

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

GLEN ARCHER
Appellant,

vs.

STATE OF TEXAS,
Appellee.

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No. 08-MCA-3230

OPINION

Appellant appeals his conviction in Municipal Court for the offense of public intoxication. A fine of \$41.00 was assessed.

In his brief, Appellant contends that he was in a privately owned vehicle as a passenger in the company of the driver and two other adults. He further claims that he was stopped by El Paso Police Officers in what he contends as a case of mistaken identity. The officers conducted a search and found no contraband or any evidence of a crime, but evidently, during their search determined that Appellant was intoxicated, and arrested him for public intoxication. After a trial before the judge, Appellant was found guilty, and this appeal ensued.

Appellant, in an articulate and comprehensive brief, claims that the stopping of the vehicle which he occupied was without probable cause, and therefore his subsequent arrest was illegal.

The law is now clear that a passenger in a vehicle has the same protections afforded by the 4th Amendment of the U.S. Constitution as the driver of the vehicle and can contest the legality of the stop of the vehicle or its subsequent search. Brendlin v. California, 127 S. CT. 2400 (2007).

Therefore, Appellant had the right to challenge the legality of his stop and subsequent arrest, but the question remains did he preserve such error in the Trial Court so that this Court could address the issue on appeal.

There is no reporter's record contained in the record before this Court. Section 30.00130 (b) Tex. Gov't. Code, requires that a request for a record must be made by the judge, prosecutor, or the

defendant. It is seldom that the judge or prosecutor would request a record, and therefore, it incumbent on the defendant to make such a request, insure that the record is transcribed by the court reporter and paid for and filed with this court for its review.

A reporter's record is essential for a review on appeal of questions concerning the factual or legal sufficiency of the evidence, as well as, in this case, to address the issue of whether improperly obtained evidence was admitted at the trial, and whether proper objection was made to that evidence in a timely manner before the Trial Court. Without a record, Appellant cannot show that he made a timely objection to the introduction of evidence of his public intoxication, as alleged, on the basis that there was no probable cause to stop the vehicle he was riding in.

It is now axiomatic that in order to preserve an error in the admission of evidence for appellate review, a defendant must make a timely objection. Johnston v. State 878 SW 2d 164 (Tex. Cr. App. 1994) Satterwhite v. State 786 SW 2d 271 (Tex. Cr. App. 1989) Thompson v. State 691 SW 2d 627 (Tex. Cr. App. 1984).

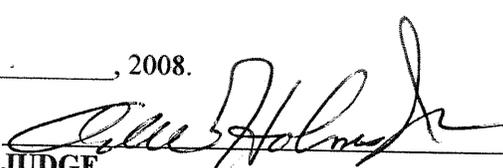
Failure to object to improper evidence can waive even an error involving constitutional rights, including rights guaranteed by the 4th Amendment of the U.S. Constitution. Muniz v. State 851 SW 2d 238 (Tex. Cr. App. 1993), Briggs v. State 789 SW 2d 918 (Tex. Cr. App. 1990)

Since there is nothing in the record before this Court to show that Appellant filed a motion to suppress or timely and properly objected to the admission of evidence concerning his public intoxication, any error relating to the admission of such evidence is waived.

Therefore, the judgment of the Trial Court is affirmed.

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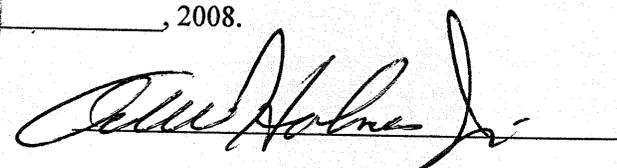
SIGNED this 13th day of Aug, 2008.


JUDGE

J U D G M E N T

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be affirmed.

SIGNED this 13th day of Aug, 2008.


JUDGE