Affirmed and Opinion filed November 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-01053-CR

STEVEN COLUMBUS QUINTERO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law Number One
Brazos County, Texas
Trial Court Cause No. 4501-99

O P I N I O N

The trial court convicted appellant, Steven Columbus Quintero, of cruelty to animals. *See* TEX. PEN. CODE ANN. § 42.09(a)(6) (Vernon Supp. 2001). In one point of error, appellant challenges the validity of the search of appellant's property without a warrant. We affirm.

Background and Procedural History

Officer Angel Martinez, of the Bryan Police Department, testified that on October 22, 1999, he was investigating an unrelated offense in a residential neighborhood when he heard

people cursing, chickens, dogs barking, and banging against metal coming from a nearby house. Expecting to find a fight and concerned for someone's safety, Martinez approached the house by way of a public access driveway to investigate. He testified that he looked through a gap in a wooden fence along the side of the property. Through the fence, Martinez saw two men holding what appeared to be agitated roosters. He followed the wooden fence to a common area parking lot where a cyclone wire fence allowed him to clearly see appellant and Robert Medina in the backyard with two roosters fighting. Officer Martinez returned to the driveway to await backup. While he was waiting, appellant and Medina exited the house and Officer Martinez placed them under arrest for cruelty to animals.

Appellant and Medina filed a joint motion to suppress the evidence and waived their right to a jury trial. At the request of and by agreement of counsel, the trial court heard their motion to suppress along with the trial testimony. At the conclusion of testimony, the trial court denied the motion to suppress for lack of standing[1] and found the officer had probable cause for the search. The trial court assessed appellant's punishment at 180 days in jail and a two thousand dollar fine. This appeal followed.

Standard of Review

This court gives almost total deference to a trial court's determination of historical facts that involve a judge's evaluation of the credibility and demeanor of the witnesses who testify. *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997). Where, as here, the trial court made no explicit findings of historical fact, we will presume the judge made those findings necessary to support its ruling provided we find support in the record. *See*

[1] The trial court did not specify which party lacked standing. The State argues appellant has no standing to contest the search. However, a showing of ownership or control of the premises searched is enough to establish standing to complain about the legality of a governmental search. *Villarreal v. State*, 935 S.W.2d 134, 137-38 (Tex. Crim. App. 1996). Although appellant did not testify, Medina testified that the home belongs to appellant. Therefore, while Medina may not have had standing, appellant does as an owner or occupier of the premises searched.

Carmouche v. State, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000). Likewise, we view the evidence in the light most favorable to the trial court's ruling on mixed questions of law and fact. *See Guzman*, 955 S.W.2d at 89.

A trial court's determination on a pure question of law, such as whether the officer had probable cause, should be reviewed *de novo* on appeal. *See id.*, at 87 (citing *Ornelas v. United States*, 517 U.S. 690, 691, 116 S.Ct. 1657, 1659, 134 L.E.d.2d 911 (1996)).

Analysis

Appellant argues that when Officer Martinez viewed his actions through the fence, the Officer conducted a search in violation of his right to privacy under both the Fourth Amendment of the United States Constitution and Article I, § 9 of the Texas Constitution, which protect against unreasonable searches and seizures. This protection includes a home and the curtilage of the home as well. *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 1742, 80 L.Ed.2d 214 (1984); *Atkins v. State*, 882 S.W.2d 910, 912 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). Whether a particular area is included within the curtilage of a home is determined by whether appellant had a reasonable expectation of privacy in the area. *Bower v. State*, 769 S.W.2d 887, 896 (Tex. Crim. App. 1989), *overruled on other grounds by Heitman v. State*, 815 S.W.2d 681 (Tex. Crim. App. 1991). The factors to consider in determining whether an area is considered curtilage include the proximity of the area to the home, whether or not the area is included within an enclosure surrounding the home, the nature of the use to which the area is put and the steps taken to protect the area from observation by a passerby. *United States v. Dunn*, 480 U.S. 294, 301, 107 S.Ct. 1134, 1139, 94 L.Ed.2d 326 (1987).

Appellant argues that his backyard falls within the curtilage of his home. However, there is no legitimate expectation of privacy and no search within the meaning of the Fourth Amendment when the general public can view the area as seen by the officer. *See Texas v. Brown*, 460 U.S. 730, 740,103 S.Ct. 1535, 1542, 75 L.Ed.2d 502 (1983); *see also Bower*,

769 S.W.2d at 897. In this case, Officer Martinez testified he walked up a public driveway that had no signs that attempted to limit or prohibit access. Officer Martinez stated that the wooden fence shut out only a portion of the property and that the fence contained holes allowing a view of the backyard. In addition, when Officer Martinez reached the common parking area, the backyard was clearly visible through a cyclone wire fence. In summary, we do not find that appellant took reasonable steps to shield his backyard from the public's view such as would establish a reasonable expectation of privacy. Accordingly, appellant's sole point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed November 1, 2001.
Panel consists of Justices Yates, Fowler, and Wittig.[2]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[2] Senior Justice Don Wittig sitting by assignment.