

**Affirmed and Opinion filed April 27, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00922-CR**

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**THOMAS JERALD BOBO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 177<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 795,579**

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**OPINION**

Pursuant to an agreed recommendation, Appellant, Thomas Jerald Bobo, pled guilty to delivery of a controlled substance after the trial court overruled his motion to suppress. Appellant brought this appeal to challenge the court's ruling on that motion.

**FACTUAL SUMMARY**

Appellant was arrested based on information obtained during an investigation of drug trafficking through the mail conducted by U. S. Postal Inspectors, the Quachita Parish Sheriff's Department in

Monroe, Louisiana, and the Houston Police Department. The investigation began in June 1998 after Sergeant James Purvis of the Quachita Parish Sheriff's Department received a tip that an individual in Texas was mailing heroin to an individual named C. C. Grant<sup>1</sup> in Monroe, Louisiana. Based on this tip, Sergeant Purvis contacted U. S. Postal Inspector Ford and asked him to watch for mail sent to Grant's address from Texas.

In September of 1998, Inspector Ford contacted Sergeant Purvis to inform him that he had received a package addressed to Grant with a Texas return address. Inspector Ford took the package to Sergeant Purvis' office in Monroe where the package was inspected by a drug sniffing dog. The dog alerted on the package which was opened after a warrant was secured. Inspector Ford and Sergeant Purvis found heroin inside the package. Inspector Ford resealed the package and delivered it personally to Grant. Based on her possession of the package, the officers obtained a search warrant and, upon its execution, found her in possession of heroin and marijuana. After her arrest, she was questioned and informed the officers that appellant was the person mailing the heroin to her from Houston.

Grant cooperated with the investigation and made several telephone calls to appellant in which she requested him to send her more heroin. These calls were recorded. In one of these calls, Grant arranged a controlled delivery.

On October 15, 1998, Grant called appellant and asked him to mail her more heroin within the next thirty minutes. When the call was placed, Sergeant Purvis and Officer Price, an HPD officer, were surveilling appellant's business in Houston. Shortly after the call, a female left appellant's Houston business, walked to a nearby post office, and dropped off the package. A postal inspector intercepted the package, opened it pursuant to a consent obtained from Grant in Monroe, and found heroin inside. Based on this discovery, appellant was arrested for delivery of a controlled substance and his business was searched.

Appellant filed a pretrial motion to suppress evidence obtained in the October 1998 search of the package at the Houston post office. This challenge was based largely on Article 38.23 of the Texas Code

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<sup>1</sup> "C. C. Grant" was an alias for Martha Grant, the person to whom the heroin was delivered.

of Criminal Procedure, which prohibits the use of unconstitutionally obtained evidence at trial against an accused. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon Supp. 2000). The trial court overruled his motion to suppress and appellant agreed to plead guilty to the charges. The trial court also gave appellant permission to appeal its ruling on his motion to suppress.

### ANALYSIS

Appellant's argument against the admission of the evidence obtained at the Houston post office is that it was fruit of the poisonous tree. Appellant argues that the original warrant used to search the evidence at the Louisiana post office, which provided the probable cause for C. C. Grant's arrest, was defective, illegal, and insufficient to provide the foundation for the probable cause supporting both his arrest and the seizure of the evidence at the Houston post office. *See U.S. v. McKim*, 509 F.2d 769, 775 (5<sup>th</sup> Cir. 1975) (holding that an otherwise legal search or arrest cannot stand if probable cause for it was established only by a prior illegal search). Stated another way, appellant argues that but for the defective warrant in Louisiana, the police would never have discovered his identity or seized the heroin at the Houston post office.

Without deciding that the Louisiana warrant was indeed defective, we find appellant's argument without merit. Appellant lacks the necessary standing to challenge the validity of the warrant executed in Louisiana on Grant's property. Appellant never admitted that he had an ownership interest in the package searched in Louisiana, nor does the fictitious Houston return address give any indication of appellant's property interest in the package. Moreover, appellant does not show that he had a reasonable expectation of privacy in Grant's residence, the residence searched by reason of one of the warrants appellant challenges.

Standing is necessary to make a challenge to the admission of evidence under Article 38.23. *See Fuller v. State*, 829 S.W.2d 191, 202(Tex. Crim. App. 1992). "Standing consists of some interest peculiar to the person individually and not as a member of the general public." *Id.* (citing *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex.1984)). "The right to complain because of an illegal search and seizure is a privilege personal to the wronged or injured party, and is not available to anyone else." *Id.* at 201. Here,

appellant lacks standing to challenge the admission of the evidence since no wrong was committed against him.

Appellant argues that *U.S. v. Wong Sun* prevents the use of the evidence against him. *See* 371 U.S. 471 (1963). *Wong Sun*, however, actually supports the contrary conclusion.

In that case, two defendants, Toy and Wong Sun, were challenging the admission of evidence against them. *See id.* at 477. There, the officers raided Toy's laundromat, which also served as his home, and arrested him without probable cause. *See id.* at 473-74. While unlawfully in custody, Toy gave the officers information about Yee, an individual who was in possession of a large amount of heroin. *See id.* at 474. Based on Toy's statements, the officers arrested Yee and recovered narcotics from him. *See id.* at 475. Yee gave officers information which led to the arrest of Wong Sun. *See id.* The court found that the use of the narcotics recovered from Yee against Toy was unconstitutional since Toy's statement, taken in violation of the Constitution, led the officers to Yee and the narcotics. *See id.* at 477-78. Wong Sun made the same challenge. *See id.* at 491. In denying his claims to suppress the evidence, the Court stated, "The seizure of heroin invaded no right of privacy or person or premises which allow Wong Sun to object to its use at trial." *Id.* at 492. Thus, because Wong Sun lacked standing to complain about the violation of Toy's rights, the Court held he could not use those grounds to complain about the use of the narcotics against him. *See id.*

Here, the same logic is applicable. Assuming that the warrant was defective, the seizure of heroin in Louisiana pursuant to that warrant did not invade any of appellant's rights to privacy or person. Rather, appellant argues, as did Wong Sun, that the evidence should be excluded because the rights of another party were violated in the course of its acquisition by police. While Grant, the addressee of the package and owner of the premises searched, might have a claim against the admission of the evidence if the State sought to admit it against her at trial, appellant has no such claim. Because appellant lacks standing to challenge the admission of the evidence, we overrule his single point of error.

The judgment of the trial court is affirmed.

/s/ Paul C. Murphy  
Chief Justice

Judgment rendered and Opinion filed April 27, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig (concurring in result only).

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