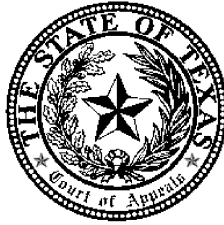


Affirmed and Opinion filed January 24, 2002.



In The
Fourteenth Court of Appeals

NO. 14-00-01054-CR

ROBERT MEDINA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Court of Law No. 1
Brazos County, Texas
Trial Court Cause No. 4499-99**

MEMORANDUM OPINION

Over a plea of not guilty, the trial court convicted appellant of cruelty to animals. Punishment was assessed at six months' confinement in the Brazos County Jail, probated for one year. A \$2,000.00 fine was imposed, \$1,250.00 of which was probated.

In a single issue for review, appellant complains that the warrantless search of the property was constitutionally impermissible under federal and state law because the police officer lacked probable cause to enter the property. He claims the trial court erred in not suppressing the evidence. Because appellant lacks standing to claim a constitutional violation, we affirm the judgment of the trial court.

FACTUAL BACKGROUND

The parties are familiar with the facts of the case, so we will not recite them here other than to note that appellant was arrested by police who observed him and his co-defendant, Steven Quintero, holding a cock fight. The fight occurred on property owned by Quintero.

STANDARD OF REVIEW

Generally, a trial court's ruling on a motion to suppress is reviewed by an abuse of discretion standard; but here, we are presented with a question of law based on undisputed facts, so we apply a de novo standard of review. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999).

STANDING

Appellant and Quintero filed a joint motion to suppress the evidence. The trial court denied the motion on a of lack of standing,¹ and we affirm on that basis.

Generally, an accused has standing, under both federal and state constitutional law, to challenge the admission of evidence obtained by a governmental intrusion only if he had a legitimate expectation of privacy in the place invaded. *Villarreal v. State*, 935 S.W.2d 134, 139 (Tex. Crim. App. 1996) (holding that a guest in a home searched by police, who had no intention to stay overnight nor unrestricted access to the home, lacked standing to complain that the search was unconstitutional); *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). One who seeks to suppress evidence obtained in an allegedly illegal search has the burden of proving that he or she had a legitimate expectation of privacy in the home. *Villarreal*, 935 S.W.2d at 138. To make such a showing, the accused must normally prove: (1) that by his conduct, he or she exhibited an actual

¹ The trial court also stated that even if there was standing, Martinez had probable cause to be on the public property adjacent to Quintero's home and to look through the fence at "what was happening in plain view."

subjective expectation of privacy, i.e., a genuine intention to preserve something as private; and (2) that circumstances existed under which society was prepared to recognize his subjective expectation as objectively reasonable. *Id.* (citing *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580, 61 L.Ed.2d 220 (1979)). To determine whether an accused's subjective expectation is one that society is prepared to recognize as objectively reasonable, *Villarreal* instructs us to consider (a) whether the accused had a property or possessory interest in the place invaded; (b) whether he was legitimately in the place invaded; (c) whether he had complete dominion or control and the right to exclude others; (d) whether, before the intrusion, he took normal precautions customarily taken by those seeking privacy; (e) whether he put the place to some private use; and (f) whether his claim of privacy is consistent with historical notions of privacy. *Id.*

DISCUSSION AND HOLDING

Appellant testified that he did not live at the home on 800-A Commerce Street, but rather, Quintero was the owner of the home. Appellant did not offer any evidence that he was an overnight guest, that he had a possessory interest in the home, or that he had the right to exclude third parties.

Therefore, we affirm the trial court's suppression ruling based on its finding that appellant lacked standing to challenge the constitutionality of the search under federal and state law.

/s/ Wanda McKee Fowler
 Justice

Judgment rendered and Opinion filed January 24, 2002.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).