Dismissed and Opinion filed July 12, 2001.

In The

Fourteenth Court of Appeals

NO. 14-98-01353-CR

JOSEPH DODSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 780656

O P I N I O N

Joseph Dodson pleaded guilty to possession of less than one gram of a controlled substance. In two points of error he contends the trial court abused its discretion in denying his motion to suppress. We affirm.

As a preliminary matter, the State contends we do not have jurisdiction to consider appellant's complaints because of a defective notice of appeal. After his motion to suppress was denied, appellant entered into a plea bargain with the State.

The rule governing notices of appeal provides that

> if the appeal is from a judgment rendered on the defendant's plea of guilty or nolo contendere under Code of Criminal Procedure article 1.15, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, the notice must:
>
> (A) specify that the appeal is for a jurisdictional defect;
>
> (B) specify that the substance of the appeal was raised by written motion and ruled on before trial; or
>
> (C) state that the trial court granted permission to appeal.

TEX.R.APP. P. 25.2(b)(3)

Appellant's notice of appeal did not state that he had the trial court's permission to appeal the motion to suppress; however, this court may look to the circumstances surrounding the notice of appeal to see if appellant substantially complied with the rule. *Miller v. State*, 11 S.W.3d 345 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd); *Gomes v. State*, 9 S.W.3d 170, 171-172 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (en banc). Here the notice of appeal, which was signed by the judge, contains a handwritten notation that appeal is limited to motion to suppress issues. Additionally, the judgment of conviction contains a similar notation, and the reporter's record on the motion to suppress hearing shows that the trial court granted appellant permission to appeal his adverse ruling on the motion to suppress. We find appellant has shown substantial compliance with the rule and that we have jurisdiction to consider appellant's complaints.

Appellant was arrested after a traffic stop, and his contentions revolve around probable cause to make the stop.

Officer David Zoretic testified he was on patrol near Sharpstown Mall in Houston when he was alerted by narcotics officers to be on the lookout for appellant's vehicle. Zoretic said he spotted the car coming out of a drive-in bank parking lot near the mall and saw the car make a lane change without signaling. He activated his emergency equipment and stopped appellant. Zoretic said he obtained appellant's permission to search the vehicle and found a small bag of white powder which appeared to be cocaine. He then

turned appellant over to the narcotics officer for further questioning.

In his first point of error appellant contends Zoretic did not have probable cause to stop his vehicle because the alleged conduct – changing lanes without signaling – is not illegal without the additional element of danger. However, appellant did not present this issue at the motion to suppress hearing; his complaints were directed to the credibility of Zoretic's version of events. Because appellant did not urge this ground as a reason to suppress the fruits of the stop, nothing is presented for review. *See* TEX. R. APP. P. 33.1(a)(1)(A). We overrule appellant's first point of error.

In his second point of error appellant complains the trial court abused its discretion in refusing to grant his motion to suppress because the record does not support the testimony of Officer Zoretic. Appellant notes that this testimony is contradicted in some particulars by the written police report, which was produced by another officer. In a motion to suppress hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). When no findings of fact are filed, we must view the evidence in the light most favorable to the trial court's ruling and will uphold the ruling on any theory of law applicable to the case. *Romero v. State*, 800 S.W.2d 539, 545 (Tex. Crim. App. 1990).

Officer Zoretic testified that he detained appellant after seeing him make a lane change without signaling. During cross-examination, appellant's attorney introduced the police report filed by narcotics officers. That report noted that appellant "exited the mall parking lot without using the vehicle's turn indicator" and that Officer Zoretic pulled appellant over some five minutes later, after appellant exited the bank parking lot. We agree with the State that these versions of the facts are not necessarily in conflict; the narcotics officers may not have been in position to see appellant's later lane change.

In any case, because we are bound to view the evidence in the light most favorable to the trial court's ruling, we overrule appellant's second point of error and affirm the judgment of the trial court.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed July 12, 2001.

Panel consists of Senior Justices Lee, Sears, and Former Justice Amidei.*

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

* Senior Justices Lee, Sears, and Former Justice Amidei sitting by assignment.