Affirmed and Opinion filed January 13, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00828-CR

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SAMMY ALBERT GONZALES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 776,644

O P I N I O N

Sammy Albert Gonzales was convicted by a jury of felony possession of a controlled substance. Finding that Gonzales had committed two prior burglaries, the jury sentenced him to forty years in prison. In a single point of error Gonzales contends the trial court erred in permitting the state to impeach him through the use of two remote misdemeanor convictions. We affirm.

Police set up surveillance of appellant's apartment after an informant told them drugs were being sold there. After seeing activity consistent with drug sales, an officer knocked on the door and asked to speak with "Sammy Gonzales," the name the informant had given him. Appellant came out of the back bedroom agreed to talk with the officers, and admitted there was marijuana in the bedroom. Appellant also; executed a consent to search. Police found several ounces of marijuana and a pistol in the closet. Appellant was arrested at that point. Incident to that arrest, police found 7.6 grams of what proved to be crack cocaine in appellant's back pocket.

Appellant testified that the officers abused him and that they planted the drugs and the pistol.

On cross-examination the state then sought to question appellant about his prior convictions for possession of marijuana:

> [PROSECUTOR]: Judge, at this time I'd like to get into the fact he had two prior possession of marijuana. He had two prior possession of marijuana charges. And I think that it's relevant because they demonstrate a lot, they demonstrate his motive, they demonstrate intent, they demonstrate knowledge of what was in there, and his opportunity to have this marijuana in this apartment. All those things are admissible under the rules of evidence. I think prior possession of marijuana charges should be something that the jury should get to know about.
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> [DEFENSE ATTORNEY]: Your Honor, he tried to impeach this defendant with a misdemeanor, okay. You can't impeach someone with a misdemeanor, you can impeach them with felonies. Now the defendant is stating that he didn't know that the marijuana was there. The fact that he has a prior – he says he admits he knows what it smells like, he says he knows what it looks like, all of that. That's the only way that you can get in a prior marijuana – I never seen it, I don't know what it looks like, I don't know what it smells like, then he can bring it in to show knowledge.
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> [TRIAL COURT]: Objection be overruled.
>
> Go ahead.
>
> [PROSECUTOR]: Judge, shows knowledge.
>
> [TRIAL COURT]: Be overruled. Be admitted.

Admission of previous convictions is governed by TEX. R. EVID. 609, which provides that only felonies and those misdemeanors involving moral turpitude are admissible to impeach a testifying defendant. We review the trial court's decision to admit into evidence a prior conviction under an abuse of discretion standard. *Theus v. State*, 845 S.W.2d 874, 881 (Tex. Crim. App. 1992).

The complained-of possession convictions are not crimes involving moral turpitude. *Roliard v. State*, 506 S.W.2d 904 (Tex. Crim. App. 1974). We must therefore determine whether they were admitted for another purpose.

On cross-examination Gonzales asserted that he never used or sold crack cocaine, that he did not sell or use marijuana, and that he did not use any alcohol or drugs. At that point the prosecutor sought to introduce the marijuana convictions.

An exception to Rule 609 arises when "the witness makes blanket statements concerning his exemplary conduct such as having never been arrested, charged or convicted of any offense, or having never been 'in trouble,' or purports to detail his convictions leaving the impression there are no others." *Ochoa v. State*, 481 S.W.2d 847, 850 (Tex.Crim.App. 1972). In that case, "it is legitimate to prove that the witness had been 'in trouble' on occasions other than those about which he offered direct testimony." *Nelson v. State*, 503 S.W.2d 543, 545 (Tex. Crim. App. 1974); *see also Davenport v. State*, 807 S.W.2d 635, 637 (Tex. App.–Houston [14th Dist.] 1991, no pet.); 1 STEVEN GOODE ET AL., TEXAS PRACTICE: GUIDE TO THE TEXAS RULES OF EVIDENCE: CIVIL AND CRIMINAL § 609.1 (2d ed. 1993).

We find that Gonzales's testimony that he did not use any intoxicant was sufficiently sweeping as to leave a false impression, which the state was entitled to rebut. The trial court did not abuse its discretion by admitting his two prior marijuana convictions. We therefore overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Ross A. Sears

Justice

Judgment rendered and Opinion filed January 13, 2000.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.[*]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[*] Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.