Judgment Vacated, Reversed and Remanded, and Opinion filed May 3, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-01366-CR

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THE STATE OF TEXAS, Appellant

V.

SANDRO GABRIEL PEYRANI, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 843,214

O P I N I O N

Appellee was charged by indictment with the offense of possession of more than 50 pounds and less than 2,000 pounds of marihuana, enhanced by a prior felony conviction. *See* TEX. HEALTH AND SAFETY CODE ANN. § 481.121 (Vernon Supp. 2000). Appellee filed a pretrial motion to suppress the marihuana. After a hearing, the trial court granted the motion. The State appeals on the ground that appellee failed to establish standing to contest the search. Because appellee concedes error as to standing, we vacate the trial court's order suppressing the evidence and remand the cause to the trial court.

On April 28, 2000, two police officers had a house under surveillance after receiving information that a large amount of marihuana would be taken from the location. The officers entered the backyard of the house and discovered several individuals, including appellee, and several bricks of marihuana. The trial court ultimately suppressed the evidence, determining that the officers' warrantless entry into the backyard was unlawful. On appeal, the State argues that the trial court erred in granting the motion to suppress because (1) appellee failed to establish that he had standing to contest the officers' entry into the backyard and (2) the officers' entry into the backyard was lawful.

The accused has standing, under federal and state constitutions, to challenge the admission of evidence obtained by a governmental intrusion only if he had a legitimate expectation of privacy in the place invaded. *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387 (1978); *Richardson v. State*, 865 S.W.2d 944, 948 (Tex. Crim. App.1993). Furthermore, the accused, because he has greater access to the relevant evidence, has the burden of proving facts establishing a legitimate expectation of privacy. *Calloway v. State*, 743 S.W.2d 645, 650 (Tex. Crim. App.1988). Where the court grants a motion to suppress evidence, the state may raise the issue of standing for the first time on appeal. *See Klima v. State*, 934 S.W.2d 109, 110-11 (Tex. Crim. App. 1996).

On appeal, appellee concedes error in connection with the first appellate issue. He agrees that the State can raise the issue of standing for the first time on appeal. Appellee further concedes that although in his motion he alleged that the house at issue was his residence and asserted during the hearing that the house was his residence, he introduced no evidence to prove the assertions. He now joins the State in asking that the trial court's order suppressing the evidence be vacated. Ordinarily the appellee's confession of error is accepted. *Hawkins v. State*, 613 S.W.2d 720, 723 (Tex. Crim. App. 1981). We see no reason not to accept the confession of error here. Because we reverse the trial court's order on the first point of error, the second point of error becomes moot. If the trial court revisits the issue of the search and determines that appellee has no standing to contest the search, any arguments

relating to the propriety of the search itself become irrelevant. Therefore, we affirm the State's first point of error, overrule its second point of error as moot, vacate the trial court's order, and remand the case for further proceedings not inconsistent with this opinion.

PER CURIAM

Judgment rendered and Opinion filed May 3, 2001.
Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[1]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.