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NO. PD-0722-19

IN THE TEXAS COURT OF CRIMINAL APPEALS

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COURT OF CRIMINAL APPEALS
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THE STATE OF TEXAS,
Appellant

vs.

BRADEN DANIEL PRICE,
Appellee

STATE'S PETITION FOR DISCRETIONARY REVIEW

FROM THE FOURTH COURT OF APPEALS
NO. 04-18-00628-CR
AND THE 175TH JUDICIAL DISTRICT COURT
OF BEXAR COUNTY, TEXAS
CAUSE NUMBER 2017CR10496

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Trial Judge:

Honorable Catherine Torres-Stahl – Presiding Judge.

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STATE'S PETITION FOR DISCRETIONARY REVIEW

To the Honorable Texas Court of Criminal Appeals:

Now comes, Joe D. Gonzales, Criminal District Attorney of Bexar County, Texas, and files this petition for discretionary review.

STATEMENT REGARDING ORAL ARGUMENT

The State requests oral argument.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant was charged by indictment with possession of marijuana 50 to 2000 pounds, a second degree felony offense. (C.R. at 16). The defense filed a pre-trial motion to suppress. (C.R. at 39). On February 23, 2018, the trial court conducted a hearing on the suppression motion and denied the defense's request. (C.R. at 36-37). On July, 17, 2018, Price pled guilty to the charges against him. On August 22, 2018, the court heard punishment evidence and sentenced Price to ten years of community supervision. (C.R, at 67). The trial court certified Price's right to appeal his pre-trial motion and he filed his notice of appeal on August 21, 2018. (C.R. at 69 and 73).

On May 8, 2019, the Fourth Court handed down their opinion reversing and remanding the trial court's judgment. In response, the State filed a motion for rehearing and a motion for en banc reconsideration on June 7, 2019. Both motions

were denied on June 14, 2019. This State's petition for discretionary review of the Fourth Court's order follows.

GROUNDS FOR REVIEW

3) Does the ability to search a suitcase incident to a lawful arrest turn on the nature of the container?

4) Did the Fourth Court err in finding that the Texas Court of Criminal Appeals opinion in *Lalande v. State,* 676 S.W.2d 115 (Tex. Crim. App. 1984) could not be reconciled with this Court's opinion in *State v. Daugherty*, 931 S.W.2d 268 (Tex. Crim. App. 1996)?

ARGUMENT

Facts of Arrest and Search

Detective Bishop, a narcotics detective with the San Antonio Police Department, received a tip from an Austin police officer that Mr. Price had gone out of state, purchased marijuana, and was scheduled to fly into the San Antonio airport that day. (2 R.R. at 9). Detective Bishop confirmed that Price was landing in San Antonio, set up surveillance at the airport and brought in a drug-sniffing dog to help locate the bags of marijuana. (2 R.R. at 11). Once Price's plane landed, his luggage was sniffed and "alerted on" by the drug dog. (R.R. at 12). The police sent the luggage through the baggage claim area where Price picked up the two bags. (2 R.R. at 14). As Price exited the baggage claim area, rolling the luggage with him, the officers approached him in the pick-up area. (2 R.R. at 14 and 22). Because the airport was busy, the officers handcuffed Price and took him to a secure area to interview him, but Price refused to talk. (2 R.R. at 15). At this point, based on all

the information the detective had, Detective Bishop arrested Price. (2 R.R. at 16). While they were in the interview area, Detective Riley searched Price's luggage, revealing fifty-four vacuum sealed packages of marijuana. (2 R.R. at 20).

The Fourth Court's Opinion

The Fourth Court held that the trial court abused its discretion in denying Price's motion to suppress. In the opinion, the court analyzed whether the officers performed a proper search incident to arrest. Specifically the question was whether Price's luggage was "immediately associated" with him. *Price v. State*, No. 04-18-00628-CR, 2019 Tex. App. LEXIS 3697 at *4 (Tex. App.—San Antonio, May 8, 2019). The facts were not in dispute and the court performed a de novo review of these legal principles. In the end, the court overruled the trial court and held that luggage is not a type of container that can be found to be "immediately associated" with a person. *Id.* at *5.

1) **The nature of the container should not determine whether it is "immediately associated" with a person for a proper search incident to arrest**

The Fourth Court's opinion incorrectly turned on the fact that luggage cannot be searched incident to arrest. The proper question for whether a suitcase is immediately associated with a person for purposes of search incident to arrest is not the type of the container but the proximity of the person to the suitcase and the timing of the search in relation to the arrest. *See Martin v. State*, 565 S.W.3d 814, 822 (Tex. App.—Houston [14th Dist.] 2018 no pet.). The Fourth Court's opinion creates

confusion about what an officer can search incident to a lawful arrest by focusing on the type of bag instead of the proximity of the item to the person and to the time of the arrest.

The Supreme Court has recognized the confusion that can happen when the nature of the container controls the outcome of a search: "The *Chadwick* dissenters predicted that the container rule would have 'the perverse result of allowing fortuitous circumstances to control the outcome' of various searches." *Cal. v. Acevedo*, 500 U.S. 565, 578-79 (1991) (citation omitted) (holding that when officers have probable cause to search a vehicle under the automobile exception, the lawful search extends to containers found inside the automobile). For example, under the Fourth Court's container rule application, if Price had been carrying a backpack or a shoulder bag, then the police could have performed a proper search incident to arrest, but since he had a suitcase, the search was improper. The "fortuitous circumstance" of Price choosing the type of bag to carry should not control the outcome. Instead, the determination of whether an item is immediately associated for the purposes of a search incident to arrest should be based on the time and proximity of the search and not the type of item searched.

The Fourth Court's opinion citied to *Stewart v. State* in support of their holding, but in *Stewart* this Court found the appellant's purse was properly searched incident to arrest. *Stewart v. State*, 611 S.W.2d 434 (Tex. Crim. App. 1981). In addition, the

Fourth Court tried to distinguish their opinion from the decision in *Carrasco*, which found that the appellant's shoulder bag was properly searched incident to arrest. *See Carrasco v. State*, 712 S.W.2d 120 (Tex. Crim. App. 1986). Not only does the Fourth Court's opinion not follow precedent from this Court, but it conflicts with their own precedent. In *Gabriel v.* State, the Fourth Court found a lawful search incident of a backpack and did not analyze the type of container, but instead analyzed the timing and the proximity of the officer's search. *See Gabriel v. State*, No. 04-15-00759-CR, 2017 Tex. App. LEXIS 1429, at *17–18 (Tex. App.—San Antonio Feb. 22, 2017, no pet.) (unpublished opinion). In *Gabriel*, the appellant was hiding under a truck and did not have the backpack in his physical position, but the court found that the backpack was properly searched incident to arrest. The opinion held, "a search is incident to arrest if it is 'substantially contemporaneous" to the arrest and is 'confined to the area within the immediate control of the arrestee." *Id.* at *14 (citing *State v. Granville*, 423 S.W.3d 399, 410 Tex. Crim. App. 2014). In addition, the court stated, "a search is still incident to arrest for 'as long as the administrative process incident to the arrest and custody have not been completed.'" *Id.* at *18 (citing, *United States v. Finley*, 477 F.3d 250, 259 n.7 (5th Cir. 2007). The Fourth Court should have followed *Stewart* and *Carrasco* and its own reasoning in *Gabriel* and found that Price's luggage was properly searched incident to arrest. Price's hands were on his luggage when the officer arrested him. The officers searched the

luggage within minutes of his arrest. (2 R.R. at 27). These suitcases were immediately associated with his person at the time of the arrest. Based on these facts, the trial court did not abuse its discretion in denying Price's motion to suppress and the Fourth Court's opinion should be reversed.

2) The inevitable discovery doctrine was not implicated here because there was not an illegal search; therefore, the reasoning in *Lalande v. State* should be applied to support the trial court's decision

Even though neither party argued at trial or on appeal that the search of Price's luggage fell within the scope of the inevitable discovery doctrine, the Fourth Court used the doctrine to counter any justification that may support the trial court's denial of the suppression motion. First, the court noted that this Court's opinion in *Lalande v. State,* 676 S.W.2d 115 (Tex. Crim. App. 1984) appeared to support a lawful search of Price's luggage. But then the court dismissed the reasoning in *Lalande v. State*, finding that it could not be reconciled with this Court's rejection of the inevitable discovery doctrine in *State v. Daugherty*, 931 S.W.2d 268, 271 (Tex. Crim. App. 1996). The court, however, misinterpreted the analysis in *Lalande*. The *Lalande* opinion did not mention the inevitable discovery doctrine. Instead, the opinion acknowledged that a personal item can be lawfully searched when the personal item will accompany the arrested person into custody. *Lalande*, 676 S.W.2d at 118. Essentially what the Court in *Lalande* acknowledged is that if the search of a personal item is legal immediately upon arrest and legal at the police station, then is

it reasonable and legal for the police to search the personal item at any interval in between.

The Court's holding in *Lalande* did not trigger the inevitable discovery doctrine because the search was held to be lawful. The inevitable discovery doctrine "*assumes* that the evidence was illegally obtained." *Daugherty*, 931 S.W.2d at 271. It is not a measure for the court to use to decide whether the search was lawful in the first place. In *Lalande* and in the instant case, the evidence was not illegally obtained; therefore, the Fourth Court improperly invoked the inevitable discovery doctrine and *Daugherty*. As evidenced by the video taken of Price's arrest, the officers were still in the administrative process of his arrest. And while the detective did not specifically testify to all of the procedures he would have performed during the arrest of Price, he did testify that Price would be taken downtown. (2 R.R. at 26). An inventory search at the police station is not inevitable discovery—it is a legal search. Since the search of Price's luggage was legal upon arrest and the search of his luggage at the police station was legal, the officers had the right to inspect the luggage at any point in between.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the State of Texas requests the Court grant review of the court of appeals opinion and allow the parties to brief the

issues and present arguments to the Court, and ultimately affirm the judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Lauren A. Scott, herby certify that the total number of words in this petition is approximately 2100. I also certify that a true and correct copy of the above and forgoing brief was electronically served to the defense attorney of record.

/s/ Lauren A. Scott
_____
Lauren A. Scott
Assistant Criminal District Attorney

APPENDIX

Attached copy of Fourth Court's opinion

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00628-CR

Braden Daniel **PRICE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CR10496
Honorable Catherine Torres-Stahl, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: May 8, 2019

REVERSED AND REMANDED

Braden Daniel Price pled guilty to possession of fifty-six pounds of marijuana after the trial court denied his motion to suppress. Price presents one issue on appeal challenging the trial court's denial of his motion. Specifically, Price contends the search of his suitcases violated his constitutional rights. We sustain Price's issue and reverse the trial court's judgment.

BACKGROUND

San Antonio Police Detective Carl Bishop was contacted by an officer with the Austin Police Department regarding a tip received from a reliable informant that Price went out-of-state

to purchase marijuana and would be flying into San Antonio carrying the drugs. Detective Bishop confirmed Price would be arriving on a flight to San Antonio, set up a surveillance, and requested a canine unit. When Price's plane landed, the canine alerted on two suitcases labeled with Price's name.

Detective Bishop observed Price retrieve the two suitcases and roll them out the exit door. Detective Bishop and other officers approached Price and placed him in handcuffs. Price and his suitcases were taken to a secure office at the airport. Once inside the office, Price was arrested and read his *Miranda* rights. After Price invoked his right to remain silent, one of the officers searched the suitcases and seized the marijuana.

STANDARD OF REVIEW

We review a ruling on a motion to suppress using a bifurcated standard of review. *Lerma v. State*, 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018). "Although we give almost total deference to the trial court's determination of historical facts, we conduct a *de novo* review of the trial court's application of the law to those facts." *Love v. State*, 543 S.W.3d 835, 840 (Tex. Crim. App. 2016) (internal quotation omitted).

DISCUSSION

Price does not challenge the lawfulness of his arrest. *See Florida v. Royer*, 460 U.S. 491, 506 (1983) (noting positive alert by canine to presence of controlled substance in luggage justifies arrest on probable cause). Instead, Price asserts his suitcases "could not be opened in the absence of his consent or a search warrant." The State responds the officers "could search [Price's] luggage incident to his lawful arrest because the bags were immediately associated with him."

"In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). One established exception to the warrant requirement is the search-incident-to-arrest exception. *State*

v. Rodriguez, 521 S.W.3d 1, 10 (Tex. Crim. App. 2017). A search that is "proximate in time and place to the arrest, that is limited to the person of the arrestee and the area within his reach is a permissible search incident to arrest." *Carrasco v. State*, 712 S.W.2d 120, 122 (Tex. Crim. App. 1986). A search incident to arrest extends to "objects immediately associated with the person of the arrestee or objects in an area within the control of the arrestee." *Id*. at 123.

Price quotes the following language from *United States v. Chadwick*, to assert the search of his suitcases was not a valid search incident to his arrest:

> Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

433 U.S. 1, 15 (1977), *abrogated on other grounds*, *California v. Acevedo*, 500 U.S. 565 (1991). In *Carrasco*, however, the Texas Court of Criminal Appeals narrowly read *Chadwick*, noting "the search occurred over an hour after the arrest and after the defendant had already been placed in jail and the repository in question had been removed to another building." 712 S.W.2d at 122. In a later opinion, the court further asserted the *Chadwick* court "held that the evidence obtained from the search must be suppressed because the footlocker 'was property not immediately associated with the arrestee' at the time of the search." *State v. Granville*, 423 S.W.3d 399, 411 (Tex. Crim. App. 2014). Therefore, our analysis in this case turns on whether the rolling suitcases were "immediately associated" with Price at the time of his arrest. If they were not, the videotape of the events that transpired between the time Price was handcuffed and the searching of his suitcases established that the suitcases were reduced to the officers' "exclusive control, and there [was] no longer any danger that [Price] might gain access to the [suitcases] to seize a weapon or destroy evidence." *Chadwick*, 433 U.S. at 15. Accordingly, unless the suitcases were "immediately

associated" with Price, their search would not be justified under the search-incident-to-arrest exception to the warrant requirement.

The Texas Court of Criminal Appeals has distinguished between a purse, which has been held to be "immediately associated" with a person, and luggage. *See Stewart v. State*, 611 S.W.2d 434, 438 (Tex. Crim. App. 1981) ("As a matter of common usage, a purse is an item carried on an individual's person in the sense that a wallet or items found in pockets are and unlike luggage that might be characterized as 'a repository for personal items when one wishes to transport them,' *Arkansas v. Sanders, supra*, a purse is carried with a person at all times."). In its brief, the State relies on the Fort Worth court's decision in *State v. Drury*, upholding the search of a tin can the defendant was holding at the time of his arrest. 560 S.W.3d 752, 754, 759 (Tex. App.—Fort Worth 2018, pet. ref'd). However, the Fort Worth court also drew a distinction with regard to luggage, reasoning, "Among other things, purses, wallets, and certain types of bags have been held to be immediately associated with an arrestee, while luggage, guitar cases, a sealed cardboard box, and a foot locker—among other things—have not." *Id*. at 755; *see also Adams v. State*, 643 S.W.2d 423, 425-26 (Tex. App.—Houston [14th Dist.] 1982, no pet.) (holding search of pouch in luggage which was in the sole custody and control of police to be illegal). Accordingly, we hold Price's suitcases were not "immediately associated" with his person; therefore, the warrantless search of the suitcases was not authorized as a search incident to Price's arrest.

In *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984), the Texas Court of Criminal Appeals suggested a different analysis that could be used to uphold the trial court's denial of the motion to suppress in the instant case. *See State v. Cortez*, 543 S.W.3d 198, 203 (Tex. Crim. App. 2018) (noting trial court's ruling on a motion to suppress can be upheld "if we conclude that the decision is correct under any applicable theory of law"). In *Lalande*, the court was reviewing the El Paso court's holding that the warrantless search of an airline shoulder bag was constitutionally

permissible as a search incident to an arrest. 676 S.W.2d at 116. Noting "the problem of drawing the line on what is 'immediately associated' with an arrestee," the court held "that once it becomes unequivocally clear that the item is to accompany the detainee [into custody], the right of inspection accrues immediately, and is not limited to inspections carried out within the station itself." *Id*. at 118. Here, it was unequivocally clear that Price's suitcases would accompany him into custody; therefore, under the reasoning in *Lalande*, the search would be permissible. *See id*.

The analysis in *Lalande*, however, cannot be reconciled with the rejection of the doctrine of inevitable discovery by the Texas Court of Criminal Appeals in *State v. Daugherty*, 931 S.W.2d 268, 273 (Tex. Crim. App. 1996). In *Daugherty*, the court held illegally obtained evidence is not admissible simply because the evidence "would have been 'obtained' eventually in any event by lawful means." 931 S.W.3d at 270. Similarly, the fact that the suitcases would have been inventoried when they accompanied Price to jail did not authorize their search at the airport office. Therefore, the trial court erred in denying the motion to suppress. And, "[i]t has long been the rule in Texas that, when a defendant pleads guilty after a trial court denies a motion to suppress and when the evidence subject to the motion could have given the State leverage in the plea bargaining process, then harm is established." *Marcopoulos v. State*, 548 S.W.3d 697, 708 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd); *see also McNeil v. State*, 443 S.W.3d 295, 303-04 (Tex. App.—San Antonio 2014, pet. ref'd) (same).

CONCLUSION

Because the trial court abused its discretion in denying Price's challenge to the search of his suitcases, Price's issue is sustained, and the judgment of the trial court is reversed.

Patricia O. Alvarez, Justice

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