



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00217-CR**

NICHOLAS RYAN O'NEAL

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM THE 271ST DISTRICT COURT OF WISE COUNTY  
TRIAL COURT NO. CR18223

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**MEMORANDUM OPINION<sup>1</sup>**

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**I. INTRODUCTION**

Appellant Nicholas Ryan O'Neal appeals his conviction for the offense of possession with intent to deliver a controlled substance, namely cocaine, in an amount of 4 grams or more but less than 200 grams. In one point, which contains several sub-points, O'Neal argues that the cocaine found in the vehicle

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<sup>1</sup>See Tex. R. App. P. 47.4.

he was occupying when he was arrested was obtained in violation of his rights under the United States and Texas constitutions. Because we hold that O’Neal has failed to preserve his argument for review, we will affirm.

## **II. BACKGROUND**

On September 29, 2014, Officer Nicholas Crane of the Bridgeport Police Department responded to an anonymous call that two men were smoking marijuana in a car parked outside a mobile home. Crane found a car matching the description in the location where the tipster stated it would be. He approached the vehicle, and as O’Neal (who was the driver-side occupant) rolled down the window, Crane was almost overwhelmed with the odor of burnt marijuana. At that time, Crane also observed a marijuana pipe in the car. After placing O’Neal in the back of his squad car, Crane searched the vehicle and found several items of drug paraphernalia, and in the car’s trunk, a locked safe. After retrieving the key to the safe from O’Neal, Crane opened the safe and found more drug paraphernalia and a “large amount of . . . cocaine.”

O’Neal did not file a motion to suppress any of the seized evidence. At trial, the State introduced several photographs of the inside of the car and the drugs and paraphernalia found inside, the cocaine found in the safe, and a lab report indicating that the cocaine weighed 6.66 grams. Each time the State introduced an exhibit, defense counsel stated, “No objection, Your Honor.” And each time the State introduced an exhibit, Crane testified about these exhibits without objection by defense counsel.

A jury found O'Neal guilty, and the trial court entered judgment accordingly. After a punishment hearing held before the bench wherein O'Neal pleaded true to the State's enhancements, the trial court sentenced O'Neal to thirty years' confinement. This appeal followed.

### III. DISCUSSION

In his sole point, O'Neal argues that Crane's seizure of the cocaine from the locked safe in the trunk of the car he was occupying was in violation of his rights under the United States and Texas constitutions. The State argues that O'Neal has failed to preserve this issue for our review. We agree with the State.

To preserve error about the illegal seizure of evidence, a defendant must either file a motion to suppress and obtain a ruling on the motion or timely object when the State offers the evidence at trial. See Tex. R. App. P. 33.1(a); Tex. R. Evid. 103(a)(1); *Ross v. State*, 678 S.W.2d 491, 493 (Tex. Crim. App. 1984); *Ratliff v. State*, 320 S.W.3d 857, 860 (Tex. App.—Fort Worth 2010, pet. ref'd). Furthermore, when an accused affirmatively asserts during trial that he has “[n]o objection” to the admission of complained-of evidence, he forfeits any reviewable error in the admission of the evidence. *Holmes v. State*, 248 S.W.3d 194, 200 (Tex. Crim. App. 2008). Additionally, if an accused waits until the State offers the evidence at trial, any objection to the evidence must be made before a witness gives substantial testimony about it. See *Ratliff*, 320 S.W.3d at 861; see also *Marini v. State*, 593 S.W.2d 709, 714 (Tex. Crim. App. [Panel Op.] 1980)

(explaining that an objection to evidence “must be urged at the earliest opportunity”).

Here, O’Neal did not file a suppression motion. Moreover, each time the State introduced the evidence at issue, defense counsel did not object but instead asserted “[n]o objection.” Defense counsel also did not object to Crane’s testimony regarding the evidence. We hold that O’Neal has failed to preserve any argument pertaining to this evidence, and we overrule his sole point.

#### **IV. CONCLUSION**

Having overruled O’Neal’s sole point on appeal, we affirm the trial court’s judgment.

/s/ Bill Meier  
BILL MEIER  
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DO NOT PUBLISH  
Tex. R. App. P. 47.2(b)

DELIVERED: August 24, 2017