In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00054-CV

JAMES R. IRONS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. CIV 23,566

MEMORANDUM OPINION

James R. Irons filed a motion to return firearms and a knife that were seized in a criminal investigation. The trial court found that Irons did not own the property at the time it was seized, and denied the motion. The single issue raised by Irons in this appeal contends the trial court erred in not ordering the return of the property to the appellant. We affirm the trial court's order.

Article 18.19 of the Texas Code of Criminal Procedure governs the disposition of seized weapons that have not been stolen. TEX. CODE CRIM. PROC. ANN. art. 18.19 (Vernon Supp. 2009). Weapons seized in connection with an offense involving the use of a weapon are held by the law enforcement agency making the seizure. TEX. CODE CRIM. PROC. ANN. art. 18.19(a). If the weapon has been seized without a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized. TEX. CODE CRIM. PROC. ANN. art. 18.19(b). If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate notifies the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate. TEX. CODE CRIM. PROC. ANN. art. 18.19(c). If the weapon is not requested within a certain time period, the magistrate orders the weapon destroyed or forfeited to the State. *Id.* If the magistrate does not order the return, destruction, or forfeiture of the weapon within the applicable period, the law enforcement agency holding the weapon may request an order of destruction or forfeiture. *Id.* If the person found in possession of a weapon is convicted of an offense involving the use of the weapon, the trial court must order the destruction or forfeiture of the weapon. TEX. CODE CRIM. PROC. ANN. art. 18.19(e). If the court does not do so within a specified period of time, the law enforcement agency holding the weapon may request an order of destruction or forfeiture of the weapon from a magistrate. *Id.*

In his motion to return the property, Irons alleged he owns fifteen guns and a knife seized by law enforcement officials from James W. Irons, Sr. James W. Irons, Sr. is the fifty-six-year-old son of the appellant, James R. Irons. The motion was apparently filed as an independent civil action, and the State has not filed a forfeiture petition regarding this particular property. Although it is not shown in this record who has custody of the weapons, an assistant district attorney for Polk County appeared at the hearing on behalf of the State and suggested that "this action belongs before the magistrate [to] whom the search warrant was returned who can determine to forfeit the guns to the State or he can determine to return them if Mr. Irons, Sr., proves ownership of them even." According to the State, the guns were seized pursuant to a search warrant obtained after a report that the appellant's son was shooting at cars passing on the highway from the front porch of his house. The appellant's son was convicted and at the time of the hearing was serving multiple concurrent sentences, the longest of which is for fifteen years.[1]

James R. Irons testified he once had a gun shop in Baytown and later moved to Mississippi where he had a gun shop and a pawn shop. Irons testified that he was the one who acquired the guns. Irons explained that the guns were in Texas because he had planned

[1] Although no record of the convictions appears in the appellate record, James W. Irons, Sr. was convicted of possession of cocaine on three separate occasions and for deadly conduct involving the discharge of a firearm. *See* http://168.51.178.33/webapp/TDCJ/index2.htm.

to move onto the land, which was jointly owned by Irons, his wife, and his son. Irons put a trailer on the land but decided not to move when his son "took so much dope he lost his mind." According to Irons, he and his son "had a little run in" that made Irons and his wife change their minds about moving to Texas. Irons denied having given the guns (listed in an attachment to his motion) to his son, but he did admit that "I have gave him some guns because I been in the gun business for years[.]" Irons had been living in Mississippi since 1976. The land in Texas was bought "for the grand kids years ago." Irons claimed the guns were originally in a big shed behind the house but were moved inside the house where his son lived, because his son's large safe had been broken into and was no longer secure. The younger Irons's drug problems began about five years before the hearing. Irons recalled that his son was arrested for possession of a controlled substance and endangering a child in October 2006. Irons explained his failure to retrieve the weapons at that time by stating that "we was planning on moving over there." Irons was still living in Mississippi at the time of the November 2008 hearing. Irons testified that he owned each of the weapons at the hearing, but he produced no documentation for any of the property.

On appeal, Irons argues that "[t]he testimony is uncontroverted that Movant is the rightful owner of the weapons." Although Irons was the only witness, the trial court was the sole judge of his credibility and the weight to be given that testimony. *City of Keller v. Wilson,* 168 S.W.3d 802, 819 (Tex. 2005) (The fact-finder is the sole judge of the credibility

of the witnesses and the weight to give their testimony.); *see also Catalina v. Blasdel,* 881 S.W.2d 295, 297 (Tex. 1994) ("A trial court's findings are reviewable for legal and factual sufficiency of the evidence by the same standards that are applied in reviewing evidence supporting a jury's answer."). "The uncontradicted testimony of an interested witness cannot be considered as doing more than raising an issue of fact unless that testimony is clear, direct, and positive, and there are no circumstances in evidence tending to discredit or impeach such testimony." *McGalliard v. Kuhlmann,* 722 S.W.2d 694, 697 (Tex. 1986).

In this case, there are sufficient circumstances in evidence that tend to discredit Irons's claim of ownership. The weapons were seized in the home where Irons's adult son was residing. Although Irons claimed to own an interest in the property where the weapons were seized, Irons lived in another state. Irons suggested he acquired these weapons before he moved to Mississippi. He claimed he left them on the property where his son resided because he (James R. Irons) intended to move onto the property. Irons had moved to Mississippi more than thirty years ago. The trial court could have rejected as incredible Irons's claim that the guns still belonged to Irons and not to Irons's son. James R. Irons admitted he had given guns to his son. Under these circumstances, the trial court could reject the father's claim of ownership and instead believe that Irons's son was the owner of the seized weapons. We hold the trial court did not abuse its discretion in denying James R.

Irons's motion to have the weapons returned to him. We overrule the sole issue and affirm the trial court's ruling.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on September 29, 2009
Opinion Delivered October 29, 2009

Before McKeithen, C.J., Kreger and Horton, JJ.