

NO. 07-04-0317-CR  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL D  
APRIL 12, 2005

---

GILBERT ESCOBEDO,

Appellant

v.

THE STATE OF TEXAS,

Appellee

---

FROM THE 364<sup>TH</sup> DISTRICT COURT OF LUBBOCK COUNTY;  
NO. 2002-439,337; HON. BRADLEY UNDERWOOD, PRESIDING

---

Before QUINN, REAVIS, and CAMPBELL, JJ

Appellant Gilbert Escobedo appeals from his conviction for capital murder and his sentence of life imprisonment. The two issues before us involve whether the trial court erred in denying his motion to change venue and by failing to afford him a hearing on the motion. We affirm the judgment of the trial court.

The State represents in its brief that the trial court did err, but that the error was harmless. Yet, statute requires a defendant seeking to transfer venue under art. 31.03 of the Code of Criminal Procedure (as did appellant here) to support the motion not only with

affidavits of at least two credible persons but also with the defendant's "own affidavit." TEX. CODE CRIM. PROC. ANN. art. 31.03(a) (Vernon 1989). While appellant accompanied his motion with three affidavits, none were his own. Because the motion did not satisfy the requirements of art. 31.03(a), the trial court did not err in either its decision to deny appellant a hearing or its decision to deny the motion itself.

Accordingly, we overrule the two points of error and affirm the judgment of the trial court.

Brian Quinn  
Justice

Do not publish.