

NO. 12-11-00051-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*STEVEN LAMON MOORE,
APPELLANT*

§

APPEAL FROM THE 114TH

V.

§

JUDICIAL DISTRICT COURT

*THE STATE OF TEXAS,
APPELLEE*

§

SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Steven Moore appeals his conviction for possession of a controlled substance. In one issue, Appellant argues that the trial court erred in overruling his motion to suppress evidence. We affirm.

BACKGROUND

In May 2007, police officers patrolling on bicycles stopped Appellant and a companion at a car wash in Tyler, Texas. The car wash was a self-service operation, and one of the officers later testified that it was a problem area. Specifically, he said that there had been concerns about people dealing drugs at that location, that he had been involved in “more than twenty” incidents at that location, and that officers patrolled that area regularly in an effort to alleviate the problems.

Appellant was not cleaning his car when the officer approached. Instead, he was leaning into the car window of another vehicle talking to the occupant. The officer approached Appellant and asked him for his identification. Appellant provided his identification, and the officer called that information into his radio operator. A short time later, the officer was informed that there were warrants for Appellant’s arrest. The officer then arrested Appellant. A subsequent search of the automobile, done after a trained dog indicated the presence of drugs in the car, revealed

about two grams of cocaine under the driver's seat of the car.

A Smith County grand jury indicted Appellant for the felony offense of possession of a substance in penalty group 1, specifically cocaine, a felony.¹ Appellant pleaded not guilty. Prior to trial, Appellant filed a motion to suppress evidence. The trial court held a hearing on the motion and overruled it the morning before the trial began. At trial, Appellant's counsel stated she had "no objection" when the State offered the cocaine into evidence. The jury found Appellant guilty as charged. Following a sentencing hearing, the jury assessed a sentence of imprisonment for twelve years and a fine of \$3,500.00. This appeal followed.

PRESERVATION OF COMPLAINT

In one issue, Appellant argues that the trial court erred by overruling his pretrial motion to suppress evidence and that he was harmed by that error.

Ordinarily, filing a pretrial motion to suppress and receiving a ruling on that motion prior to trial is sufficient to preserve a complaint about that ruling for appellate review. See *Moraguez v. State*, 701 S.W.2d 902, 904 (Tex. Crim. App. 1986); *Brown v. State*, 183 S.W.3d 728, 741 (Tex. App.–Houston [1st Dist.] 2005, pet. ref'd). However the "affirmative acceptance of [] previously challenged evidence waive[s] any error in its admission." See *Swain v. State*, 181 S.W.3d 359, 368 (Tex. Crim. App. 2005) (citing *Jones v. State*, 833 S.W.2d 118, 126 (Tex. Crim. App. 1992), cert. denied, 507 U.S. 921, 113 S. Ct. 1285, 122 L. Ed. 2d 678 (1993)); *Moody v. State*, 827 S.W.2d 875, 889 (Tex. Crim. App. 1992) (statement of "no objection" to offered evidence waives claim to inadmissibility of challenged evidence that had been subject of suppression hearing); *Dean v. State*, 749 S.W.2d 80, 83 (Tex. Crim. App. 1988) (defendant waives appellate review of pretrial motion to suppress by stating "we don't have any objections" when evidence is offered); *Lemons v. State*, 135 S.W.3d 878, 882 (Tex. App.–Houston [1st Dist.] 2004, no pet.) (same).

In this case, Appellant filed a pretrial motion to suppress the cocaine recovered from his automobile. However, when the cocaine was offered by the State, Appellant's counsel stated that she had "no objection" to the trial court's admitting it. This serves to waive a complaint about the admission of the cocaine despite the court's having ruled on Appellant's motion to suppress prior to trial. See *Swain*, 181 S.W.3d at 367–68; see also *Daniels v. State*, No. 12-06-00048-CR, 2007 Tex. App. LEXIS 685, at *7 (Tex. App.–Tyler Jan. 31, 2007, no pet.) (mem. op., not designated for

¹ See TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2010).

publication).

Because Appellant has not preserved this issue for our review, we overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we *affirm* the judgment of the trial court.

Opinion delivered February 29, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

FEBRUARY 29, 2012

NO. 12-11-00051-CR

STEVEN LAMON MOORE,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 114-0999-10)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.