Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01421-CR

GAVILAN FRILLO NICHOLS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 758,459

O P I N I O N

Police stopped appellant Gavilan Frillo Nichols to write him a citation for jaywalking. They quickly learned from their computer that a warrant existed for his arrest. They arrested him, searched him incident to that arrest, and found a crack pipe and less than one gram of cocaine in his pocket. At trial, the jury found Nichols guilty of possession of cocaine, sentenced him to two years' confinement, and fined him $10,000.

Nichols now appeals that the trial court erred in admitting the cocaine into evidence because the arrest warrant was invalid. He also appeals that the trial court erred in not

properly instructing the jury on the validity of the arrest warrant and the subsequent seizure of the cocaine per article 38.23 of the Texas Code of Criminal Procedure. Because Nichols waived his complaint about admission of the cocaine and because there was no factual dispute about the manner of his arrest, we overrule his two points of error and affirm.

I. EVIDENCE OF THE COCAINE

We first address whether the trial court erred in admitting the cocaine into evidence. Nichols argues that it should have been suppressed because the State failed to prove a factual basis for his arrest warrant. If his arrest was invalid, he argues, the cocaine would be inadmissible. To appeal the admission of the cocaine, however, Nichols needed to timely present an objection or motion that specified the grounds for his complaint when the evidence was first displayed. *See* TEX. R. APP. PROC. 33.1; *Griffin v. State*, 665 S.W.2d 762, 770 (Tex. Crim. App. 1983). When Nichols objected to the cocaine's admission, the arresting officers had already displayed the cocaine and discussed it before the jury, including the positive results of a cocaine field test. Thus, Nichols waived any error in the admission of the cocaine because his objection was untimely. *See Johnson v. State*, 803 S.W.2d 272, 291 (Tex. Crim. App.1990); *Thomas v. State*, 884 S.W.2d 215, 216-17 (Tex. App.–El Paso 1994, pet. ref'd) (waiver of error where witnesses had already testified about finding syringe with cocaine residue on it); *Turner v. State*, 642 S.W.2d 216, 217 (Tex. App.–Houston [14th Dist.] 1982, no pet.)(error waived for failure to object to preceding testimony of officer regarding arrest and items found in search). Accordingly we overrule this point of error.

II. THE JURY CHARGE

We next address Nichols's complaint that the jury charge should have properly instructed the jury under article 38.23 of the Texas Code of Criminal Procedure, which permits the jury to disregard illegally seized evidence. Specifically, Nichols wanted an instruction to the jury that if it had a reasonable doubt about the validity of the arrest

warrant, then it was to disregard the cocaine found in his pocket. An instruction to disregard under article 38.23 is required only if the trial evidence raises a factual dispute about the manner in which the evidence was obtained. *Thomas v. State*, 723 S.W.2d 696, 707 (Tex. Crim. App. 1986); *Angelo v. State*, 977 S.W.2d 169, 177-78 (Tex. App–Austin 1998, pet. ref'd); *cf., e.g., Hutch v. State*, 922 S.W.2d 166, 169 (Tex. Crim. App. 1996) (instruction given where officer found cocaine in stop for no seatbelt, but defendant claimed he wore seatbelt); *Stone v. State*, 919 S.W.2d 424 (Tex. Crim. App. 1996)(instruction proper in DWI case where driver and passenger denied officer's testimony that driver was weaving in road); *Moreno v. State*, 916 S.W.2d 654 (Tex. App.–El Paso, 1996 no pet.)(instruction proper where defendant's girlfriend contested officer's story that she lived with defendant and thus had authority to consent to search of defendant's apartment).

In this case, there was no dispute in trial about how the evidence was obtained or the facts surrounding Nichols's arrest. For instance, it was undisputed that an arrest warrant was reported on the police officers' computer. It was undisputed that Nichols jaywalked, thus providing police a proper reason to stop him. Nichols's only argument is a legal issue: whether the State proved at trial that the arrest warrant was valid. *See Angelo*, 977 S.W.2d at 178. As there was no factual dispute regarding the manner of Nichols's arrest and discovery of the cocaine, we hold that he was not entitled to an article 38.23 instruction. Accordingly, we overrule this second point of error.

Having overruled both of Nichols's points of error, we affirm his conviction.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed November 18, 1999.

Panel consists of Justices Draughn, Lee, Hutson-Dunn.[*]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[*] Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.