

Affirmed and Memorandum Opinion filed August 1, 2023.



In The

Fourteenth Court of Appeals

NO. 14-22-00227-CR

PATRICK JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 1678778**

MEMORANDUM OPINION

Appellant Patrick Jackson appeals his conviction for murder. A jury found appellant guilty and assessed his punishment at life in prison. In a single issue, appellant asserts that the information used to obtain a search warrant was itself obtained as the result of an illegal search of an apartment. Holding appellant failed to demonstrate standing to complain regarding the search of the apartment, we affirm.

Discussion

In order to challenge a search under the United States Constitution, the Texas Constitution, or the Texas Code of Criminal Procedure, a party must first establish standing. *Pham v. State*, 324 S.W.3d 869, 874 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd) (citing *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996)).¹ Standing is a question of law that may be raised by a party for the first time on appeal or by this court sua sponte. See *Kothe v. State*, 152 S.W.3d 54, 60 (Tex. Crim. App. 2004); *Randolph v. State*, No. 14-18-00647-CR, 2020 WL 548317, at *2 (Tex. App.—Houston [14th Dist.] Feb. 4, 2020, pet. ref'd) (mem. op., not designated for publication). While we owe deference to the trial court's factual findings, we review the legal issue of standing de novo. *Kothe*, 152 S.W.3d at 59. A defendant who challenges a search has the burden to establish standing to do so. See *State v. Betts*, 397 S.W.3d 198, 203 (Tex. Crim. App. 2013); *Villarreal*, 935 S.W.2d at 138. A “reviewing court may properly sustain the trial court’s denial [of a motion to suppress] on the ground that the evidence failed to establish standing as a matter of law, even though the record does not reflect that the issue was ever considered by the parties or the trial court.” *Wilson v. State*, 692 S.W.2d 661, 671 (Tex. Crim. App. 1984); *Randolph*, 2020 WL 548317, at *2.

The purpose of the Fourth Amendment to the United States Constitution is to safeguard a person’s legitimate expectation of privacy from unreasonable

¹ Appellant alleges violations of his rights under the Fourth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 9 of the Texas Constitution. Appellant, however, has neither adequately explained the relevance of the Fourteenth Amendment to the analysis, nor provided any argument or authority that the Texas Constitution offers him greater protection than the United States Constitution with regard to the issues raised by the motion to suppress. We therefore analyze this case under Fourth Amendment jurisprudence. See *Williams v. State*, 502 S.W.3d 254, 258 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); see also *Randolph v. State*, No. 14-18-00647-CR, 2020 WL 548317, at *2 n.2 (Tex. App.—Houston [14th Dist.] Feb. 4, 2020, pet. ref'd) (mem. op., not designated for publication).

government intrusions. *Villarreal*, 935 S.W.2d at 138; *Jackson v. State*, 617 S.W.3d 916, 925 (Tex. App.—Houston [14th Dist.] 2021, no pet.). The rights protected by the Fourth Amendment are personal. *Matthews v. State*, 431 S.W.3d 596, 606 (Tex. Crim. App. 2014). A defendant has no standing to complain about the invasion of someone else’s personal rights. *Kothe*, 152 S.W.3d at 59. Therefore, a defendant must show that the search violated his, rather than a third party’s, legitimate expectation of privacy. *Matthews*, 431 S.W.3d at 606. To carry his burden of proof and demonstrate a legitimate expectation of privacy, a defendant must show that (1) “by his conduct, he exhibited an actual subjective expectation of privacy, i.e., a genuine intention to preserve something as private”; and (2) “circumstances existed under which society was prepared to recognize his subjective expectation as objectively reasonable.” *Villarreal*, 935 S.W.2d at 138; *see also Matthews*, 431 S.W.3d at 606; *Jackson*, 617 S.W.3d at 925.

In determining whether a person’s expectation of privacy is reasonable, we examine the totality of circumstances surrounding the search and consider a non-exhaustive list of factors, including whether (1) the defendant had a property or possessory interest in the place invaded; (2) he was legitimately in the place invaded; (3) he had complete dominion or control and the right to exclude others; (4) before the intrusion, he took normal precautions customarily taken by those seeking privacy; (5) he put the place to some private use; and (6) his claim of privacy is consistent with historical notions of privacy. *Matthews*, 431 S.W.3d at 607; *Villarreal*, 935 S.W.2d at 138; *Jackson*, 617 S.W.3d at 925.

Appellant makes no argument regarding any of the listed factors. The only evidence adduced at the suppression hearing was a few photographs of the apartment, four photographs of the people discovered inside the apartment, and the brief testimony of the officer who first entered the apartment. That officer testified

that he had learned from another officer that the one-bedroom apartment was leased by a third party and not appellant. The officer further described finding appellant and another man in the front room of the apartment, and two other people, including the lessee, were found in the sole bedroom.

The evidence therefore indicated appellant had no property or possessory interest in the apartment. There also was no evidence he was at least a welcome overnight guest of the apartment lessee. *See Jackson*, 617 S.W.3d at 925 (citing *Minnesota v. Olson*, 495 U.S. 91, 98 (1990) (holding overnight guests have legitimate expectation of privacy in their host's home)). Although the fact appellant was sitting on the couch in the front room of the apartment suggests he was there legitimately, there was no evidence that he had complete dominion or control over the space or the right to exclude others, that he took any precautions to secure his privacy in the space, that he put the space to any private use, or that his claim of privacy is consistent with historical notions of privacy. *See Matthews*, 431 S.W.3d at 607; *Jackson*, 617 S.W.3d at 925.

Appellant failed to meet his burden to establish that he has standing to challenge the search of the apartment. *See Betts*, 397 S.W.3d at 203; *Villarreal*, 935 S.W.2d at 138. Accordingly, we overrule his sole issue.

We affirm the trial court's judgment.

/s/ Frances Bourliot
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Wilson.

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