No. _____

In The
Supreme Court of the United States

KENTON LANCE LIGHT,
Petitioner,
v.
THE STATE OF TEXAS,
Respondent.

On Petition For Writ Of Certiorari
To the Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

GEORGE W. ARISTOTELIDIS*
Tower Life Building
310 S. St. Mary's Street
Suite 1910
San Antonio, TX 78205
(210) 277-1906
jgaristo67@gmail.com

ZOE RUSSELL
Tower Life Building
310 S. St. Mary's Street
Suite 1910
San Antonio, TX 78205
zoe@lawzoerussell.com

Prospective Court-Appointed Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fourth Amendment was violated when police searched a container on the basis that Petitioner abandoned the item without any evidence that Petitioner voluntarily discarded the container.

2. Whether the Fourth Amendment requirement of probable cause for the search of an automobile under the automobile exception was violated when police discovered a small amount of methamphetamine outside of the vehicle and could not articulate a nexus between the place to be searched and the evidence sought to be discovered.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings in the court below are named in the caption of the case.

RELATED CASES

- *State of Texas v. Kenton Lance Light*, No 6328 & No. 6330, 216th District Court, Gillespie County, Texas. Judgment entered August 14, 2018. Sentenced October 3, 2018.

- *Light v. State*, No. 04-18-00802-CR & 04-18-00803-CR, 2019 Tex. App. LEXIS 9700 (Tex. App.—San Antonio Nov. 6, 2019, no pet. h.) (mem. op., not designated for publication).

- *Light v. State*, PD-1236-19 & PD-1237-19 (Tex. Crim. App. Sept. 19, 2020). Petition for discretionary review refused.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Federal Cases **Page**

State Cases

Other

No. _____

In The
Supreme Court of the United States

KENTON LANCE LIGHT,
Petitioner,
v.
THE STATE OF TEXAS,
Respondent.

On Petition For Writ Of Certiorari
To The Texas Court of Criminal Appeals

Petitioner asks that a writ of certiorari issue to review the order and judgment entered by the Texas Court of Criminal Appeals on September 16, 2020.

OPINIONS BELOW

The order of the Texas Court of Criminal Appeals refusing Light's petition for discretionary review was entered on September 16, 2020.

The opinion by the Fourth Court of Appeals of Texas affirming Light's conviction was entered on November 6, 2019. The order by the Fourth Court of Appeals of Texas denying rehearing and rehearing *en banc* was entered on March 26, 2020. The opinion of the Fourth Court of Appeals of Texas is unpublished. Each is appended to this petition. *See* App. A; App. B; App. C; App. D; App. E.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

This petition is filed within 90 days after the Texas Court of Criminal Appeals denied Light's petition for discretionary review. *See* SUP. CT. R. 13.3. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in pertinent part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"

STATEMENT OF THE CASE

Mr. Kenton Lance Light is serving a 50-year sentence due to the discovery of methamphetamine in a car he had been driving. The police claimed to have probable cause to search the vehicle due to finding a hide-a-key magnetic box containing a small baggie of methamphetamine on the side of the road nearby the stopped vehicle. Although neither Light nor his passenger claimed the hide-a-key box, the police determined that a small amount of drugs *outside* of the vehicle provided probable cause to believe there would be evidence of more methamphetamine *within* the vehicle.

Light made incriminating statements about a second small metal pill box found nearby the vehicle. Those statements were prompted by an illegal search by police of the contents of that container, with the State later arguing incorrectly that Light had abandoned it. The State failed to advance proof of voluntarily abandonment of the pill box by Light.

Without Light's statements about the pill box, the connection between the hide-a-key container, Light, and the vehicle becomes even more tenuous. Police did not witness either Light or his passenger discard the hide-a-key box and neither claimed it belonged to them when questioned. The only factor supporting probable cause to search the vehicle was the hide-a-key box's proximity to the vehicle.

Deputy Loth of the Gillespie County Sheriff's Office pulled over Light and passenger Phillip Gressett in the early morning hours of February 23, 2016, after seeing Light's vehicle was driving with a missing a tire following an accident. Light and Gressett freely walked around the scene and observed the damage to the vehicle. No witnesses testified to seeing, nor do the dash camera videos show, Light or Gressett dropping, throwing, or kicking an item (such as the hide-a-key box or Light's pill box) on the ground.

Deputy Moellering arrived at the scene to assist Loth. After circling the vehicle with a flashlight, he found a small, gold-colored container (the pill box) and a small hide-a-key box lying on the ground near the truck's front passenger side—close to the missing tire. He believed the items likely belonged to the driver or passenger because of their location and because they were relatively dry despite rainy conditions. Moellering opened the metal tin, finding prescription pills, and *then* asked to whom the tin belonged. Light answered it belonged to him and contained his medicine, and, according to

Moellering, Light also offered that he did not have a prescription for the lorazepam pills held in the tin but did for the hydrocodone pills.

Moellering also opened the hide-a-key container. He found a plastic baggie with a small amount of a substance believed to be methamphetamine. Light and Gressett denied ownership of the hide-a-key box numerous times when asked by Moellering.

Based on the two-and-one-half pills of lorazepam and approximately half gram of methamphetamine, Moellering and Deputy Hudson initiated a warrantless search of the vehicle. Upon searching the vehicle, Hudson found a bag containing a larger amount of methamphetamine in the backseat. Light was questioned about the bag and is alleged to have made incriminating statements in response.

Light challenged the search of the metal tin and the vehicle with a motion to suppress, which the 216th District Court of Gillespie County denied without a written order. He was subsequently convicted at trial and sentenced to 365 days in jail for the possession of lorazepam under Case Number 6330 and 50 years in prison for possession of methamphetamine with intent to deliver under Case Number 6328.

Light appealed, and the Fourth Court of Appeals affirmed. First, the Fourth Court determined that Light abandoned the metal tin containing his medicine, justifying the warrantless search. Second, the Fourth Court, citing no precedent, upheld the search of the vehicle under the automobile exception. "Despite the weather conditions, the [hide-a-key] box was dry, indicating it was recently discarded; however, both Light and Gressett denied ownership of the box. From these circumstances, the officers could reasonably have believed a 'fair probability' existed that additional methamphetamine would be located inside the truck." *Light v. State*, No. 04-18-00802-CR & 04-18-00803-CR, 2019 Tex. App. LEXIS 9700, at *7 (Tex. App.—San Antonio Nov. 6, 2019, pet. ref'd) (mem. op., not designated for publication); Appendix A. The Fourth Court also denied rehearing and rehearing *en banc* to Light. Appendix B; Appendix C.

The Texas Court of Criminal Appeals denied Light's petition for discretionary review. Appendix D; Appendix E.

REASONS FOR GRANTING THE WRIT

The Texas Court of Criminal Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

This Court has never addressed whether narcotics found outside of a vehicle amounts to probable cause to search within the vehicle. The answer in the affirmative, without more than mere proximity between the narcotics and the vehicle, disregards precedent from this Court regarding probable cause and the automobile exception. Texas's holding stretches the automobile exception beyond its proper bounds. Light presents an issue of compelling and exceptional importance to this Court that should be granted review.

This Court held in *United States v. Ross*, 456 U.S. 798, 809 (1982), that a search under the automobile exception "is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained." The Texas Court of Criminal Appeals eschewed the Fourth Amendment requirement of a nexus between the place to be searched and the evidence sought and, in doing so, failed to require probable cause to search Light's vehicle. "Probable cause for a search exists when under the totality of the circumstances there is a fair probability that contraband or evidence of a crime will be found *in a particular place*." *United States v. Goddard*, 312 F.3d 1360, 1363 (11th Cir. 2002) (emphasis added) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

A. Abandonment requires evidence of an individual's voluntary intent to abandon, a burden not met by the State in this case.

Light's statements about the metal tin containing his medicine and unprescribed lorazepam and the discovery of the lorazepam should be suppressed as fruit of an illegal search of the tin because the tin was not abandoned. Police searched inside the metal tin without probable cause, believing it belonged to Light or passenger Gressett, but without asking for consent before opening it.

"In determining whether there has been abandonment, the critical theory is whether the person prejudiced by the search . . . voluntarily discarded, left behind, or otherwise *relinquished his interest in the property* in question so that he could no longer retain a reasonable expectation of privacy with regard to it *at the time of the search*." *United States v. Ramos*, 12

F.3d 1019, 1022 (11th Cir. 1994) (quotations omitted) (emphasis in original). While Light bears the burden of proving a legitimate expectation of privacy in his medicine container—which he showed by claiming possession of the property when asked and by the property containing his medicine and a written prescription bearing his name—"the burden of proving abandonment is on the government." *Id*. at 1023.

Light did not abandon the container because there are no "words spoken, acts done, and other objective facts" that show abandonment by Light. *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973). Whereas in *Colbert*, the defendants "disclaimed any interest in [their] briefcases and began to walk away from them," Light immediately claimed ownership of the small metal container. *Id*. at 177. No evidence in the record affirmatively shows Light intentionally placed or threw his medicine container on the ground. *See California v. Hodari D.*, 499 U.S. 621 (1991) (finding abandonment where a young person fled upon seeing police approaching and, while being chased, police witness him throwing a small rock away); *Abel v. United States*, 362 U.S. 217 (1960) (leaving a hotel room and checking out of the hotel amounted to abandonment of the contents of the room's wastebasket).

The Fourth Court of Appeals found "the trial court could have believed Light abandoned the gold metal tin containing the lorazepam based on Light's actions in the dash cam video and the condition[1] and location of the metal tin." *Light*, 2019 Tex. App. LEXIS 9700, at *6. The Fourth Court describes Light's actions in the dash cam video as follows: "The dash cam video shows that while Deputy Loth was speaking to Gressett and the driver and passenger of the other vehicle, Light entered the back passenger seat of the truck and closed the door. After he exited the truck, he went around the front of the truck to the front passenger side where the gold metal tin and hide-a-key box were recovered. Light then returned to the driver side of the truck." *Id*. at *5.

The dash cam video did not show Light discarding the metal tin. The court took the State's word that the metal tin was abandoned without the State offering any proof. Deputy Moellering—who, according to his testimony,

[1] The condition of the tin that the Fourth Court refers to is its relative dryness despite rainy conditions. However, whether Light accidentally dropped the tin or whether it fell out of the vehicle when he attempted to open the passenger-side door, the relative dryness of the tin would be the same regardless of accidentally or purposefully dropping it. The "condition" offers no evidence of voluntary abandonment.

believed that the tin belonged to one of the two men—should have asked who the tin belonged to *before* opening and searching the tin's contents. The Fourth Court believed that since the tin was on the ground instead of in Light's hands, that was evidence enough of his voluntary abandonment of the item. However, there was no showing of voluntariness at all. The State entirely failed in their burden of proof.

Without evidence to show the intent to voluntarily abandon on Light's part, and absent probable cause to search within the metal tin, all fruit of the search must be suppressed and cannot contribute to the totality of the circumstances of the probable cause calculation to search the vehicle.

B. Texas exceeds the scope of the automobile exception by failing to require probable cause to believe narcotics would be found in the vehicle.

No evidence was put forward in the motion to suppress hearing or at trial to justify why police believed they would find *more* contraband or evidence of a crime within the vehicle driven by Light simply because of the discovery of a small amount of methamphetamine outside of the vehicle. An inference by the court is similarly unfounded because there is no connection between a small amount of methamphetamine—again unclaimed by Light and without anyone having seen Light deceptively dispose of the methamphetamine—and a vehicle nearby to it. "While the United States Supreme Court in *Ybarra v. Illinois* held that a 'person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person,' that principle, by extension, prohibits the search of vehicles whose only connection to a situs of illegal activity is their proximity to that situs." *State v. Smith*, No. 1712004846, 2018 Del. Super. LEXIS 261, *4 (not designated for publication) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).

Just as Light could not have been arrested based on probable cause of actual or constructive possession of the methamphetamine found on the side of the road because "there must be some nexus between the accused and the prohibited substance[,]" so, too must there exist a nexus between the vehicle search and the prohibited substance. *United States v. Ferg*, 504 F.2d 914, 917 (5th Cir. 1974); *see also United States v. Stephenson*, 474 F.2d 1353, 1355 (5th Cir. 1973) ("[M]ere presence in the area where the narcotic is discovered . . . is insufficient to support a finding of possession.").

For probable cause to search a particular location, facts must exist to establish a nexus between the location to be searched and the evidence sought. *See United States v. Freeman*, 685 F.2d 942, 949 (5th Cir. 1982). "[T]he fact that there is probable cause to believe that a person has committed a crime does not automatically give the police probable cause to search his house for evidence of that crime. 'If that were so, there would be no reason to distinguish search warrants from arrest warrants, and cases like *Chimel v. California*, 395 U.S. 752 (1969), would make little sense'" *Id*. (quoting *United States v. Lucarz*, 430 F.2d 1051, 1055 (9th Cir. 1970)).

The same logic—that the State must be able to establish *why* evidence will be found inside a house even when an individual is being arrested from that place—can be applied to finding drugs outside of a vehicle without anyone to claim them or without any evidence showing the driver or passenger deceptively discarded them.

In the case of *Commonwealth v. Alvarado*, decided by the Supreme Judicial Court of Massachusetts, the passenger in a vehicle, Londono, was seen shoving a clear plastic bag down the front of his pants. *Commonwealth v. Alvarado*, 651 N.E.2d 824, 828 (Mass. 1995). Trooper Cummings removed Londono from the vehicle and questioned him about the bag. *Id*. Londono denied having placed anything down his pants and also lied and then corrected himself about where he lived (Colombia versus Puerto Rico). *Id*. Trooper Cummings patted down Londono and felt a bulge at the front of his pants. *Id*. Cummings asked Londono if what he felt was cocaine, and Londono admitted it was and removed it from his pants. *Id*. Cummings arrested Londono and made his way back to the vehicle, where he saw the driver, Alvarado, "remove his hand from the floor area of the back seat on the passenger side." *Id*. at 829. Despite finding 28 grams of cocaine from Londono, and seeing furtive gestures by Alvarado, the Court determined "Cummings had no probable cause to believe that the automobile contained cocaine other than the amount seized on Londono's person." *Id*. at 833. Further, "[n]or was there any evidence of a nexus between the cocaine on Londono's person and the automobile itself." *Id*. Even given the furtive gesture by Alvarado, this observation was not "sufficient to provide Cummings with the probable cause to search the automobile." *Id*.

The Georgia Court of Appeals also found no probable cause to search an automobile on similar facts. In *Lowe v. State*, 835 S.E.2d 301 (Ga. 2019), police pulled over a vehicle after seeing the occupants leave a house the police

had under surveillance for drug dealing. *Id*. at 303. When an officer approached the passenger-side window, he saw the passenger reach toward the floorboard and then pull up a mesh pouch with a plastic baggie sticking out with a green, leafy substance. *Id*. at 304. The officer grabbed for the pouch and asked if there were more drugs in the car. *Id*. Officers removed the driver and passenger, and proceeded to search the vehicle, finding methamphetamine. *Id*. The trial court denied the driver's motion to suppress, but the Court of Appeals of Georgia reversed. *Id*. at 303. The Georgia court wrote,

> The vehicle was stopped for failure to signal before changing lanes – Lowe and her passenger were not suspected of any crimes before that time, officers did not smell marijuana in the car, they did not observe any items inside the car indicative of contraband use, or observe furtive or suspicious movements between the two women. That her passenger had marijuana in her wallet and was riding in Lowe's vehicle is not sufficient to establish probable cause for a warrantless search under the automobile exception. . . .
>
> Accordingly, we cannot say that given the totality of the circumstances, there was probable cause under the automobile exception *to believe that Lowe's vehicle contained contraband.*

Id. at 306 (emphasis added).

In *Lowe* and *Alvarado*, the drugs in question were found inside the vehicle. In Light's case, the connection between the small amount of methamphetamine in the hide-a-key box and the vehicle is even weaker. Even if evidence resulting from the warrantless search of the gold metal tin is included in the totality of circumstances, there was not probable cause to search the truck in this case because no facts lead to an inference that *more* methamphetamine or other drugs would be inside the vehicle. *Cf. United States v. Wilmer*, No. 2:19-CR-22, 2019 U.S. Dist. LEXIS 197609, at *60-62 (N.D.W. Va. Nov. 1, 2019) (finding probable cause to search a vehicle even though the officers only found drugs *outside* of the vehicle because police found drug paraphernalia on defendant's person and defendant admittedly attempted to "ditch" a Crown Royal bag containing methamphetamine under the car).

The State relies upon *Turner v. State* and *Wyoming v. Houghton*, but those cases are inapposite to Light's. *Turner v. State*, 550 S.W.2d 686 (Tex. Crim. App. 1977); *Wyoming v. Houghton*, 526 U.S. 295 (1999). In *Turner*, the driver was asked to step out of the car by an officer at his window, and while doing so, the cover officer saw Turner drop a matchbox to the floorboard in front of his seat. *Turner*, 550 S.W.2d at 687. The Texas Court of Criminal Appeals concluded that "under the circumstances," a driver conspicuously dropping a box when asked out of the vehicle "could warrant a man of reasonable caution in believing that the box contained contraband that appellant wanted to conceal from the officers." *Id*. at 688. *Turner* hinges on the defendant attempting to hide his possession of a matchbox containing heroin when asked to exit the vehicle such that a reasonable person could assume he had used his vehicle to traffic in contraband.

In Light's case, no one witnessed him tossing the hide-a-key on the side of the road. Light and Gressett did not admit to doing so. Light and Gressett did not ever claim ownership of the hide-a-key. As well, the matchbox in *Turner* was found *inside* the vehicle whereas the hide-a-key container in this case was discovered outside of the vehicle.

The driver of the vehicle in *Wyoming v. Houghton* had a hypodermic syringe in his front shirt pocket that he admitted he used to take drugs. *Houghton*, 526 U.S. at 298. He was *inside* of the vehicle when the contraband was found. *Houghton* does not apply to our facts because the item containing drugs in this case was not inside the vehicle.

In Light's case, Deputies Loth and Moellering failed to articulate any reason to believe more methamphetamine would be found within the vehicle. The Fourth Court of Appeals did not cite precedent for its conclusion that "a 'fair probability' existed that additional methamphetamine would be located inside the truck." *Light*, 2019 Tex. App. LEXIS 9700, at *7. Neither Light nor Gressett were suspected of being drug dealers. The deputies were not operating from a confidential tip about more contraband in the vehicle. The deputies did not see anything in plain sight in the vehicle to lead them to believe drugs would be found inside. They did not witness any furtive or suspicious movements made by Light or Gressett. They did not call a drug dog.

The rule established in this case holds that if a small amount of drugs is found outside, yet nearby, a vehicle, a fair probability exists that more drugs

will be found within the vehicle. This holding improperly expands upon the already amorphous meaning of probable cause. *See* Andrew Manuel Crespo, *Probable Cause Pluralism*, 129 YALE L.J. 1276, 1279 (2020) ("[T]wo centuries after the Supreme Court first applied the phrase [probable cause], scholars continue to describe it as "elusive," "hopelessly indeterminate," and "shrouded in mystery."). The watering down of the probable cause standard "will leave judges ill equipped to stand as 'guardians of the Bill of Rights,' in 'between the citizen and the police.'" *Id.* at 1281 (quoting *United States v. Calandra*, 414 U.S. 338, 356 (1974) (Brennan, J., dissenting) and *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963)). Here, that failure will cost Light fifty years of confinement in prison.

C. Summation.

In closing, Light requests this Court grant a writ of certiorari to correct Texas's expansion of both abandonment law and the law of probable cause to justify the automobile exception. Texas's holding would no longer require proof of voluntary abandonment, with the burden on the government. Additionally, under Texas's theory of probable cause, police no longer need to establish a nexus between the place to be searched and the evidence sought.

CONCLUSION

For these reasons, Petitioner Kenton Lance Light asks that this Honorable Court grant a writ of certiorari.

Respectfully submitted,

GEORGE W. ARISTOTELIDIS
Tower Life Building
310 S. St. Mary's Street
Suite 1910
San Antonio, TX 78205
(210) 277-1906
jgaristo67@gmail.com
Prospective Court-Appointed Counsel for Petitioner

APPENDIX A

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

Nos. 04-18-00802-CR & 04-18-00803-CR

Kenton Lance **LIGHT**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court Nos. 6330 & 6328
Honorable N. Keith Williams, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: November 6, 2019

AFFIRMED

After Kenton Lance Light's pretrial motion to suppress was denied, he was convicted by a jury of possession of the controlled substance lorazepam and possession with intent to deliver methamphetamine. Light appeals the trial court's judgments asserting the trial court erred in denying his motion to suppress. We affirm the trial court's judgments.

BACKGROUND

At the hearing on Light's motion to suppress, three officers testified: (1) Deputy Chad Loth; (2) Sergeant Nick Moellering; and (3) Deputy Wayne Hudson.

Deputy Loth testified he was traveling eastbound on a highway around 1:00 a.m. when he observed a westbound pickup truck which appeared to be missing a front passenger tire causing sparks to fly from the front end as it was being driven down the highway. Deputy Loth turned around and stopped the truck to check the welfare of the occupants because the vehicle appeared to have been in an accident. When Deputy Loth exited his patrol vehicle, he confirmed the truck was missing the front passenger wheel and also observed damage to the passenger side of the truck. Light was driving the truck, and Phillip Gressett, later identified as the truck's owner, was in the front passenger seat. As soon as the truck stopped, Light quickly exited the truck and told Deputy Loth he believed he had hit a guardrail. Deputy Loth testified there were intermittent storms that night with heavy rain, so hydroplaning was a plausible explanation. Gressett also exited the truck through the driver's side door because the front passenger door would not open. Light did not have his driver's license, so Deputy Loth asked dispatch to run a check on the status of his driver's license. Deputy Loth stated he knew Light from prior encounters with him. Dispatch informed Deputy Loth that Light had three active suspensions. As a result, Deputy Loth testified Light could not legally drive. Deputy Loth testified the suspended license gave him probable cause to arrest Light, but he did not arrest him at that time.

As Deputy Loth was talking to Light and Gressett, another vehicle pulled up, and the passenger in that vehicle told Deputy Loth that his vehicle was struck by the truck Light was driving and was disabled approximately a half of a mile down the highway. The passenger further informed Deputy Loth that the wheel of the truck Light was driving was in the middle of the highway at the location of the accident. Deputy Loth instructed the driver to park on the side of the road, and the two men remained at the scene. Deputy Loth sent Deputy Billy Hull back to the scene of the accident to check the condition of the highway and ensure the wheel was not blocking it. Deputy Loth believed Light struck the other vehicle and failed to stop at the scene of the

accident. Around that time, Sergeant Moellering arrived. As Sergeant Moellering was assessing the damage to the truck, he noticed a gold-colored metal tin and black hide-a-key box laying on the ground less than a few feet from where the front tire should have been. Although there had been intermittent storms with heavy rain that night, both the hide-a-key box and the metal tin were relatively dry and did not have any grass or mud on them. Neither Light nor Gressett claimed ownership of the hide-a-key box which contained a small baggy of methamphetamine. Light stated the metal tin contained his medicine, and he believed the metal tin must have fallen out of the passenger side of the vehicle. In later observing the dash cam recording of the stop, Deputy Loth noticed the front passenger door was never opened; however, during the stop, Deputy Loth testified Light can be seen walking around to the front passenger side, removing something from his pocket, and trying to kick the object underneath the truck. Based on the contents of the hide-a-key box and metal tin, Sergeant Moellering and Deputy Hudson searched the truck. Some glass pipes, small baggies, and a large amount of methamphetamine was found. In response to Sergeant Moellering's question about who owned the methamphetamine, Light admitted the methamphetamine was his. Light and Gressett were then placed under arrest. After the arrests, the truck was inventoried and towed. Deputy Loth testified he intended to impound and tow the truck after the initial stop based on the absence of the front wheel.

Sergeant Nick Moellering testified he went to assist Deputy Loth with traffic control and conducting the crash investigation due to the heavy storms in the area. When Sergeant Moellering arrived at the scene, he observed Deputy Loth speaking with Light and Gressett and also observed the front passenger wheel was off the vehicle. As he was assessing the damage to the truck, he observed a hide-a-key box and gold metal tin on the ground within a foot of where the front tire should have been. Sergeant Moellering opened the gold metal tin and saw that it contained pills. He then asked Gressett and Light if they recognized the tin, and Light said it belonged to him. In

response to Sergeant Moellering's question about whether Light had a prescription for the lorazepam contained in the metal tin, Light admitted he did not have a prescription for it. Sergeant Moellering stated the absence of a prescription for the lorazepam gave him probable cause to arrest Light, but he was not arrested at that time. Both Gressett and Light denied any knowledge about the hide-a-key box. Sergeant Moellering testified he asked Gressett and Light about both items because they were dry even though it had been raining. The hide-a-key box contained a bag of methamphetamine; however, Light and Gressett were not told about the discovery. After discovering the methamphetamine, Sergeant Moellering and Deputy Hudson began searching the vehicle. Sergeant Moellering testified he recovered a Styrofoam cup containing three glass pipes used to smoke methamphetamine and numerous plastic baggies which are commonly used to package controlled substances from the front console cup holder. Deputy Hudson recovered a black bag or pouch in the back passenger seat area that contained six plastic bags of methamphetamine. When they located the black pouch, Sergeant Moellering testified Light began nodding his head. When he asked Light if they found his stash, Light responded it was all his. Sergeant Moellering further testified Gressett stated it was not his. Prior to discovering the methamphetamine in the black bag, neither Light nor Gressett had been placed under arrest, handcuffed, or restricted in their movements. After the methamphetamine was found, both men were placed under arrest.

Sergeant Moellering testified the truck was not completely off the highway but was "[s]till a little bit in it." Photographs taken of the truck at the scene were admitted into evidence which also shows the truck was slightly on the highway. Sergeant Moellering further testified the truck could not legally be driven from the scene because it was missing a wheel and tire. As a result, the truck was towed.

Deputy Wayne Hudson testified he went to assist Deputy Loth. When Deputy Hudson arrived at the scene after observing the second vehicle and the wheel and tire to the truck a half of a mile away, Sergeant Moellering informed him about the methamphetamine found in the hide-a-key box. He then assisted Sergeant Moellering in searching the truck and found a black pouch under the rear passenger seat containing several plastic bags of methamphetamine.

Deputy Loth was recalled as a witness. He testified he did not see either the hide-a-key box or the gold metal tin when he initially went to the passenger side of the truck to observe the damage upon arriving at the scene.

The dash cam video shows that while Deputy Loth was speaking to Gressett and the driver and passenger of the other vehicle, Light entered the back passenger seat of the truck and closed the door. After he exited the truck, he went around the front of the truck to the front passenger side where the gold metal tin and hide-a-key box were recovered. Light then returned to the driver side of the truck.

The trial court denied the motions to suppress, and Light appeals.

STANDARD OF REVIEW

"When reviewing a trial judge's ruling on a motion to suppress, we must view the evidence in the light most favorable to the trial court's ruling." *Marcopoulos v. State*, 538 S.W.3d 596, 600 (Tex. Crim. App. 2017) (internal quotation omitted). "We will afford almost total deference to a trial court's express or implied determination of historical facts and review *de novo* the court's application of the law of search and seizure to those facts." *Id*. (internal quotation omitted).

LORAZEPAM

In his first issue, Light contends the trial court erred in denying his motion to suppress the lorazepam because it was in a closed container that belonged to Light, and the container was searched without a warrant and without obtaining Light's consent.

"When police take possession of property abandoned independent of police misconduct, there is no seizure under the Fourth Amendment." *State v. Martinez*, 570 S.W.3d 278, 286 (Tex. Crim. App. 2019). When "contraband is thrown, dropped or placed away from the person of the accused in a public place, the recovery thereof does not involve a search and the evidence is admissible." *Gomez v. State*, 486 S.W.2d 338, 339 (Tex. Crim. App. 1972); *Haley v. State*, 04-03-00793-CR, 2004 WL 2168632, at *4 (Tex. App.—San Antonio Sept. 29, 2004, no pet.) (mem. op.; not designated for publication). Here, the trial court could have believed Light abandoned the gold metal tin containing the lorazepam based on Light's actions in the dash cam video and the condition and location of the metal tin. Accordingly, the trial court did not abuse its discretion in denying Light's motion as to the lorazepam.

SEARCH OF TRUCK

In his second issue, Light contends the trial court erred in denying his motion to suppress the methamphetamine recovered during the search of the truck because the officers lacked probable cause to search the truck. Light further contends the automobile exception to the warrant requirement did not apply because the truck was inoperable and the officers made an immediate decision to impound the truck obviating the basis for the automobile exception.

"The automobile exception allows for the warrantless search of an automobile if it is readily mobile and there is probable cause to believe that it contains contraband." *Marcopoulos*, 538 S.W.3d at 599 (internal quotation omitted). "Probable cause exists where the facts and circumstances known to law enforcement officers are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id*. at 599-600. "For probable cause to exist, there must be "a 'fair probability' of finding inculpatory evidence at the location being searched." *Id*. In determining whether probable cause exists, a reviewing court must consider the totality of the circumstances known to the officer. *Id*.

In the instant case, before searching the truck, the officers had recovered the hide-a-key box by the front passenger side of the truck. Despite the weather conditions, the box was dry, indicating it was recently discarded; however, both Light and Gressett denied ownership of the box. From these circumstances, the officers could reasonably have believed a "fair probability" existed that additional methamphetamine would be located inside the truck. In addition, the trial court could have reasonably found the truck was readily mobile because Light was driving it immediately prior to the traffic stop. *See Medina v. State*, 565 S.W.3d 868, 878 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd); *Torres v. State*, No. 04-16-00717-CR, 2018 WL 521591, at *2 (Tex. App.—San Antonio Jan. 24, 2018, no pet.) (not designated for publication); *see also Keehn v. State*, 279 S.W.3d 330, 335 (Tex. Crim. App. 2009) (quoting *California v. Carney*, 471 U.S. 386, 392-93 (1985)) ("'When a vehicle is being used on the highways, . . . the two justifications for the vehicle exception come into play.'"). Therefore, the trial court did not err in denying Light's motion as to the methamphetamine recovered during the search of the truck.

ADMISSION OF OWNERSHIP

In his third issue, Light contends the trial court erred in denying his motion to suppress his statement that he owned the methamphetamine because he was in custody when the statement was made but was not read his *Miranda* rights.

Statements made by a suspect during a custodial interrogation are inadmissible unless certain warnings were given to the suspect before he made those statements. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). A defendant has the burden to establish he was in custody before the State bears the burden to show compliance with *Miranda*. *Hines v. State*, 383 S.W.3d 615, 621 (Tex. App.—San Antonio 2012, pet. ref'd) (internal quotation omitted).

"A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest."

Id. at 621 (internal quotation omitted). The Texas Court of Criminal Appeals has outlined four situations that may constitute custody: "(1) when the suspect is physically deprived of his freedom of action in any significant way; (2) when a law enforcement officer tells the suspect that he cannot leave; (3) when law enforcement officers create a situation that would lead a reasonable person to believe his freedom of movement has been significantly restricted; and (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave." *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996). In the first, second, and third situations, the restrictions upon the suspect's freedom of movement must rise to the degree associated with an arrest as opposed to an investigative detention. *Id*.

Under the fourth situation, an officer's knowledge of probable cause must be manifested to the suspect, and that manifestation could occur "if information substantiating probable cause is related by the officers to the suspect or by the suspect to the officers." *Id*.; *Garcia v. State*, 237 S.W.3d 833, 837 (Tex. App.—Amarillo 2007, no pet). "However, the manifestation of probable cause does not automatically establish custody." *Garcia*, 237 S.W.3d at 837. "[T]he question turns on whether, under the facts and circumstances of the case, 'a reasonable person would have felt that he or she was not at liberty to terminate the interrogation and leave.'" *Ervin v. State*, 333 S.W.3d 187, 205 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (quoting *Nguyen v. State*, 292 S.W.3d 671, 678 (Tex. Crim. App. 2009)). "The 'reasonable person' standard presupposes an *innocent* person." *Dowthitt*, 931 S.W.2d at 254. "[T]he subjective intent of law enforcement officials to arrest is irrelevant unless that intent is somehow communicated or otherwise manifested to the suspect." *Id*.

Here, the dash dam video shows Light freely moving around the truck and the scene of the stop with his movements unrestricted. The video further shows Gressett and the other citizens at the scene similarly moving around unrestricted. Although Light points to the fact that three

uniformed officers were on the scene, Sergeant Moellering and Deputy Hudson testified they initially arrived at the scene to assist with traffic control due to the weather. None of the officers mentioned the methamphetamine discovered in the hide-a-key box, and Light was never informed he was not free to leave. "Because no other circumstances are indicative of custody, we decline to hold that a single incriminating question, directed at multiple individuals who might have had access to the drugs at issue, is sufficient to establish that a reasonable person would perceive the detention to be a restraint on his movement comparable to formal arrest." *Estrada v. State*, No. PD-0106-13, 2014 WL 969221, at *6 (Tex. Crim. App. Mar. 12, 2014) (internal quotation omitted) (not designated for publication). Accordingly, because Light was not in custody when he responded to Sergeant Moellering's question, the trial court did not err in denying his motion to suppress his response to the question.

CONCLUSION

The judgments of the trial court are affirmed.

Sandee Bryan Marion, Chief Justice

DO NOT PUBLISH

APPENDIX B

FILE COPY

Fourth Court of Appeals
San Antonio, Texas

March 26, 2020

No. 04-18-00802-CR & 04-18-00803-CR

Kenton Lance **LIGHT,**
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court No. 6330, 6328
Honorable N. Keith Williams, Judge Presiding

O R D E R

Sitting: Sandee Bryan Marion, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

The panel has considered the Appellant's Motion for Rehearing, and the motion is DENIED.

Sandee Bryan Marion
Sandee Bryan Marion, Chief Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 26th day of March, 2020.

Michael A. Cruz
MICHAEL A. CRUZ,
Clerk of Court

APPENDIX C

FILE COPY

Fourth Court of Appeals
San Antonio, Texas

March 26, 2020

No. 04-18-00802-CR & 04-18-00803-CR

Kenton Lance **LIGHT,**
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court No. 6330, 6328
Honorable N. Keith Williams, Judge Presiding

O R D E R

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

The panel has considered the Appellant's Motion for En Banc Rehearing, and the motion is DENIED.

Sandee Bryan Marion
Sandee Bryan Marion, Chief Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 26th day of March, 2020.

Michael A. Cruz
MICHAEL A. CRUZ,
Clerk of Court

APPENDIX D

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

9/16/2020 **COA No. 04-18-00802-CR**
LIGHT, KENTON LANCE **Tr. Ct. No. 6330** **PD-1236-19**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

GEORGE WILLIAM ARISTOTELIDIS
LAW OFFICE OF JORGE G. ARISTOTELIDIS
TOWER LIFE BUILDING
SAN ANTONIO, TX 78205
* DELIVERED VIA E-MAIL *

APPENDIX E

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

9/16/2020 **COA No. 04-18-00803-CR**
LIGHT, KENTON LANCE **Tr. Ct. No. 6328** **PD-1237-19**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

GEORGE WILLIAM ARISTOTELIDIS
LAW OFFICE OF JORGE G. ARISTOTELIDIS
TOWER LIFE BUILDING
SAN ANTONIO, TX 78205
* DELIVERED VIA E-MAIL *