Affirmed and Opinion filed December 2, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00193-CR

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ISMAEL SALINAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 684,136

O P I N I O N

Appellant, Ismael Salinas, pled guilty to possession of cocaine and was sentenced to 5 years imprisonment. On appeal, he contends the court erred in overruling his motion to suppress evidence and in admitting illegally seized evidence. We affirm.

An informant in the custody of Pasadena Police gave officers a tip regarding several individuals who were allegedly selling narcotics. The informant then called his source and arranged to meet them in one hour at a Taco-Cabana restaurant. They were identified as two Hispanic men in their mid-thirties with mustaches driving a white car. Eventually, two Hispanic men with mustaches drove into the parking lot in a white car. They entered the restaurant, and then exited again in about fifteen minutes. The informant

identified them to the officers as his source. As the two men, Roberto and Ismael Salinas, reached their car, officers approached them. Roberto threw the trunk key into the car, locked the door, and threw the ignition key into the grass. The two men were separated, and police received written consent from Roberto to search the car. The trunk of the car held a cooler containing what was later identified as cocaine.

Appellant was arrested and indicted for possession of more than 400 grams of cocaine with intent to distribute. He moved to have the evidence suppressed, the motion was denied. Pursuant to a plea agreement, appellant pled guilty to possession of between 200 and 400 grams of cocaine. The plea agreement allowed appellant to appeal the denial of the motion.

Standing to Contest Evidence

In four points of error, appellant contends the trial court erred in overruling his motion to suppress in violation of Article I, § 9 of the Texas Constitution, the Fourth amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment, Article 38.23 of the Texas Code of Criminal Procedure, and Chapter 14 of the Texas Code of Criminal Procedure.

To have standing to complain about the legality of a governmental search, a person must show that he personally had a reasonable expectation of privacy. *See United States v. Jacobsen*, 466 U.S. 109, 121-22, 104 S.Ct. 1652, 1661-62, 80 L.Ed.2d 85 (1984); *United States v. Salvucci*, 448 U.S. 83, 91-92, 100 S.Ct. 2547, 2553, 65 L.Ed.2d 619 (1980); *Calloway v. State*, 743 S.W.2d 645, 650 (Tex. Crim. App.1988); *Wilson v. State*, 692 S.W.2d 661, 669 (Tex. Crim. App.1984). During the motion hearing, defense counsel explicitly asked the State to stipulate that appellant was arrested without a warrant and that he had standing to contest the search. The State stipulated the arrest and search were made without a warrant. Defense counsel again asked the State to stipulate that appellant had standing. The State did not so stipulate. Appellant could have testified at the preliminary hearing that he had a possessory interest in the cocaine; and that testimony would have been inadmissible at trial on the issue of guilt. *Simmons v. United States*, 309 U.S. 377, 88 S. Ct. 967, 19 L.Ed. 2d 1247 (1968). Appellant, however, did not so testify.

Appellant lacks standing to contest the validity of the search because he was a mere passenger in the vehicle and did not assert an interest in the property seized. *See Salvucci*, 448 U.S. at 95, 100 S.Ct. at 2554-55, 65 L.Ed.2d at 619 (1980); *Rawlings v. Kentucky*, 448 U.S. 98, 105-06, 100 S.Ct. 2556, 2561-62, 65 L.Ed.2d 633 (1980); *Flores v. State*, 871 S.W.2d 714, 720 (Tex. Crim. App. 1993); *Fuller v. State*, 829 S.W.2d 191, 201-02 (Tex. Crim. App.1992), cert. denied, 508 U.S. 941, 113 S.Ct. 2418, 124 L.Ed.2d 640 (1993) (ruling that a defendant needs standing to invoke article 38.23 because the right to complain of an illegal arrest or seizure is a privilege personal to the wronged party); *Meeks v. State*, 692 S.W.2d 504, 510 (Tex. Crim. App.1985) (holding that "a passenger in a vehicle does not have a legitimate expectation of privacy in the trunk of the vehicle where the passenger fails to assert a possessory interest in the vehicle or the property seized"); *Garcia v. State*, 960 S.W.2d 329, 332(Tex. App.–Corpus Christi 1997) (rejecting so-called "target" standing, i.e. the theory whereby any criminal defendant at whom a search was directed would have standing to contest the legality of that search); *Howard v. State*, 888 S.W.2d 166, 174 (Tex. App.–Waco 1994) (denying standing to passenger in a motor vehicle who fails to assert a possessory interest in the vehicle or the property seized.); *Metoyer v. State*, 860 S.W.2d 673, 677 (Tex. App.–Fort Worth 1993, pet. ref'd.) (holding that a passenger in a motor vehicle does not have standing when he fails to assert a possessory interest in the vehicle or the property seized.); *Kelley v. State*, 807 S.W.2d 810, 815 (Tex. App.–Houston [14th Dist.] 1991, pet. ref'd) (holding that an individual who fails to meet his burden of proving a possessory interest in either the vehicle or the evidence seized, lacks standing to contest the search); *Cannon v. State*, 807 S.W.2d 631, 633 (Tex. App.–Houston [14th Dist.] 1991, no pet.) (holding that a person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has no standing).

Because appellant lacks standing to object to the search, his points of error are overruled.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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