In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00418-CR
No. 07-16-00167-CR

JUAN MANUEL MEZA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Randall County, Texas
Trial Court No. 25,498-C, Honorable Ana Estevez, Presiding

September 29, 2016

MEMORANDUM OPINION

Before QUINN, CJ., and CAMPBELL and HANCOCK, JJ.

Juan Manuel Meza (appellant) appeals his two convictions for manufacturing or delivering controlled substances. The issues raised on appeal concern the trial court's decision to deny his motion to suppress evidence and the State's failure to disclose an investigation file purportedly containing material evidence. We affirm.

Background

The dispute began with the stop by a state trooper of two individuals driving a car. The trooper had been asked by a fellow law enforcement official to make the stop.

Neither of the vehicle's occupants were appellant. Information garnered from the stop was used to obtain a search warrant of appellant's abode. In executing the warrant, law enforcement officials discovered the contraband for which appellant was prosecuted, convicted and sentenced.

At a suppression hearing before trial began, appellant argued that a statement in the affidavit supporting issuance of the warrant was false. The trial court denied the motion.

At trial, appellant discovered that law enforcement personnel had developed and delivered to the State a record memorializing an eight to nine month investigation into drug activity involving him. The record, however, had not been delivered to him for review despite his having previously moved for the discovery of evidence. He believed that the failure to disclose violated art. 39.14 of the Texas Code of Criminal Procedure. The trial court did not order the State to reveal the data to appellant but rather had it sealed for review by us.

The issue raised at the suppression hearing and the art. 39.14 objection underlies appellant's two complaints here. We address the suppression matter first.

As we stated in *Allen v. State*, No. 07-13-00066-CR, 2014 Tex. App. LEXIS 8879, at *13 (Tex. App.—Amarillo August 12, 2014, pet ref'd) (mem. op., not designated for publication), the defendant contending that a search warrant affidavit contains false information has the burden to prove that by a preponderance of the evidence. So too must he illustrate that the misrepresentation was made knowingly and intentionally or with reckless disregard for the truth. *Id.* Appellant failed to satisfy either prong of the test.

The aforementioned stop by the trooper was alluded to in the affidavit. Within those comments was the statement that "[d]uring initial contact with Trooper Villanueva [sic] noted numerous indicators of criminal activity," and it is that statement deemed false by appellant. Yet, appellant cited us to no evidence illustrating it to be false. Nor did we find any of record. Instead, he argues that during his testimony at the suppression hearing, the trooper did not testify about observing the "numerous indicators of criminal activity." This may be because no one broached the particular subject, and because no one did, appellant apparently wanted the trial court to conclude that the failure to do so rendered the statement false. It was not obligated nor did it have basis to do that. A statement is not false until shown to be false. The latter cannot occur without evidence of its falsity. None was presented, and the trial court could not simply manufacture the missing data. Accordingly, appellant has not shown on appeal the presence of a false statement made knowingly and intentionally or with reckless disregard for the truth.

Regarding the art. 39.14 issue, appellant asserts that he was denied "Due Process, the right of Confrontation, the right of Compulsory Process, and a fair trial by the blatant refusal of the State to comply with [the] Article . . . and the court's discovery order, and the court's refusal to instruct the documents in question [to be disclosed] upon discovery of their existence in violation of the Fifth Amendment of the Constitution of the United State and Article 1, Section 10 of the Constitution of Texas." We overrule the issue.

First, the sole ground urged purportedly warranting disclosure and urged below was founded upon art. 39.14.[1] Nothing was said about confrontation, compulsory process, due process, or the Fifth Amendment. The grounds underlying the complaint asserted at trial must comport with those urged on appeal, otherwise they are waived. *Guevara v. State*, 97 S.W.3d 579, 583 (Tex. Crim. App. 2003). Having based the complaint below only on art. 39.14, the other grounds mentioned here were and are waived.

The remaining grounds we consider encompass art. 39.14(a) and *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).[2] When appellant raised his complaint, the trial court did not review the reports to determine whether they were discoverable or deliver them to appellant. Instead, it ordered them sealed for purposes of appellate review.

Both the statute and *Brady* require that the data be "material" before it is discoverable. *See* TEX. CODE CRIM. PROC. ANN. art. 39.14(a) (West Supp. 2016) (stating that "the state shall produce and permit the inspection . . . of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness . . . that constitute or contain evidence *material* to any matter involved in the action") (emphasis added); *Salazar v. State*, 222 S.W.3d 10, 14 (Tex. App.—Amarillo 2006, pet. ref'd) (stating that "[t]o demonstrate reversible error for a violation of *Brady* rights, a defendant must show (1) the State failed to disclose evidence; (2) the withheld

[1] Counsel uttered: "And I would say that is a clear violation of 39.14. It requires suppression of the evidence and dismissal of the case;" and, "We would just ask the Court to note again our objection on the basis of 39.14."

[2] *Brady* is considered because art. 39.14(h) tends to reiterate the substance of that opinion. *See* TEX. CODE CRIM. PROC. ANN. art. 39.14(h) (West Supp. 2016) (stating that "[n]otwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.").

evidence is favorable to the defendant; and (3) the withheld evidence is *material, that is, there is a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different*.") (emphasis added). And, like the definition of "material" in a *Brady* setting, materiality for purposes of art. 39.14(a) means that "there is a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different." *Evans v. State*, No. 07-07-0377-CR, 2009 Tex. App. LEXIS 150, at *7 (Tex. App.—Amarillo January 9, 2009, pet. ref'd) (mem. op., not designated for publication).[3]

We inspected the documents in question. They contain 1) surveillance reports of appellant on dates other than those that were the subject of this trial, 2) surveillance reports of others, and 3) reports of arrests not directly related to the offense for which appellant was tried. No information potentially exculpatory or available for impeachment purposes was found within them. Nor did they contain any information potentially relevant to any of the defensive theories posited by appellant in his brief (*i.e.* "duress"). Thus, we do not find a reasonable probability that had they been disclosed the outcome of the trial would have been different. Simply put, the information was not material, and, therefore, not subject to disclosure.

Having overruled both of appellant's issues, we affirm the judgment of the trial court.

Brian Quinn
Chief Justice

[3] Whether the information was material is also part of the test in determining whether the trial court erred in not first perusing the data before sealing it. *Gonzales v. State*, No. 04-14-00222-CR, 2015 Tex. App. LEXIS 7267, at *10 (Tex. App.—San Antonio July 15, 2015, no pet.) (mem. op., not designated for publication) (stating that the "determination whether the trial court should have conducted a sua sponte, in camera review utilizes the same legal standard as that employed to determine whether the trial court abused its discretion by refusing to compel disclosure: whether the item is material to the defense.").