COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00130-CR

BLAS GREGORIO PEDRAZA MORALES — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 432ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1440881D

MEMORANDUM OPINION[1]

Appellant Blas Gregorio Pedraza Morales appeals from his conviction for possession of between five and fifty pounds of marihuana and argues in a sole point that the trial court erred by denying his pretrial motion to suppress the evidence seized as a result of a search warrant. Because Appellant did not

[1]*See* Tex. R. App. P. 47.4.

establish that he had standing to challenge the validity of the warrant, we affirm the trial court's judgment. *See* Tex. R. App. P. 43.2(a).

Hyacinth Marley, an employee of a financial-services company, was suspected of committing credit-card abuse based on information she obtained while at work. On January 7, 2016, police officers searched Marley's home pursuant to a warrant and found marihuana.[2] Appellant was present in Marley's home at the time of the search. A grand jury indicted Appellant with the intentional or knowing possession of between five and fifty pounds of marihuana. *See* Tex. Health & Safety Code Ann. § 481.121 (West 2017). Marley was also indicted with two unspecified offenses.

Appellant filed a motion to suppress the marihuana evidence and argued that there was insufficient probable cause stated in the warrant's affidavit to justify the search and that no exception to the warrant requirement applied, rendering the search unconstitutional and requiring suppression of the drug evidence. In his motion, Appellant asserted that he had standing to challenge the search of Marley's home because he was an "occup[ant]" and "invited guest" in Marley's home at the time of the search. Marley similarly filed a motion to suppress in her criminal prosecutions. The trial court held a hearing on Marley's motion, and Appellant stipulated that all evidence adduced at that hearing would be the same if introduced at a hearing on Appellant's motion. Appellant did not

[2]The record before this court does not explain exactly where the marihuana was found.

contest the facts contained in the warrant affidavit but simply argued that the facts as stated did not provide probable cause for the warrant. Accordingly, the trial court did not hold a hearing on Appellant's motion but denied it, as it did the motion in Marley's cases, on the basis of these undisputed facts, concluding that these facts sufficiently established probable cause to support issuance of the warrant. *See* Tex. Code Crim. Proc. Ann. art. 18.01(b) (West Supp. 2017), art. 28.01, § 1(6) (West 2006). Appellant then pleaded guilty to the third-degree felony of possession of marihuana, and the trial court, following Appellant's plea-bargain agreement with the State, deferred adjudicating his guilt and placed him on community supervision for five years.[3]

On appeal, Appellant again challenges the sufficiency of the affidavit to establish probable cause for a search warrant. The State responds that Appellant had no standing to challenge the sufficiency of the affidavit facts to support probable cause. Our appellate record does not contain the warrant, the affidavit, or the reporter's record from the hearing on Marley's motion. Appellant concedes that "no other testimony or evidence is before this Court beyond what is in the Clerk's record" and recognizes that his motion to suppress was decided

[3]We have jurisdiction over this appeal even though Appellant pleaded guilty and the trial court followed the plea-bargain agreement in sentencing because Appellant is appealing the trial court's ruling on his pretrial motion, which the trial court recognized in its certification. *See* Tex. R. App. P. 25.2(a)(2), (d). Further, his guilty-plea admonishments reflect that he specifically reserved the right to appeal the suppression ruling as part of his guilty plea. *See* Tex. Code Crim. Proc. Ann. art. 26.13(a)(3) (West Supp. 2017).

on the basis of stipulated facts. Because there is no dispute regarding the factual bases for the trial court's ruling, the appellate record need not be supplemented with these materials from Marley's criminal case. *See* Tex. R. App. P. 34.5(c); *cf. Solomon v. State*, 49 S.W.3d 356, 365 (Tex. Crim. App. 2001) ("While Rule 34.5(c)(1) permits supplementation of an appellate record with material that has been omitted from the appellate record, the rule cannot be used to create a new appellate record."). Based on these undisputed facts and because the State's standing argument is a legal issue, we review the trial court's ruling de novo. *See Kothe v. State*, 152 S.W.3d 54, 59 (Tex. Crim. App. 2004); *Dyar v. State*, 125 S.W.3d 460, 462 (Tex. Crim. App. 2003).

The right to be protected from unreasonable searches is personal; thus, an accused has standing to challenge the admission of evidence only if he had a legitimate, reasonable expectation of privacy in the place searched. *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998); *Rakas v. Illinois*, 439 U.S. 128, 134, 139 (1978). Appellant had the burden to proffer facts demonstrating his expectation of privacy in Marley's home. *See Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). Appellant's unsupported assertions in his motion to suppress, amounting to nothing more than an allegation of mere presence in Marley's home, did not carry his burden to show that he had a legitimate and reasonable expectation of privacy; therefore, he lacked standing to challenge the lawfulness of the search of Marley's home. *See State v. Anderson*, No. 05-10-00697-CR, 2011 WL 693264, at *1–2 (Tex. App.—Dallas Feb. 28, 2011, no pet.)

(mem. op., not designated for publication); *Gouldsby v. State*, 202 S.W.3d 329, 335 (Tex. App.—Texarkana 2006, pet. ref'd); *accord United States v. Wineinger*, 208 F. App'x 286, 289 (5th Cir. 2006). Indeed, Appellant does not attempt to argue on appeal that he established his standing in the trial court. Therefore, the trial court did not err by denying Appellant's motion to suppress, and we overrule Appellant's sole point on appeal.[4]

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: MEIER, GABRIEL, and KERR, JJ.

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

DELIVERED: May 24, 2018

[4]Even if Appellant had the requisite standing, we would conclude that the uncontested affidavit facts, as detailed by the trial court in the order denying the motion to suppress, were sufficient to support a probable-cause finding for the issuance of a search warrant for Marley's home. *See, e.g.*, *Gabriel v. State*, 290 S.W.3d 426, 434–35 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *Meka v. State*, No. C14-92-00489-CR, 1993 WL 143367, at *3 (Tex. App.—Houston [14th Dist.] May 6, 1993, no pet.) (not designated for publication).