Affirmed and Opinion filed July 19, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00806-CR

GARY SHELTON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 15
Harris County, Texas
Trial Court Cause No. 0995490

O P I N I O N

Appellant pled guilty, with an agreed recommendation, to driving while intoxicated ("DWI") by the introduction of either Lorazepam or an unknown drug into his body. After finding two enhancements true, the trial court sentenced appellant to 120 days' confinement in the Harris County Jail, and suspended his driver's license for one year. In five points of error, appellant contends that the trial court erred in denying his motion to suppress because the arresting officer violated his Fourth Amendment protection against an unreasonable search, the arresting officer violated Article I § 9 of the Texas Constitution, the arresting officer arrested appellant in violation of Chapter 14 of the Texas Code of Criminal Procedure, and the arresting officer lacked probable cause to search appellant's car. We affirm.

FACTUAL BACKGROUND

On January 14, 2000, Vicenta Hernandez witnessed appellant driving partly on the driveway and partly on the grass of a parking lot outside of a laundromat. Hernandez, a patron of the laundromat, saw appellant attempt to make a u-turn and then hit a parked truck. Appellant staggered out of the car to look at the truck he hit. Hernandez witnessed one of the passengers leave the scene and the other passenger try to stop appellant from leaving. Officer Melborn Poff arrived at the laundromat as appellant was attempting to leave. He questioned the witness and examined the vehicles for damage. Officer Poff testified that because appellant was staggering around, he performed a series of field sobriety tests on appellant. Appellant failed these tests. He told Officer Poff that he was taking Lorazepam, and that he hit the parked truck. Based upon appellant's failure of these tests, Officer Poff arrested him and placed him in the patrol car. Officer Poff searched appellant's car and found a bottle of Lorazepam. Appellant complains that his car was illegally searched, and therefore the bottle of Lorazepam should be suppressed as evidence.

DISCUSSION AND HOLDINGS

I. Standard of Review

In reviewing a ruling on a motion to suppress evidence, an appellate court views the evidence in the light most favorable to the trial court's ruling. *Green v. State*, 615 S.W.2d 700, 707 (Tex. Crim. App. 1980); *Posey v. State*, 763 S.W.2d 872, 874 (Tex. App.—Houston [14th Dist.] 1988, pet. ref'd). Because the trial court is the sole fact finder at a hearing on a motion to suppress evidence obtained in a search, an appellate court is not at liberty to disturb any finding supported by the record. *Rysiejko v. State,* 782 S.W.2d 529, 532 (Tex. App.–Houston [14th Dist.] 1989, pet. ref'd). An appellate court will not reverse the trial court's decision on the admissibility of the evidence unless the court clearly abused its discretion. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990).

II. Analysis

A. Search of the Vehicle

In his second, third, and fifth points of error, appellant complains the trial court erred in denying his motion to suppress because the arresting officer violated his rights under the Fourth Amendment and Article I, Section 9, of the Texas Constitution. Appellant argues that the search of his vehicle was illegal, regardless of the validity of his arrest. Because appellant does not separately brief his state and federal constitutional claims, we assume that he claims no greater protection under the state constitution than that provided by the federal constitution. *See Muniz v. State*, 851 S.W.2d 238, 251-52 (Tex. Crim. App. 1983). Accordingly, we base our decision on the Fourth Amendment grounds asserted by appellant.

The Fourth Amendment bars unreasonable searches and seizures. *Maryland v. Buie*, 494 U.S. 325, 331, 110 S.Ct. 1093, 1096, 108 L.Ed.2d 276 (1990). A warrantless search is per se unreasonable unless the government can demonstrate that the search falls within one of the exceptions to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75, 91 S.Ct. 2022, 2042, 29 L.Ed.2d 564 (1971). The Supreme Court held that a search incident to a valid arrest of a person who has recently been in an automobile extends to that automobile, the passenger compartment, and containers found therein. *New York v. Belton*, 453 U.S. 454, 460 (1981). Here, appellant admitted to driving the car and to striking the parked truck; Vicenta Hernandez witnessed appellant driving the vehicle prior to Officer Poff's arrival at the scene; appellant was a recent occupant of the automobile; and the officer arrested appellant soon after appellant got out of the car. We find the officer's search lawful. *Id.* As a result, we overrule appellant's 2nd, 3rd, and 5th points of error.

B. Arrest of Appellant

In appellant's fourth point of error he contends the arresting officer did not witness appellant commit any offense, and had no information that appellant committed any felony or was about to escape. Appellant complains that his arrest for DWI violated Chapter 14 of the Texas Code of Criminal Procedure, and was illegal. Texas Code of Criminal Procedure article 14.01(b) permits an officer to arrest an individual for an offense committed in his presence

or within his view. Appellant argues that since the officer did not witness appellant driving, he had no probable cause to search the automobile. The offense of DWI occurs when an individual (1) is intoxicated, and (2) operates a motor vehicle in a public place. *Chilman v. State*, 22 S.W.3d 50, 56 (Tex. App.–Houston [14th Dist.] 2000, pet. ref'd). Texas courts have found probable cause to arrest despite the fact that an officer did not see the accused operating a motor vehicle. *Id*. at 57 (finding probable cause to arrest for driving while intoxicated where appellant demonstrated signs of being intoxicated and was seated behind the wheel of an automobile). At the time of the arrest, Officer Poff knew, (1) appellant seemed intoxicated because he failed the field sobriety tests; (2) a witness saw appellant driving the car in the parking lot and striking the parked truck; and (3) appellant admitted to driving the car and to taking the Lorazepam. Considering the totality of the circumstances known to the officer, we find that these facts were sufficient for a reasonable person to believe that appellant was driving while intoxicated. Hence, the officer was justified in arresting appellant for DWI. We overrule appellant's fourth point of error.

Appellant's first point of error (that "the trial court erred by denying appellant's motion suppress") is subsumed by his second through fifth points of error. As a result, that contention is adequately addressed by this opinion and need not be dealt with separately. *Graves v. Diehl*, 958 S.W.2d 468 (Tex. App.–Houston [14th Dist.] 1997, no pet.). We overrule his first point of error.

CONCLUSION

Finding that the search was proper, we hold that the trial court did not abuse its discretion in denying appellant's motion to suppress the evidence of Lorazepam, and we overrule appellant's five points of error. The judgment of the trial court in affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed July 19, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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