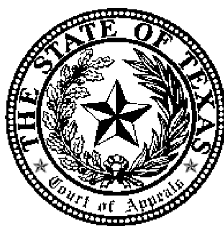
Affirmed and Opinion filed September 27, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00601-CR

SANTIAGO ALBERTO CAMPOS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 811,466

O P I N I O N

When police officers arrested appellant Santiago Alberto Campos, he was carrying a box that proved to contain two kilograms of cocaine. At the hearing scheduled to consider his motion to suppress, appellant instead entered a plea of guilty to the offense of possession with intent to deliver at least 400 grams of cocaine. TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (Vernon Supp. 2001). He testified that he pleaded guilty not because of a plea agreement (there was none) or any other promise, but because his attorney talked to the judge "in an attempt to try to get her to give him the minimum." At the conclusion of the lengthy hearing, the court sentenced appellant to fifteen years in prison, the minimum

allowed for this offense, and assessed a $100 fine.[1] We affirm.

In a single point of error, appellant contends that his plea was not knowing and voluntary. Appellant signed a preprinted, judicial confession form stipulating that the charges alleged in the indictment were true. He also signed a document called "Statements and Waivers of Defendant" stating that he had read the indictment and that he had "committed each and every element alleged." After appellant pleaded guilty stating that no one coerced him or promised him anything to plead guilty, the trial court found him guilty and proceeded to the sentencing hearing.

During sentencing, appellant admitted being present when a co-defendant (the uncle of appellant's son) began preparing cocaine for sale. Appellant testified that he was asked to deliver a box to his son because "nobody knew me," and to put a little bit of cocaine in his pants pocket "so they would not suspect what I had in the box." Officers stopped appellant at his son's home and discovered the cocaine in the box. According to the State's attorney, the officers were prepared to testify that appellant admitted to them that the box contained cocaine.

During sentencing, appellant's counsel introduced several matters supporting his request for a minimum sentence, including appellant's health problems[2] and plans to return to his family in Costa Rica whom he had not seen during the year he had been in custody. In addition, appellant and his attorney told the trial court he thought the box contained diluting materials rather than cocaine. After hearing these claims, the trial court said:

> THE COURT: The magic phrase was "are you pleading guilty because you are guilty" and you said, "Yes." Do you want to change that?

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[1] The State did not oppose the plea or the sentence.

[2] Appellant suffered from colon cancer, for which he received a colostomy while in custody, and was required to use a walker because of back problems.

> Okay. I'm tired of playing games with you. I'm trying to find out what your role is in all this. If you had no role, I'll let you withdraw your plea. I need to know what the situation was.
>
> APPELLANT: Because they did find drugs on me, I plead guilty.
>
> THE COURT: You're not charged with what you had in your pants. You're charged with possession with intent to deliver cocaine weighing at least 400 grams . . .
>
> * * * *
>
> Right now we're talking about his [appellant's] position that he didn't know what he had. I need to hear it from him. If your position is you didn't have a clue what was in that box, I can't take your plea.
>
> APPELLANT: I plead guilty, Judge.
>
> THE COURT: Do you understand what guilty means?
>
> APPELLANT: Yes.
>
> THE COURT: Knowingly possessing with intent to deliver. Are you guilty of that?
>
> APPELLANT: Yes.

Appellant argues that this testimony demonstrates his plea was involuntary.

Voluntariness of the Plea

A trial court cannot accept a plea of guilty or a plea of nolo contendere "unless it appears that . . . the plea is free and voluntary." TEX. CODE CRIM. PROC. ANN. art. 26.13(b)

(Vernon 1989). When a defendant affirmatively indicates at the plea hearing that he understands the nature of the proceeding and is pleading guilty because the allegations in the indictment are true, not because of any outside pressure or influence, he has a heavy burden to prove that his plea was involuntary. *George v. State*, 20 S.W.3d 130, 135 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). The standard of review when an appellant contends that his plea was not made knowingly and voluntarily is whether the record discloses that defendant's plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. See *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (1970).

Here, the trial court went to significant lengths to be sure appellant understood the nature of the charges against him and the penalty range involved. The record reveals that appellant had an interpreter during the hearing and that the trial court carefully clarified that he was not being charged with the cocaine found in his pocket. A review of the record shows no evidence of coercion—the trial judge stated nothing but the blunt facts. Appellant had every opportunity to withdraw his plea if in fact he did not know what was in the box he carried, but he continued in his choice to plead guilty.

In a bench trial, the trial court is not required to withdraw a defendant's guilty plea sua sponte, thus substituting its own judgment for that of a defendant in deciding whether to plead guilty. See *Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978); *Graves v. State*, 803 S.W.2d 342, 346 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). Even when the evidence reasonably and fairly raises an issue as to the innocence of the accused, the trial court is not obligated to withdraw a defendant's guilty plea on its own motion. *Graves,* 803 S.W.2d at 346. As the trier of fact, the trial court is in a position to weigh the evidence and find the defendant not guilty of the charged offense or guilty of a lesser included offense, and the trial court's decision will be reviewed only on an abuse of discretion standard. See *id.* Because the exculpatory testimony in this case was self-serving and contradicted by the State's evidence as well as appellant's earlier testimony, the trial court did not abuse its discretion.

We find appellant's plea was knowingly and voluntarily made. Consequently, we overrule appellant's point of error and affirm the trial court's judgment.

/s/ Scott Brister
Chief Justice

Judgment rendered and Opinion filed September 27, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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