. State*, 871 S.W.2d 744, 748 (Tex. Crim. App. 1994). As trier of fact, the trial court is free to accept or reject any or all of the testimony. *Lewis v. State*, 915 S.W.2d 51, 53 (Tex. App.—Dallas 1995, no writ).

Officer Stephens testified that she conducted a post-arrest search of the vehicle and found the crack cocaine rocks in the driver's side door, near the arm rest. Although Officer Stephens was not the first to search the vehicle, the search was still a search incident to appellant's lawful arrest. *See State v. Ballard,* 987 S.W.2d 889 (Tex. Crim. App. 1999) (holding once an officer has probable cause to arrest, he may search the passenger compartment of a vehicle as a search incident to that arrest; it is irrelevant that the arrest occurs immediately before or after the search, as long as sufficient probable cause exists for the officer to arrest before the search); *Williams v. State*, 726 S.W.2d 99 (Tex. Crim. App. 1986) (holding that police officer had probable cause to arrest defendant after observing a traffic violation and thus search of sack in pickup was justified as search incident to arrest).

Nevertheless, appellant argues that no matter how the search is characterized, the search was still conducted in bad faith and exceeded the scope of a search incident to arrest. He claims because the officers were looking for contraband and believed they would find

contraband when they stopped and arrested him, the search was unreasonable. The officers testified that they were assigned to patrol a high-crime area when they stopped appellant. Both officers also testified that because of the area, they believed there was a probability appellant may be in the possession of illegal contraband.

The Court of Criminal Appeals has rejected the pretext-stop doctrine under both the federal and state constitutions. *See Crittenden v. State*, 899 S.W.2d 668, 674 (Tex. Crim. App. 1995) (discussing the state constitution); *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992) (discussing the federal constitution). In addressing a claim under the Texas Constitution, it held that "an objectively valid traffic stop is not unlawful under Article I, Section 9 just because the detaining officer had some ulterior motive for making it." *Crittenden*, 899 S.W.2d at 674. In addressing a claim under the Fourth Amendment of the United States Constitution, the Court of Criminal Appeals held that "the validity of an arrest or stop should be determined solely by analyzing objectively the facts surrounding the event." *Garcia*, 827 S.W.2d at 943. Further, the United States Supreme Court has held that the constitutional reasonableness of a traffic stop does not depend on the actual motivation of the individual officers involved. *Whren v. United States*, 517 U.S. 806 (1996).

It is the objective facts in existence at the time of the arrest, and not the subjective conclusions of the officer, that the reviewing court must scrutinize to determine the existence of probable cause. *Amores v. State*, 816 S.W.2d 407, 415 (Tex. Crim. App. 1991). Therefore, that the officers thought they might find illegal drugs on appellant after stopping him for several traffic violations is inconsequential. We determine whether the facts and circumstances known to the officer objectively constituted a lawful basis for arrest, regardless of the officer's subjective motivation or purpose of his actions. *Blount v. State*, 965 S.W.2d 53, 55 (Tex. App.—Houston[1st Dist.] 1998, pet. ref'd) (citing *Garcia*, 827 S.W.2d at 944).

We hold the officers had probable cause to arrest appellant for traffic violations and therefore, the search of appellant's automobile was permissible as a search incident to arrest.

*See Ballard*, 987 S.W.2d at 892. Thus, the trial court did not abuse its discretion in denying appellant's motion to suppress the cocaine. We overrule appellant's sole point of error.

We affirm the trial court's judgment.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed April 4, 2002.
Panel consists of Chief Justice Brister and Justices Anderson and Frost.
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