

Opinion issued January 24, 2002 withdrawn; Affirmed and Opinion filed March 7, 2002.



In The  
Fourteenth Court of Appeals

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NO. 14-01-00600-CR

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JAN BARNETT MORIARTY, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from 25th District Court  
Colorado County, Texas  
Trial Court Cause No. CR99-118

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**OPINION ON MOTION FOR REHEARING**

Appellant's motion for rehearing is overruled; the opinion issued in this case on January 24, 2002 is withdrawn; and the following opinion is issued in its place.

Jan Barnett Moriarty appeals a deferred adjudication for credit card abuse on the ground that the trial court erred by denying her motion to suppress evidence seized from her purse after she was arrested. Appellant's sole point of error argues that the search of her purse was unlawful because the police officer failed to obtain a search warrant and the search was neither made pursuant to an inventory search nor incident to her arrest.<sup>1</sup>

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<sup>1</sup> A hearing was held on appellant's motion to suppress on October 12, 2000 (the "October hearing"). At the conclusion of that hearing, the trial court stated that it was taking the matter under

When an appellant challenges a trial court's denial of a pretrial motion to suppress evidence prior to a guilty plea, but it is not clear from the trial testimony and exhibits what "fruits" of the allegedly illegal search the trial court held would not be suppressed, then the appellate court need not address the merits of the claim. *See Gonzales v. State*, 966 S.W.2d 521, 524 (Tex. Crim. App. 1998). In this case, because there is no evidence in the record (even if supplemented)<sup>2</sup> identifying what items, if any, were found in appellant's purse, appellant's sole point of error presents nothing for our review. Accordingly, it is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman  
Justice

Judgment rendered and Opinion filed March 7, 2002.

Panel consists of Justices Yates, Edelman, and Guzman.

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advisement. On November 21, 2000, a second hearing was held (the "November hearing") at which the trial court announced that it was denying appellant's motion to suppress and then heard appellant's guilty plea. After filing her notice of appeal, appellant requested and paid for a reporter's record of the October hearing but not the November hearing. Her brief affirmatively stated that the entire record in this case consisted of one volume of court reporter's notes and gave no reference to a portion of the record at which the motion to suppress was ruled upon by the trial court. Lacking a record to show that appellant's complaint was preserved by such a ruling, we overruled her point of error and affirmed the trial court's judgment. *See* TEX. R. APP. P. 33.1(a)(2)(A) (as a prerequisite to presenting a complaint for appellate review, the record must show that the trial court either ruled on the motion, expressly or implicitly, or refused to rule on it and the complaining party objected to the refusal); *Gutierrez v. State*, 36 S.W.3d 509, 510 (Tex. Crim. App. 2001). Appellant thereafter requested and paid for a reporter's record of the November hearing, and, on rehearing, asks to be allowed to supplement the record with it, *i.e.*, after the briefs have been filed and our original opinion was issued. Although we must allow a record to be filed late when the delay is not the appellant's fault, we may (but are not required to) do so where, as here, the delay is the appellant's fault. *See* TEX. R. APP. P. 35.3(c). Because there is an alternate ground, discussed above, on which appellant's point of error must be overruled, we overrule the motion to supplement as moot.

<sup>2</sup> *See supra* note 1.