Affirmed and Opinion filed May 25, 2000.

In The

Fourteenth Court of Appeals

NOS. 14-99-00379-CR & 14-99-00387-CR

LARRY LEE ALLEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause Nos. 794,587 & 794,588

O P I N I O N

Appellant, Larry Lee Allen, was convicted of possession of cocaine and possession of a firearm and sentenced to 30 years imprisonment for each offence. On appeal, he contends that the trial court erred in denying his motion to suppress because the search was illegal.

In a motion to suppress evidence based on an illegal arrest, the initial burden of proof requires the defendant to establish that the seizure occurred without a warrant. *See Russell v. State*, 717 S.W.2d 7, 9 (Tex. Crim. App.1986). Appellant claims it is "undisputed" that there was no warrant. However, the absence of testimony on this issue does not constitute proof of a warrantless arrest. This Court has previously stated that "[w]e do not believe it is asking too much of defense counsel to merely demonstrate,

through questions put to a witness, the nonexistence of a warrant at the time of the arrest." *Telshow v. State*, 964 S.W.2d 303, 307 (Tex. App.–Houston[14 Dist.] 1998, no pet.). Because appellant did not meet his threshold burden of showing that the police did not have a warrant, the State was not required to show the police had reasonable suspicion to detain or probable cause to arrest. *Id.*; *see also White v. State*, 871 S.W.2d 833, 836-37 (Tex. App.–Houston [14th Dist.] 1994, no pet.).

Accordingly, appellant's contentions are overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed May 25, 2000.

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

Do Not Publish — TEX.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