Affirmed and Opinion filed November 22, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-00-0219-CR
NO. 14-00-0220-CR
NO. 14-99-1360-CR
NO. 14-99-1361-CR

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EVE LETICIA LINARES and MARIA DEL SCORRO GALVAN, Appellants

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause Nos. 808,854; 808,855; 808,838; 808,839

O P I N I O N

This is a consolidated appeal arising from the multiple convictions of appellants Eve Linares and Maria Galvan. Both appellants were convicted of the offenses of possession with intent to deliver cocaine and possession of marijuana. *See* TEX. HEALTH& SAFETY CODE ANN. §§ 481.115(d), 481.112(d) (Vernon Supp. 2000). The court sentenced each appellant to concurrent eight year terms of confinement in the Institutional Division of TDCJ. Presenting

three issues for review, appellants now argue that the trial court improperly denied their motions to suppress evidence of the illegal substances. We affirm.

In September of 1998, Houston narcotics officer Daniel Eller received information that the residents of 513 Enid street were trafficking large amounts of marijuana and cocaine from their home. Acting on this information, Eller and another officer, Robert Bradley, undertook surveillance of this residence on March 25, 1999. During the course of this surveillance, the officers first observed a short Hispanic male park a brown Chevrolet Tahoe and enter the home at 513 Enid. Within a short time after his arrival, the officers observed three other individuals arrive at the residence. Each new arrival would walk around to the rear of the residence and out of sight of the officers. At this point, the man who had arrived in the Tahoe would appear from the rear of the residence, look both ways down the street, and return to the rear of the home. Within moments of his return, the party who had recently arrived would drive off.

After Juan Duran, the third of these visitors, had left the home, Eller and Bradley followed him in an unmarked car. Observing Duran take two right turns without signaling, the officers then radioed a marked police vehicle with instructions to pull him over. Having done so, the uniformed officer then found cocaine and marijuana in Duran's possession. Shortly thereafter, officers Eller and Bradley read Duran his rights and asked him about the cocaine. Duran first responded by saying that he "purchased it for his boss named Mario," but then changed his story and stated that he bought it for himself from a man named Mario at 513 Enid. Based on the latter statement and other circumstantial evidence, Eller and Bradley prepared an affidavit and obtained a search warrant for the residence at 513 Enid. Later that day, the police executed the warrant and, after finding large quantities of cocaine and marijuana, arrested both appellants. Appellants now present three issues for review, arguing that the state lacked probable cause for issuance of the search warrant.

Points of Error One Through Three

In three related points of error, appellants argue that the police affidavit authorizing the

search of appellants' home did not contain probable cause to believe that cocaine would be found. As a result, appellants argue that the trial court's denial of their motion to suppress the fruits of the illegal search violated the Fourth Amendment of the US Constitution, Article I, Section 9 of the Texas Constitution and article 38.23 of the Code of Criminal Procedure.

An appellant claiming relief under both the federal and state constitutions must "analyze, argue or provide authority to establish that his protection under the Texas Constitution exceeds or differs from that provided to him by the Federal Constitution." *Arnold v. State*, 873 S.W.2d 27, 33 (Tex.Crim.App.1993). The Texas Court of Criminal Appeals initially instructed that if the appellant did not provide sufficient distinctions between the state and federal constitutional grounds, the ground could be overruled as multifarious. *See Heitman v. State*, 815 S.W.2d 681, 690 n. 23 (Tex.Crim.App.1991) (quoting *McCambridge v. State*, 712 S.W.2d 499, 502 n. 9 (Tex.Crim.App.1986)). However, the court has since modified this approach and instead instructed that under such circumstances, the reviewing court need not address the appellant's state constitutional argument. *See Arnold*, 873 S.W.2d at 33. Here, the appellant does not analyze, argue, or provide authority to establish that his protection under the Texas Constitution exceeds or differs from the protection provided to him by the United States Constitution. Therefore, we will not address the appellant's state constitutional argument. *Chilman v. State*, 22 S.W.3d 50, 54 (Tex. App.–Houston [14 th Dist] 2000, pet. filed). Moreover, because the exclusionary provision of article 38.23 is only triggered by evidence obtained in violation of federal or state law, our findings on appellants' federal constitutional issue will also be dispositive of their article 38.23 challenge.

A search warrant must be based upon probable cause. *See* U.S. CONST. amend. IV; TEX. CONST. art. I, § 9. Whether the facts alleged in a probable cause affidavit sufficiently support a search warrant is determined by examining the totality of circumstances. *See Illinois v. Gates*, 462 U.S. 213, 228-229, 103 S.Ct. 2317, 2326-27, 76 L.Ed.2d 527 (1983). The allegations are sufficient if they would "justify a conclusion that the object of the search is probably on the premises." *Cassias v. State*, 719 S.W.2d 585, 587 (Tex.Crim.App.1986). The magistrate is permitted to draw reasonable inferences from the facts and circumstances

alleged. Id. at 587-588. *Gish v. State*, 606 S.W.2d 883, 886 (Tex.Crim.App.1980). *Id. at* 363 In order to establish probable cause, the affidavit need not set forth facts sufficient to establish guilt beyond a reasonable doubt. *See Janecka v. State*, 739 S.W.2d 813, 823 (Tex. Crim. App. 1987). However, the affidavit must recite facts and circumstances demonstrating that the affiant has reasonably trustworthy information sufficient to warrant a reasonably cautious person's belief that the evidence to be seized is at the particular place to be searched. *See Tolentino v. State*, 638 S.W.2d 499, 501(Tex. Crim. App. 1982). We judge the adequacy of a search warrant affidavit by its "four corners." as this is the information which the magistrate had before him when he issued the warrant. *See Jones v. State*, 833 S.W.2d 118, 123-24 (Tex.Crim.App.1992). Finally,a reviewing court applies a *de novo* standard in deciding whether the trial court erred in admitting evidence based on a finding of probable cause in an affidavit. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997); *Lane v. State*, 971 S.W.2d 748, 751 (Tex.App.–Dallas 1998, pet. ref'd).

In the case at bar, Officer Eller presented the magistrate with an affidavit describing appellant's residence and stating his belief that an individual named Mario was concealing cocaine therein. The affidavit then provided the following facts:

> On September 28, 1998 [your] affiant received information about narcotic trafficking from a residence at 513 Enid. The information afforded to your affiant was that large amounts of cocaine and marijuana were being transported from Mexico to the residence at 513 Enid. Soon after the cocaine and marijuana arrived at 513 Enid, a large portion of the narcotics were soon moved to another unknown location. The narcotics that remained at 513 Enid were then sold to regular customers from the residence.
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> As a result of receiving that information you affiant and Officer R.M. Bradley checked law enforcement computer records for prior narcotic related cases at that address. Your affiant and Officer Bradley found that two prior narcotic investigations had occurred at that address. One investigation occurred in 1989 and another investigation occurred in 1994. On both occasions a hispanic male named Mario Linares was a party to these investigations. With the information that your affiant and Officer Bradley had received, the officers began conducting occasional surveillance at 513 Enid.
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> On March 25, 1999 your affiant and Officer Bradley again conducted surveillance on the residence at 513 Enid. At approximately 1400 hours your

affiant and Officer Bradley observed a brown Chevrolet Tahoe, Tx. License Plate VT7489, arrive at the residence. The vehicle parked on the north side of the residence. The vehicle was driven by a hispanic male approximately 22 to 26 years of age, approximately 5'7 to 5'8 tall [and] approximately 170 to 190 pounds, having short black hair, a medium complexion, and wearing blue jeans and a blue shirt. As your affiant and Officer Bradley continued their surveillance they observed no fewer [than] three vehicles arrive and park on the north side of the residence. Your affiant and Officer Bradley observed one male [from] each vehicle enter the property of 513 Enid through the large rear wrought iron gate. The males would only stay at the residence for a short period of time before returning to their vehicles and leaving the residence. During two instances, the male that was observed driving the Chevrolet Tahoe exited the rear of the residence. Only moments later did your affiant and Officer Bradley observe the other males exit the residence and return to their vehicles.

As a result of the investigation by your affiant and Officer Bradley, a marked HPD patrol unit was called to the area. As your affiant and Officer Bradley observed a brown Jeep arrive and leave the residence, the officers began rolling surveillance on the vehicle. A short time later the vehicle, Tx. License number plate [sic] RHF28N, was stopped by the marked patrol unit for traffic violations. The driver of the vehicle was identified as Juan Carlos Duran, [redacted]. During that traffic stop, patrol Officers Sanchez and Alvarado recovered a small clear plastic bag containing a white powder substance from the interior of the vehicle. The substance was laying on the floor next to the driver seat of the vehicle. The substance was given to your affiant and was field tested by your affiant. The substance did test positive for cocaine.

Officer Bradley advised the suspect, Duran, of his legal rights. The suspect told Officer Bradley that he understood each of his rights. As a statement against his penal interest the suspect, Duran, told Officer Bradley that he had just purchased the bag of cocaine that the patrol officers had recovered. The suspect, Duran, told Officer Bradley and your affiant that he had purchased the cocaine from a male known as Mario while at the residence on Enid. The suspect further stated that he has purchased cocaine from the male suspect known as Mario on several occasions at the residence on Enid. The suspect further stated that on each occasion he has been at the residence on Enid, he has been able to purchase cocaine.

In summary, then, the affidavit sought to show probable cause of drug concealment at appellants' home based on the following facts and circumstances: (1) the unattributed information concerning the use of the residence for narcotics trafficking received in September 1998; (2) the 1989 and 1994 narcotics investigations involving a man named Mario

at 513 Enid; (3) the two officer's observations of three individuals stopping by the residence and leaving within a few minutes of their arrival; (4) an individual exiting the residence and peering down the street shortly before two of the three visitors left; and, (5) the discovery of cocaine in Duran's, the third visitor's, vehicle, cocaine which Duran said he purchased from a male known as Mario at 513 Enid. Based on this information and applying the totality of circumstances test, we conclude the affidavit contained probable cause for issuance of the evidentiary search warrant.

We agree with appellant that Duran, Eller's informant, did not appear to provide reasonably trustworthy information; however, this observation only becomes apparent when we look beyond the four corners of the affidavit by considering the officers' testimony at the suppression hearing. From the perspective of the magistrate issuing the warrant, Duran's information appeared trustworthy for a number of reasons: it contained a statement against penal interest; Duran made the statement with little time or opportunity for fabrication; and, the statement provided the name of a specific individual. *See Mejia v. State*, 761 S.W.2d 35, 36 (Tex. App.–Houston [14th Dist.] 1988, pet. ref'd). (finding the same facts sufficient to establish probable cause in an affidavit for search warrant). Coupled with Eller's observations of activity outside the house and previous narcotics investigations, the affidavit appears sufficient to warrant a reasonably cautious person's belief that cocaine could be found in appellant's home.

Considering all the relevant circumstances, we hold that the trial court correctly admitted evidence of the cocaine after determining that the magistrate's finding of probable cause was supported by the affidavit. Accordingly, we overrule appellants' three issues for

review and affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed November 22, 2000.

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

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