

Affirmed and Opinion filed February 24, 2000.



In The

Fourteenth Court of Appeals

NO. 14-97-01276-CR

NICHOLAS BROST, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 96-43244**

OPINION

Appellant entered a plea of guilty to the misdemeanor offense of driving while intoxicated. He was convicted and the court assessed punishment at a fine of \$200 and one year community supervision. Prior to the entry of his plea, appellant filed a motion to suppress, which the trial court denied. In a single point of error, appellant claims the trial court erred in overruling his motion to suppress because the State failed to meet its burden of proof by showing either the existence of a warrant or the reasonableness of appellant's arrest and search. We affirm.

Prior to the entry of his plea, appellant filed a motion to suppress, which alleged that the doctrine of collateral estoppel prevented the State from relitigating the issue of probable cause because that issue had already been litigated and the issue resolved in favor of appellant in a prior administrative hearing on the suspension of appellant's driver's license. Under paragraph IV of appellant's motion, he asserted, "The arrest and search was not based on probable cause, reasonable suspicion of illegal activity, consent, or other lawful reason such that would allow the stop, search, or arrest of Defendant." In denying appellant's motion to suppress, the trial court made the following notation: "Material under paragraph IV was not submitted to the court by the defense. The only issues that were raised, discussed in evidence, briefed were paragraph I, II, III. ALR does not collaterally estop State from criminal prosecution."

The trial court stated further:

We have not heard evidence and it is not an issue whether or not the arrest and search was based on probable cause. The only issue before the Court now is whether or not the ALR collaterally stops [sic] the State from going forward on the DWI prosecution.

* * * * *

What you have submitted here has got a bunch of new issues. We had findings and there's no probable cause to stop the man. I haven't heard one word, either way, on this issue. And so, the only issue that I am agreeing with here is whether or not the ALR findings collaterally estop the State from going forward at the trial proceedings on the Brost case. That's all I am ruling on with this case.

[Defense counsel]: Maybe we had better go off the record and so I can talk to my client about that, Judge.

THE COURT: Back on the record. I reiterate, the only issue that we have heard in this proceeding so far is a collateral estoppel issue. The collateral estoppel issue is denied.

On April 15, 1997, the day the trial court denied appellant's motion to suppress, appellant entered a guilty plea. On July 11, 1997, appellant filed a motion for new trial. The trial court granted appellant's motion for new trial so that appellant could relitigate the collateral estoppel issue in light of the decision of *State v. Aguilar*, 947 S.W.2d 257 (Tex. Crim. App. 1997).

On September 23, 1997, the trial court held a second hearing on appellant's motion to suppress. The only issue argued and ruled on by the trial court was the question of whether the prior ruling by the administrative law judge acted as collateral estoppel on the issue of probable cause to stop and search appellant. Neither party presented evidence or argued the issue of the reasonableness of the stop and seizure.

For the first time on appeal, appellant claims the trial court erred in denying his motion to suppress because the State presented no evidence on the issue of probable cause. Because this issue was not presented to the trial court, appellant has failed to preserve error. To preserve error, the complaining party must first afford the trial court an opportunity to rule on the specific complaint. *Meyers v. State*, 865 S.W.2d 523, 524 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). The purpose of requiring a timely specific objection is to allow the trial court the opportunity to make a determination on the objection and then to proceed with the trial under the proper procedural and substantive manners, as appropriately corrected by the trial court. *Janecka v. State*, 823 S.W.2d 232, 243-44 (Tex. Crim. App. 1992). A point of error that does not comport with the trial objection presents nothing for review. *Knox v. State*, 934 S.W.2d 678, 687 (Tex. Crim. App. 1996). Because appellant's point on appeal was not presented to the trial court, we overrule appellant's point of error.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed February 24, 2000.

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

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