Affirmed and Opinion filed July 13, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00812-CR

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WOODROW W. KING, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 759972

O P I N I O N

Appellant, Woodrow W. King, was charged with possession of at least 400 grams of cocaine with intent to deliver. After the trial court denied his motion to suppress, appellant entered a plea of guilty to the charged offense pursuant to an agreed punishment recommendation. The trial court accepted appellant's plea, found him guilty, and assessed punishment at 25 years' confinement and a $10,000 fine. In two points of error, appellant

argues the trial court erred by denying his motion to suppress and that he did not knowingly and voluntarily enter his plea.[1]

In his first point of error, appellant argues the trial court erred in overruling his motion to suppress. We review the record at a motion to suppress hearing under a mixed standard: (1) the historical facts and any application of law to fact questions that turn on an evaluation of credibility and demeanor, are viewed in the light most favorable to the trial court's ruling, and (2) application of law to fact questions that do not turn upon an evaluation of credibility and demeanor are reviewed de novo. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App.1997).

The evidence from the hearing includes the testimony of Houston Police Officer Fullbright. Officer Fullbright observed appellant load three boxes into the trunk of a white Dodge Intrepid. Soon thereafter, Fullbright stopped the Intrepid which was driven by Donald Theodore. The Intrepid had been rented from Dollar Rent-a-Car by Travis Brooks. Officer Fullbright recovered 45 pounds of marijuana and a kilogram of cocaine from the Intrepid's trunk. He found the marijuana in the three boxes he had seen appellant put in the trunk. The cocaine, wrapped in cellophane was also in the trunk.

Appellant was not in the Intrepid when it was stopped and searched. Later, when he was stopped, he did not know the rental car was stopped and was never taken to the location of its stop. He admitted to loading three of his boxes in the Intrepid's trunk earlier in the day.

Appellant moved to suppress the evidence taken from the Intrepid's trunk, claiming it was taken in violation of his state and federal constitutional rights. The trial court ruled appellant lacked standing to challenge the search of the white Intrepid and overruled the motion to suppress.

Standing is an individual's right to complain about an allegedly illegal government search. *See Villarreal v. State*, 893 S.W.2d 559, 661 (Tex. App.–Houston [1st Dist.] 1994)

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[1] Appellant's point of error two, claiming his guilty plea was jurisdictionally defective, is moot because we reach the merits of his appeal regarding his motion to suppress.

aff'd, 935 S.W.2d 134 (Tex. Crim. App. 1996). To have standing to complain about the legality of a governmental search, a defendant must show he had a reasonable expectation of privacy. *See Trinh v. State*, 974 S.W.2d 872, 874 (Tex. App.–Houston [14th Dist.] 1998, no pet.). When the legality of a search is in issue, the defendant bears the burden of proving his own privacy rights were violated. *See Rakas v. Illinois*, 439 U.S. 128, 131 n. 1, 99 S. Ct. 421, 58 L. Ed.2d 387 (1978); *Wilson v. State*, 692 S.W.2d 661 (Tex. Crim. App. 1984) (opinion on reh'g). Thus, if Johnson cannot show he had a legitimate expectation of privacy in the vehicle, he does not have standing to contest its search.

To determine whether appellant had a legitimate expectation of privacy, we must first determine whether appellant demonstrated an actual subjective expectation of privacy. If he did, we must next determine if that subjective expectation is one that society is prepared to recognize as reasonable. *See Smith v. Maryland*, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L. Ed.2d 220 (1979).

A defendant has standing to challenge the search of a car he does not own by showing possession of the borrowed car was gained from the owner of the car or from someone authorized to give him permission to use the car. *See Nite v. State*, 882 S.W.2d 587, 590-91 (Tex. App.—Houston [1st Dist.] 1994, no pet.); *Sutton v. State*, 711 S.W.2d 136, 138 (Tex. App .—Houston [14th Dist.] 1986, no pet.). Stated another way, where the defendant can not show he gained permission to possess the car, he does not have standing to challenge any search of the car. *See id*. Thus, because appellant did not gain permission from the rental car company or the renter to possess the car, he did not have a legitimate expectation of privacy in the use of the car. Therefore, he does not have standing to challenge the legality of the search of the car. *See Rovnak v. State*, 990 S.W.2d 863, 866-71 (Tex. App.—Texarkana 1999, pet. ref'd). Accordingly, we overrule appellant's first point of error.

In his third point of error, appellant contends the trial court should not have accepted his guilty plea because he did not knowingly and intelligently enter the plea. Specifically,

appellant claims his head was "fuzzy" from a head injury he incurred several days before the proceeding.

Appellant timely filed a motion for new trial alleging his guilty plea had not been voluntarily or knowingly entered. A hearing was conducted on this motion for new trial, where appellant testified that prior to the suppression hearing he was in a fight in jail with other inmates and his head was banged against the wall several times causing his thinking to become "fuzzy" after the fight. Appellant claims he did not understand that by pleading guilty he waived his right to trial by jury.

At the suppression hearing, the prosecutor who examined appellant during the suppression hearing and negotiated his plea, testified he did not detect any physical impairment in appellant. The prosecutor "had no question in [his] mind that [appellant] understood what he was doing."

We determine the voluntariness of a plea by the totality of the circumstances. *See Griffin v. State*, 703 S.W.2d 193, 196 (Tex. Crim. App.1986). When the record reflects that the trial court properly admonished the defendant on the consequences of his plea, there is a prima facie showing that the defendant entered a knowing and voluntary plea. *See Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App.1985); *Forcha v. State*, 894 S.W.2d 506, 509 (Tex. App.—Houston [1st Dist.] 1995, no pet.). The burden then shifts to the defendant to show that he entered his plea without understanding the consequences. *See Fuentes*, 688 S.W.2d at 544. Appellant's attestation of voluntariness at the original plea hearing imposes a heavy burden on him at a later hearing to show a lack of voluntariness. *See Dusenberry v. State*, 915 S.W.2d 947, 949 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd).

In determining the voluntariness of the plea, we consider the entire record. *See Williams v. State*, 522 S.W.2d 483, 485 (Tex. Crim. App. 1975). There is a presumption of regularity of the judgment and the proceedings absent a showing to the contrary, and the burden is on the defendant to overcome this presumption. *See Ex parte Wilson*, 716 S.W.2d 953, 956 (Tex. Crim. App. 1986); *Dusenberry*, 915 S.W.2d at 949.

In considering a motion for new trial, the trial court possesses broad discretion in assessing the credibility of witnesses and in weighing the evidence to determine whether a different result would occur upon retrial. *See Morris v. State*, 696 S.W.2d 616, 620 (Tex. App.—Houston [14th Dist.] 1985), *aff'd*, 739 S.W.2d 63 (Tex. Crim. App. 1987). In assessing the evidence presented at the new trial hearing, the trial court, sitting as the trier of fact, may properly consider the interest and bias of any witness. *See Messer v. State*, 757 S.W.2d 820, 827-28 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd) (op. on reh'g). The court is not required to accept as true the accused's testimony or any defense witness simply because it was not contradicted. *See id* (citing *Key v. State*, 99 Tex. Crim. 612, 270 S.W. 1027 (1925)).

The trial court, as the fact finder, was entitled to not believe appellant and did so when it denied his motion for new trial. *See Messer*, 757 S.W.2d at 828. Accordingly, the trial court did not abuse its discretion in overruling appellant's motion for new trial. Thus, his third point of error is overruled.

Having overruled all of appellant's points of error, we affirm the trial court's judgment.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed July 13, 2000.
Panel consists of Justices Sears, Cannon, and Draughn.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.