Affirmed as Modified and Opinion Filed November 7, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00701-CR

MARCO ANTONIO LUNA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F-1422091-H

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Stoddart

Marco Antonio Luna was indicted for possession of cocaine in an amount of less than one gram. He appeals the denial of his motion to suppress the evidence obtained after Luna was stopped for driving without a front facing license plate. After the trial court denied the motion, Luna pleaded guilty pursuant to a plea bargain to a Class A misdemeanor offense of possession of cocaine. The trial court sentenced Luna to thirty-three days in jail. In a single issue, Luna contends the traffic stop was unreasonable because the statute requiring a vehicle to display two license plates is unconstitutionally vague. We modify the judgment to reflect the correct statute for the offense and affirm the judgment as modified.

BACKGROUND

Around midnight, December 20, 2014, Officer Alfredo Delapaz noticed Luna driving

without a license plate on the front of his vehicle. Delapaz initiated a traffic stop for failure to display a front-facing license plate. His dashboard camera recorded the encounter and was admitted in evidence at the hearing. Delapaz testified he did not see a license plate anywhere on the front of the vehicle, even after he approached. He stated that if a license plate was on the dashboard, he could not see it from where he was standing. The video recording shows that Delapaz used his flashlight to look inside vehicle. Delapaz testified that the law required the display of a license plate at the front of the vehicle. He could not, however, identify the exact location of that requirement in the transportation code or applicable rules. Luna testified that he had a license plate in the front windshield, but did not inform Delapaz about the license plate because he thought it was obvious. Luna argued the statute requiring a vehicle to display two license plates is unconstitutionally vague. After the hearing, the trial court denied the motion to suppress, concluding the statute is not unconstitutionally vague and that Delapaz had reasonable suspicion that Luna's vehicle was displaying only one of the two license plates required by the transportation code.

STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). We review the trial court's factual findings for an abuse of discretion, but review the trial court's application of the law to the facts de novo. *Id.* We give almost total deference to the trial court's determination of historical facts, particularly when the trial court's fact findings are based on an evaluation of credibility and demeanor. *Id.* We give the same deference to the trial court's conclusions with respect to mixed questions of law and fact that turn on credibility or demeanor. *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). We review mixed questions of law and fact that do not turn on credibility and demeanor as well as purely legal questions de novo. *Id.* As a

general rule, we view the evidence in the light most favorable to the trial court's ruling and afford the prevailing party the strongest legitimate view of the evidence, including all reasonable inferences that may be drawn from that evidence. *State v. Duran*, 396 S.W.3d 563, 571 (Tex. Crim. App. 2013). We will affirm the trial court's ruling if it is reasonably supported by the record and correct under any theory of law applicable to the case, even if the trial court did not rely on that theory. *See State v. Copeland*, 501 S.W.3d 610, 612–13 (Tex. Crim. App. 2016).

APPLICABLE LAW

When a defendant asserts a search and seizure violates the Fourth Amendment, the defendant bears the initial burden of producing evidence to rebut the presumption of proper conduct by law enforcement. *State v. Woodard*, 341 S.W.3d 404, 412 (Tex. Crim. App. 2011). A defendant can satisfy this burden by showing the search and seizure was without a warrant. *Id.* The burden then shifts to the State to establish that the search or seizure was nevertheless reasonable under a totality of the circumstances. *Id.* It is undisputed there was no warrant for the stop in this case.

A police officer may lawfully stop and reasonably detain a motorist if the officer has a reasonable basis for suspecting the person has committed a traffic violation. *Garcia v. State*, 827 S.W.2d 937, 944–45 (Tex. Crim. App. 1992); *State v. Gammill*, 442 S.W.3d 538, 540 (Tex. App.—Dallas 2014, pet. ref'd). Reasonable suspicion exists if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity. *Brodnex v. State*, 485 S.W.3d 432, 437 (Tex. Crim. App. 2016). This standard is objective and disregards the officer's subjective intent. *Id.* It is based on the totality of the circumstances. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011).

The State is not required to establish with absolute certainty that a traffic violation

occurred. *Abney v. State*, 394 S.W.3d 542, 548 (Tex. Crim. App. 2013). Rather, the State must establish that, under the totality of the circumstances, the detention was reasonable. *Id.; Gammill*, 442 S.W.3d at 543. "The question in this case is not whether appellant was guilty of the traffic offense but whether the trooper had a reasonable suspicion that [he] was." *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015).

A penal statute may be challenged as unconstitutionally vague if it fails to define the criminal offense with sufficient definiteness that a person of ordinary intelligence can understand what conduct is prohibited and in a manner that does not permit arbitrary and discriminatory enforcement. *State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006); *see also Watson v. State*, 369 S.W.3d 865, 870 (Tex. Crim. App. 2012). A statute is not unconstitutionally vague simply because a word or phrase is not specifically defined. *Watson*, 369 S.W.3d at 870; *Holcombe*, 187 S.W.3d at 499. Undefined terms are typically given their plain meaning unless the language is ambiguous or the plain language leads to absurd results the legislature could not have possibly intended. *See Wilson v. State*, 448 S.W.3d 418, 423 (Tex. Crim. App. 2014). Further, statutory words should be read in context and construed according to the rules of grammar and common usage. *See* TEX. GOV'T CODE ANN. § 311.011(a). When a statute "does not substantially implicate constitutionally protected conduct or speech, it is valid unless it is impermissibly vague in all applications." *Watson*, 369 S.W.3d at 870 (quoting *Holcombe*, 187 S.W.3d at 499).

ANALYSIS

Transportation code section 504.943 provides in relevant part:

> a person commits an offense if the person operates on a public highway, during a registration period, a motor vehicle that does not display two license plates that:
>
> (1) have been assigned by the department for the period; and
>
> (2) comply with department rules regarding the placement of license

plates.

TEX. TRANSP. CODE ANN. § 504.943(a). "Department" in this section means the Texas Department of Motor Vehicles. *Id*. § 504.001(2). At the time of the incident, the relevant rules of the department regarding placement of license plates provided:

> (2) Unless otherwise prescribed by law, each vehicle registered under this subchapter:
>
> > (A) must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, § 621.2061 may place the rear plate so that it is clearly visible[.]

43 TEX. ADMIN. CODE § 217.22(c)(2)(A) (2014) (Tex. Dep't of Motor Vehicles, Motor Vehicle Registration), repealed by 40 Tex. Reg. 1096 (2015) (current version at 43 TEX. ADMIN. CODE § 217.27(b)(1)).[1]

Luna argues section 504.943(a) does no more than inform a person he must display two license plates assigned by the department of motor vehicles and do so in accordance with the department's rules regarding placement of license plates. He asserts there is nothing in section 504.943(a) that would give a person of ordinary intelligence "even a hint" that the rules referenced would be found in the Texas Administrative Code.

We disagree. We begin by noting that the Texas Administrative Code is the repository for all rules adopted by state agencies. *See* TEX. GOV'T CODE ANN. § 2002.051(c) ("The administrative code shall contain each rule adopted by a state agency under Chapter 2001, but may not contain emergency rules adopted under Section 2001.034."). Further, the text of section 504.943(a) provides the information necessary to identify the applicable rule within the administrative code. First, the regulatory agency, the Texas Department of Motor Vehicles, is

[1] The rule has been renumbered in the current version, but the text is the same as the prior version.

clearly identified. TEX. TRANSP. CODE ANN. § 504.943(a)(1), (2); *id*. § 504.001(a)(2) (Department means the Texas Department of Motor Vehicles).[2] Next, it identifies where the information will be located, the department's rules. The word "rule" in the context of administrative agencies is clear and easily understood: a "rule" is a state agency statement of general applicability that "implements, interprets, or prescribes law or policy[.]" TEX. GOV'T CODE ANN. § 2001.003(6)(A)(i).[3] As mentioned, agency rules are located in the administrative code. *Id*. § 2002.051(c). Finally, section 504.943 identifies the appropriate rules to consult: the rules "regarding the placement of license plates." TEX. TRANSP. CODE ANN. § 504.943(a)(2).[4] These references taken together give a person of ordinary intelligence sufficient information to locate and identify the applicable rules regarding placement of license plates.

To the extent Luna argues the rules are vague, we cannot agree. Looking to the department's rules, we find very specific standards for the placement of license plates on motor vehicles: the vehicle "must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground[.]" 43 Tex. Admin. Code § 217.27(b)(1). These standards are easily understood by people of ordinary intelligence and do not permit arbitrary and discriminatory enforcement.

We conclude the statute and the administrative rules identified by the statute sufficiently define the criminal offense with such definiteness that a person of ordinary intelligence can understand what conduct is prohibited and do not permit arbitrary and discriminatory

[2] The department's rules are located in Title 43, Part 10 of the Texas Administrative Code. *See* 43 TEX. ADMIN. CODE §§ 206.1–221.115 (Transportation, Tex. Dep't of Motor Vehicles).

[3] Each state agency is required to "index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions[.]" TEX. GOV'T CODE ANN. § 2001.004(2).

[4] The Legislature specifically delegated to the department the authority to "adopt rules regarding the placement of license plates for a motor vehicle[.]" TEX. TRANSP. CODE ANN. § 501.010(c).

enforcement. Therefore, section 504.943(a) is not unconstitutionally vague.

CONCLUSION

We conclude the trial court did not abuse its discretion by denying Luna's motion to suppress. We note that the judgment lists the statute for the offense as section 481.121 of the health and safety code. That statute concerns possession of marijuana. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121. Luna was indicted for possession of a controlled substance, cocaine, in an amount of less than on gram, a violation of section 481.115 of the health and safety code. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115. We modify the section of the judgment titled "Statute for Offense:" to read "481.115 Health and Safety Code." *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd). As modified, we affirm the trial court's judgment.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
160701F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MARCO ANTONIO LUNA, Appellant

No. 05-16-00701-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 1, Dallas County, Texas
Trial Court Cause No. F-1422091-H.
Opinion delivered by Justice Stoddart.
Justices Bridges and Fillmore participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

> The section titled "Statute for Offense:" is modified to read "481.115 Health and Safety Code."

As **MODIFIED**, the judgment is **AFFIRMED**.

Judgment entered this 7th day of November, 2017.