

Opinion issued June 27, 2017



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-15-00777-CR

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**JULIAN MENDOZA OROZCO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 8  
Harris County, Texas  
Trial Court Case No. 1976824**

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**MEMORANDUM OPINION**

A jury convicted appellant Julian Mendoza Orozco of the misdemeanor offense of possession of marijuana, and the trial court sentenced him to 180 days in jail, probated for one year. *See* TEX. HEALTH & SAFETY CODE § 481.121(a), (b)(1).

Orozco appealed. In a single issue, he challenges the trial court's denial of his motion to suppress evidence. Because we conclude the arresting officer had reasonable suspicion to conduct the brief investigatory detention that led to the discovery of marijuana, we affirm.

### **Background**

In 2014, the Harris County Precinct 4 Constable's Office provided law-enforcement patrol services for the Timber Lane Municipal Utilities District, which included Timber Lane Park. The park was located at the end of Ciderwood Drive, a two-lane street through a residential area that ended in a cul-de-sac. Approaching the cul-de-sac, on the right side of the street were two signs: the first sign said "Welcome to Timber Lane Park," and the second sign said "Timber Lane Park Closed Dusk to Dawn." Just past the second sign, on the right, was the entrance to a parking lot. A sign on the metal gate at the entrance to the parking lot said "Parking Lot Closed and Locked Dusk to Dawn." On the left side of Ciderwood Drive, across from the "Welcome" sign and the parking lot, was a small municipal storm-water plant consisting of several tanks and a small building.

During a routine patrol, at approximately 11:00 p.m., Corporal C. Zorzi saw a convertible with its top down, parked between the "Welcome" sign and the "Closed Dusk to Dawn" sign but on the opposite side of the street. Zorzi had patrolled this area for three years and previously had made arrests for sexual

assaults, trespassing, and drug possession. He specifically recalled an arrest for criminal trespassing a month earlier when a car was parked in approximately the same location.

The parked car was facing away from the cul-de-sac and was between 75 and 100 feet from the entrance to the parking lot. The parking lot was closed and locked. No other cars were on the road. At first, Zorzi could not see if there were people in the car. He parked facing the other car, at an angle so that his interaction would be recorded by his dash camera and so that his car would provide cover if someone fired shots at him. He testified that he “was not blocking” the other car, and “if they wanted to leave, there was ample room to get around.”

Zorzi did not activate his lights or siren, but he turned on his spotlight to see if the vehicle was occupied or if there was criminal activity in progress. He saw a driver and passengers sitting in the car, and he got out to speak with them. Zorzi approached the parked car. He carried a flashlight, but he did not display his weapon or use a loud voice. He approached the driver’s side and calmly asked the occupants what they were doing. Within the first five seconds, he smelled marijuana coming from the car, and he saw marijuana in the car. He then asked the driver and other occupants to step out of the car. Appellant Julian Mendoza Orozco was one of the passengers. Zorzi searched the car and found marijuana. Orozco admitted that the marijuana found in the car was his.

Orozco was arrested and charged with misdemeanor possession of marijuana. He filed a motion to suppress evidence. At the suppression hearing, the trial court admitted into evidence photographs, maps, park rules, and the dash camera video. The video showed the parked car's headlights were turned off, and there was a single streetlight in the area. The court also heard testimony from Zorzi and Orozco.

Zorzi testified about the encounter and his suspicion that the men in the car had been trespassing in the park after hours. On cross-examination, the defense attorney questioned Zorzi about a map and a deed that showed that the portion of the street where the car was parked that night was not owned by Timber Lane MUD but had been "deeded to the public in 1971 for use as an easement as a road." After he saw the deed, Zorzi testified that he did not believe that Orozco and the others were parked illegally on the street. However, he said, "I am just going by what you are telling me."

Orozco testified that he felt that he was not free to leave from the moment that Zorzi pulled up. He assumed that if he moved, Zorzi would consider him to be "fleeing." Orozco testified: "I just stayed there. I didn't want to move or anything." On cross-examination, he clarified that he meant he felt like he and the others were not free to leave by moving the car.

The trial court denied the motion to suppress and later filed findings of fact and conclusions of law. The jury found Orozco guilty, and he appealed.

### **Analysis**

On appeal, Orozco contends that the trial court erred by denying his motion to suppress evidence. He argues that Zorzi's initial encounter with him was not a casual encounter, but a detention, made without reasonable suspicion.

“In reviewing a trial court's ruling on a motion to suppress, we apply a bifurcated standard of review.” *Wilson v. State*, 311 S.W.3d 452, 457–58 (Tex. Crim. App. 2010). We give almost total deference to the trial court's determinations of historical facts, and we review the application of the law of search and seizure de novo. *See id.* at 458. When the trial court files findings of fact regarding its ruling on a motion to suppress, we do not engage in our own factual review; rather we determine only whether the record supports the trial court's findings of fact. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *Orosco v. State*, 394 S.W.3d 65, 70 (Tex. App.—Houston [1st Dist.] 2012, no pet.). In the second part of the bifurcated review, we determine whether the trial court properly applied the law to the facts. *Romero*, 800 S.W.2d at 543; *Orosco*, 394 S.W.3d at 70.

In a hearing on a motion to suppress, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their

testimony. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). We will sustain the trial court's ruling if it is reasonably supported by the record evidence and is correct under any theory of law applicable to the case. *See State v. Weaver*, 349 S.W.3d 521, 525 (Tex. Crim. App. 2011).

The trial court issued the following findings of fact:

1. As part of his daily duties Corporal Christopher Zorzi (Zorzi) with the Harris County Constable Precinct 4 patrolled the Timber Lane Municipal Utilities District (Timber Lane MUD) in Harris County, Texas. There had recently been other criminal activity in the park . . . including a criminal trespass a month prior, in which Zorzi found a vehicle parked like the suspect's vehicle was in this case.
2. According to Zorzi, as one drives along Ciderwood Drive, which leads into the park, they are met by a sign that reads, "Welcome to Timber Lane Park." After this first sign, they are then met by a second sign that reads, "Closed from dusk till dawn." All of the property is owned by Timber Lane MUD. Part of the land around the roadway was deeded to the public for use as a roadway and public and private utilities in 1971. The road dead ends in a cul-de-sac right after a small parking lot with a gate.
3. At around 11 pm, on August 6, 2014, Zorzi observed a suspicious vehicle parked inside the park after closing hours. The car was parked past the "Welcome to Timber Lane Park" sign and across the road from (parallel to) the . . . "Closed from dawn till dusk" sign. The parking lot for the park was located approximately 50 or 100 feet from where the suspicious vehicle was parked. The parking lot gate was closed and there were no vehicles parked anywhere in the area.
4. As Zorzi drove up the road and saw the vehicle, he could not see if there was anyone inside of it. He pulled up behind that vehicle at an angle. This provided Zorzi some cover in case any

occupants in the vehicle started shooting at him, in addition to providing a good angle for his dash camera. His vehicle did not block the suspicious vehicle, and there was ample room for the suspicious vehicle to leave.

5. Zorzi activated his spotlight as he neared the vehicle to see if anyone was inside, but he did not turn on his flashing lights or sirens. The spotlight lit up the car and the occupants, and he sat there for a minute watching them.
6. Zorzi stated that he felt he had a reasonable suspicion for the stop because the park was closed and there was no other place for a vehicle to park. If the occupants of the suspicious vehicle were going to commit a crime, they would have to park that vehicle on the street, and exit the vehicle to enter the park.
7. When the suspicious vehicle did not move during Zorzi's observation of it, he exited his patrol car and approached the suspicious vehicle. He said, "What's going on guys? What are you doing here," in a calm voice, and noticed marijuana in plain sight within the first five seconds and he also noticed it by smell.
8. Appellant was a passenger in the suspicious vehicle.
9. Appellant testified that the officer parked right in front of the car and put the spotlight on them. He did not want to move because he thought it would be considered fleeing and he could have been shot. He felt like he was not free to leave.

Orozco makes no argument on appeal that the trial court's findings of fact lack evidentiary support. We therefore address only the questions that Orozco has raised that relate to whether the trial court properly applied the law to the facts. *See Romero*, 800 S.W.2d at 543.

Orozco argues that the trial court erred by denying his motion to suppress because Zorzi lacked reasonable suspicion to approach the car and investigate. The

crux of the argument is that when Zorzi approached, the car in which Orozco was an occupant was not parked inside Timber Lane Park, and therefore he was not trespassing.

A police officer may detain a person temporarily for investigative purposes if the officer reasonably suspects that the detained person is connected with a crime. *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880 (1968); *Wade v. State*, 422 S.W.3d 661, 668–69 (Tex. Crim. App. 2013). A police officer has reasonable suspicion to detain if, under the totality of the circumstances, he has specific, articulable facts that, combined with rational inferences from those facts, would lead him reasonably to conclude that the person detained is, has been, or soon will be engaged in criminal activity. *Matthews v. State*, 431 S.W.3d 596, 603 (Tex. Crim. App. 2014). “The facts that an officer relies on to raise suspicion that illegal conduct is afoot need not be criminal in themselves; ‘they may include any facts which in some measure render the likelihood of criminal conduct greater than it would otherwise be.’” *Wade*, 422 S.W.3d at 670 (quoting *Crockett v. State*, 803 S.W.2d 308, 311 (Tex. Crim. App. 1991)).

In this case, Zorzi was patrolling the park as part of his assigned responsibilities. It was 11:00 p.m., and it was after dusk. The park was closed, and signs posted at the entrance to the park and the parking lot for the park indicated that the park was closed after dark. Zorzi was aware of some criminal activity that



had taken place at the park in the recent past, including a criminal trespass a month prior. As he approached Timber Lane Park, he saw a car parked on the street, across from the “Welcome” and “Closed Dusk to Dawn” signs, approximately 75 to 100 feet from the parking lot. There were no other cars in the area. The car’s headlights were turned off. When Zorzi first approached he could not discern if the car was occupied, so he shined his spotlight on it and observed for a few moments. When he saw that there were people in the car, but the car was not moving, he walked over to investigate.

Orozco argues that Zorzi lacked reasonable suspicion because, although he believed that the car was parked illegally on property owned by Timber Lane MUD after dusk, it was shown at the suppression hearing that the car was parked on a public road. This factor is not dispositive, however, because the fact giving rise to reasonable suspicion need not be criminal in itself. Zorzi was not required to witness Orozco committing the crime of criminal trespass in order to have reasonable suspicion to investigate. *See Wade*, 422 S.W.3d at 670. Moreover, the reasonable-suspicion standard is an objective one, which disregards actual subjective intent of the officer and instead looks to whether there was an objectively justifiable basis for the detention. *Id.* at 668.

At the time Zorzi stopped his patrol car and walked over to investigate, Orozco was in a car at the end of a dead-end street, near a park owned by Timber

Lane MUD, with signs warning that the park was closed after dusk. Considering the close proximity to the park, Zorzi rationally could have inferred that the people in the car had been or soon would be in the park. A person commits criminal trespass if he enters or remains on the property of another and “had notice that the entry was forbidden.” TEX. PENAL CODE § 30.05. Under the totality of the circumstances, Zorzi reasonably could have concluded that the people in the car had been or soon would be engaged in criminal trespass. *See id.*; *Matthews*, 431 S.W.3d at 603. Thus, Zorzi had reasonable suspicion to conduct a brief investigatory detention. *See Matthews*, 431 S.W.3d at 603. Accordingly, we hold that the trial court did not err by denying the motion to suppress. In light of our disposition, we do not need to address Orozco’s argument that he was actually detained from the moment that the spotlight was activated. *See TEX. R. APP. P.* 47.1.

### **Conclusion**

We affirm the judgment of the trial court.

Michael Massengale  
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).