TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00536-CR
NO. 03-14-00537-CR

Gerald Stevens, Appellant

v.

The State of Texas, Appellee

FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NOS. C-1-CR-14-100017 & C-1-CR-14-100018
HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING

MEMORANDUM OPINION

A municipal-court jury found Gerald Stevens guilty of failing to stop at the proper place (a light at an intersection) and failure to display his driver's license. The jury assessed his punishments as a fine of $50 for the failure to stop and a fine of $200 for the failure to display his license. The county court at law affirmed the judgments. Stevens raises more than twenty issues on appeal to this Court. We will affirm the judgment.

BACKGROUND

Austin Police Department Officer Kyle Robertson testified that he observed Stevens's offenses and issued the citations. He testified that Stevens was traveling northbound in a passenger car on Austin's South First Street and stopped at a red light at Oltorf with the car's front wheels in the crosswalk past the designated stopping point. Robertson testified that he stopped Stevens and

asked him to display his license, but Stevens declined. Robertson testified that Stevens provided his name and date of birth, but refused to show his license on grounds that he was not operating a motor vehicle for transport.

Stevens reiterated at trial his belief that he was not required to display his driver's license. He testified that he was traveling with his wife in their car, but there was no transportation, activity for profit or hire, no passengers or cargo, no passenger manifest, or bill of lading. He denied that he was "driving" the car, but stated on cross-examination that he was at the wheel of the car and that if he put his foot on the brake, the car would stop. He also testified that his car was stopped behind the crosswalk.

STATE'S CHALLENGE TO OUR JURISDICTION

The State contends that we must dismiss both appeals because Stevens filed documents too late to preserve his right to continue to seek review. Stevens was found guilty on December 18, 2013, and filed his motion for new trial on December 30, 2013. His motion for new trial was overruled on January 2, 2014, and Stevens filed his notice of appeal and appeal bond on January 13, 2014. Both the motion for new trial and the notice of appeal must be filed ten days after the applicable triggering event. *See* Tex. Gov't Code §§ 30.00014(c) (motion for new trial), 30.00014(d) (notice of appeal).[1] Stevens filed his documents more than ten days after the applicable triggering events, but both times the filing period was set to expire on a weekend, causing the period to extend to the following Monday. *See* Tex. Gov't Code § 311.014(b).

[1] The Austin Municipal Court is a court of record. *See* Tex. Gov't Code §§ 30.00001(b)(1), 30.00731; *see also* Rules of the Municipal Court, City of Austin 8.5B.

We lack jurisdiction over some aspects of Stevens's appeal of the fine for stopping in the crosswalk. A party can appeal to the court of appeals if the fine assessed exceeds $100 and the judgment was affirmed by the county court at law in its appellate capacity. Tex. Gov't Code § 30.00027(a)(1). The party can challenge the constitutionality of the statute on which the conviction was based irrespective of the amount of the fine. *See id.* § 30.00027(a)(2). Because Stevens was fined only $50 for stopping in the crosswalk, he did not have the right to appeal to this Court any non-constitutional issues arising from that offense. For non-constitutional issues concerning that case, the county court's affirmance of the judgment is the final judgment.

DISCUSSION

Stevens raises more than twenty challenges to the judgment.[2] He challenges the jurisdiction of the court, the constitutionality of statutes, the definitions used, and various aspects of the law and procedure used in this case.

He asks in Issue A whether a municipal court has jurisdiction over a state-jail felony. But Stevens was not tried for a state-jail felony; he was tried for crimes legislatively defined as misdemeanors. *See* Tex. Transp. Code §§ 521.025 (failure to possess and display driver's license on demand of peace officer is a misdemeanor); 542.301 (traffic offenses are misdemeanors unless otherwise provided); 545.302(a)(4) (stopping on a crosswalk prohibited). He asserts without support that all criminal matters codified outside the penal code "sound in alleged breach of fiduciary duty," but we find no legal support for the proposition. He also argues that a municipality may not decrease

[2] He labels three of the issues A, B, and C, then numbers the rest (although he skips some numbers in the traditional numbering system). He numbers issues 1, 2, 5, 6, 8, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25.

the State-set offense level, but the record does not demonstrate that a municipality has reduced any offense level here. We overrule Issue A.

Stevens contends in Issue 1 that this case should be characterized under federal law because it is a transportation matter that is covered by maritime law, citing *Lozman v. City of Riviera Beach*, 133 S. Ct. 735 (2013). *Lozman*, a case about a maritime lien, focused in part on whether a floating home was a "vessel" and therefore subject to maritime law. *Id*. at 739. The case did not concern a criminal offense or Texas law. *See generally id.* The case does not support Stevens's argument. *See Perkins v. State*, No. 03-14-00305-CR, slip op. at 5-6 (Tex. App.—Austin June 25, 2015, no pet.). The Supreme Court also did not determine whether transportation required that the movement of the person or property contained in the structure was for profit or hire. *Lozman*, 133 S. Ct. at 746. The focus on the home's status as a vessel arose because, for maritime law to apply, the action must be within admiralty jurisdiction which in turn traditionally requires the incident to occur on navigable waters. *See Schlumberger Tech. Corp. v. Arthey*, 435 S.W.3d 250, 253 (Tex. 2014) (discussing tort jurisdiction) (citing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531-34, 547-48 (1995)). There is no evidence that navigable waters existed when and where Stevens was ticketed, so we see no basis for the applicability of maritime law. The offenses at issue are defined by Texas laws and these cases based on violations of them are properly in state courts. Tex. Code Crim. Proc. art. 4.14(a); *see* Tex. Transp. Code §§ 521.025, 545.302(a)(4). We overrule Issue 1.

Stevens contends in Issue 2 that these cases are civil cases because the State did not follow procedures needed to make it a criminal case. These cases are criminal cases because they were initiated by the State via complaints that allege he committed offenses against the peace and

dignity of the State, and he was found guilty of committing the charged offenses—all hallmarks of a criminal cause of action. *See* Tex. Code Crim. Proc. arts. 21.20, .21 (definition and requisites of information), arts. 21.01, .02 (definition and requisites of indictment), arts. 45.018, .019 (definition and requisites of complaint in municipal court); *cf. Cadle Co. v. Lobingier*, 50 S.W.3d 662, 667 (Tex. App.—Fort Worth 2001, pet. denied) (comparing civil contempt, assessed to encourage satisfaction of existing obligation, and criminal contempt, assessed to punish previous wrongdoing). We note that the municipal court and the county court at law gave the cases numbers including the letters "CR," indicating criminal cases as opposed to a "CV" designation for a civil case.

Stevens contends that this matter is a "non-case" because the State did not prove notice and subject-matter jurisdiction. He relies on the Legislature's 1999 repeal of a provision that stated that "[p]roceedings in a municipal court shall be commenced by complaint." *See* former Tex. Code Crim. Proc. art. 45.01.[3] Stevens argues that, since that repeal, proceedings charging misdemeanors must be started by information signed by a county or district attorney as they are in county courts. *See* Tex. Code Crim. Proc. art. 2.05 ("in counties having one or more criminal district courts an information must be filed in each misdemeanor case").

While the current code does not as plainly state that a complaint alone commences proceedings in a municipal court as it did in the repealed article 45.01, the code still permits that process. We are instructed to interpret statutes so that effect may be given to each, and to avoid interpretation that would render any parts of them meaningless. *Ludwig v. State*, 931 S.W.2d 239, 242 n.9 (Tex. Crim. App. 1996). We must presume that the entire statute is intended to be effective,

[3] Act of May 22, 1989, 71st Leg., R.S., ch. 600, § 1, 1989 Tex. Gen. Laws 1991, *repealed by* Act of May 30, 1999, 76th Leg., R. S., ch. 1545, § 75(a), 1999 Tex. Gen. Laws 5314, 5331.

Tex. Gov't Code § 311.021, and must consider the object to be attained and the consequences of a particular construction, *id*. § 311.023. The code of criminal procedure states that a "**complaint** *or* information for any Class C misdemeanor may be presented within two years from the date of the commission of the offense." Tex. Code Crim. Proc. art. 12.02(b) (emphases added). The offenses for which Stevens was convicted were charged as Class C misdemeanors. *See* Tex. Penal Code § 12.23 (Class C misdemeanors punishable by fine only not to exceed $500). The chapter governing justice and municipal courts provides that "[f]or purposes of this chapter, a **complaint** is a sworn allegation charging the accused with the commission of an offense." *Id.* art. 45.018(a) (emphasis added). It also provides that "[a] defendant is entitled to notice of a **complaint** against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint." *Id.* art. 45.018(b) (emphasis added). Read together, these statutes require that a defendant is entitled to notice of a complaint charging him with a Class C misdemeanor at least a day before any proceeding in the prosecution under the complaint begins. If we interpreted the repeal of article 45.01 as eliminating the complaint-only commencement of actions in the municipal courts, then articles 45.018 (complaint) and 45.019 (requisites of complaint) would be meaningless surplusage. We must reject Stevens's interpretation in favor of the reading that gives meaning to the existing code of criminal procedure. We overrule Issue 2, and we deny Stevens's motion to recharacterize these cases as civil cases.

Stevens contends by three issues that the deputy clerk's status as complaining witness caused reversible errors. He contends that the municipal court was disqualified (Issue 14), that the municipal court should have held a disqualification or recusal hearing (Issue 15), and that structural due process was violated because the complaining witness is the custodian of the municipal court's

records (Issue 16). But the deputy clerk is not the complaining witness. Michael Tang swore to the allegations before the deputy clerk. This is consistent with State law permitting the complaint to be "sworn to" before the municipal judge, the clerk, or a deputy clerk, among others. *See* Tex. Code Crim. Proc. art. 45.019(e). Here, the deputy clerk's signature appears at the end of the complaint, directly after the phrase "Sworn to and subscribed before me by affiant on this day." This action did not make the deputy clerk a complainant or complaining witness and does not make the court a party to the lawsuit or a witness regarding the facts of the offense any more than administering an oath to a witness testifying live in court does. It does not require recusal or disqualification of the municipal court. Issues 14, 15, and 16 fail.

By Issue C, Stevens argues that the trial court erred by overruling his objections to the "round-robin" transfer of his cases. At least three municipal judges held hearings on aspects of these cases. He asserts that, because there are no transfer orders, no one other than the first judge had authority. But he cites us to and we find no authority for the proposition that an order transferring his case from one municipal judge to another is required.[4] There is no dispute that all three judges are Austin municipal court judges. We find no error and overrule Issue C.

By Issue 5, Stevens argues that the notice requirements of the code of criminal procedure conflict. *Compare* Tex. Code Crim. Proc. art. 27.11 *with id.* art. 45.0 18(b). Article 27.11 states that "[i]n all cases the defendant shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings." Article 45.018(b)

---

[4] Stevens cites an opinion discussing transfer of cases from one district court to another. *See Bargas v. State*, 164 S.W.3d 763, 767 (Tex. App.—Corpus Christi 2005, no pet.). Stevens cites us to no restriction on different Austin municipal court judges hearing different parts of the case in statutes or the Rules of the Municipal Court City of Austin.

provides that "[a] defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection." The provision relevant to the municipal courts is more specific and prevails in municipal court. *See* Tex. Gov't Code § 311.026(b); *see also* Tex. Code Crim. Proc. arts. 45.001, .002. We overrule Issue 5.

By Issue 6, Stevens contends that article 45.018(b)'s one-day notice rule violated due process. In addressing a constitutional challenge, this court "must begin with the presumption that the statute is valid and that the Legislature did not act arbitrarily or unreasonably in enacting it." *State v. Rosseau*, 396 S.W.3d 550, 557 (Tex. Crim. App. 2013). The party challenging the statute "has the burden to establish its unconstitutionality." *Id.* "[T]o prevail on a facial challenge, a party must establish that the statute always operates unconstitutionally in all possible circumstances." *Id.* In this case, appellant knew what he was charged with well in advance of his trial. The record reflects that he was ticketed on July 5, 2013 and that the municipal court held a hearing on his motion to dismiss these charges on September 12, 2013—more than three months before the December 18, 2013 trial in which he participated fully. Stevens has not shown that the statute deprived him of notice of the charges against him. We overrule Issue 6.

Stevens contends by Issue 13 that the complaints are inadequate because "there's no affiant." He contends that "the party purporting to be the Witness/Affiant has not appeared in 'this state.' There being, then no signature of any Affiant, there's no 'complaint.'" There is, however, a signature of an affiant. Stevens does not cite to a statutory provision requiring that the affiant appear in this state. The statute is silent as to the affiant's whereabouts when making the complaint. *See* Tex. Code Crim. Proc. art. 45.019. The argument fails. We overrule Issue 13.

Stevens contends by Issue 12 that he is not liable in the capacity charged. He contends that "[i]n 'this state,' to be seen and therefore heard, whether party or witness, the person has to waive his/her objections to the debts of the United States." Stevens was charged with performing an act prohibited and failing to perform an act required in the transportation code. *See* Tex. Transp. Code § 542.301(a). Stevens's quarrels with the monetary system of the United States and how he is required to pay any fines are irrelevant to the capacity in which he violated the laws of Texas. We overrule Issue 12.

By issue 8.1 through 8.5, Stevens asserts that the failure to define several terms throughout the process, including in the jury charge, demonstrated that the State never had an actual grievance or showed standing. By Issue 23, he contends that the instructions were inadequate for failing to define key semantical, commercial terms: vehicle, driver, motor vehicle, and operator. Our first duty in analyzing a criminal jury charge issue is to decide whether error exists. *Barrios v. State*, 283 S.W.3d 348, 350 (Tex. Crim. App. 2009). If error is found, the degree of harm necessary for reversal depends on whether the appellant preserved the error by objecting to the complained-of instruction. *Olivas v. State*, 202 S.W.3d 137, 144 (Tex. Crim. App. 2006). If the defendant properly objected to the erroneous jury charge instruction, reversal is required if we find "some harm" to the defendant's rights.[5] *Id.* at 144 n.21. If the error was not objected to, it must be

[5] During the charge conference, appellant objected to the use of the terms driver and vehicle and filed special appearances, motions to dismiss, and standing evidentiary objections challenging the use or non-use of other terms challenged here. The latter, particularly, were not strictly objections to the charge. For purposes of this opinion, however, we will treat them as objections to the charge.

"fundamental" and requires reversal only if it was so egregious and created such harm that the defendant "has not had a fair and impartial trial." *See id.*; *see also Barrios*, 283 S.W.3d at 350.

The government code instructs on how to interpret words used in statutes:

> (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.
>
> (b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Tex. Gov't Code § 311.011. The trial court is accorded wide discretion in submitting explanatory instructions and definitions. *Campbell v. State*, 125 S.W.3d 1, 9 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

The terms at issue are used in their ordinary meaning[6] and there is no indication in the record that the jurors were confused by the meaning of these terms or the absence of definitions for them. Two of the terms are defined in the Transportation Code. *See* Tex. Transp. Code § 541.201(11) (motor vehicle), (23) (vehicle). We have previously rejected Stevens's argument that

---

[6] The word transportation is not used in the charge and it does not appear in the text of either statute defining the offenses charged here. *See* Tex. Transp. Code §§ 521.025 (requirement to display driver's license on demand); 545.302(a)(4) (stopping on a crosswalk prohibited). The statutes are in the Transportation Code, but "transportation" is the title of the code and not a listed element of the offense. The word "transport" appears in the text of the definition of "vehicle," but there is no showing that the word is used in any technical sense that differs from its ordinary meaning. *See id.* § 541.201(23) ("device that can be used to transport or draw persons or property on a highway").

Stevens complains about the term "driver" being defined elsewhere in the code, *see* Tex. Transp. Code § 522.003(11), but cites no authority for the proposition that the legislature's choice to define a term in one code or chapter prevents the legislature from using that word elsewhere without defining it again.

the definition of "transportation" is among the elements that must be proved for these offenses and, regardless, that it requires a commercial purpose for the travel, and thus that travel without a commercial purpose is not transportation. Stevens has not shown that the trial court erred by not defining the words transportation, vehicle, motor vehicle, driver, or operator. We overrule issues 8.1, 8.2, 8.3, 8.4, 8.5, 22, and 23.

Other issues rely on Stevens's argument that these offenses require proof of a commercial aspect to his travel. Stevens urges by Issue 8.6 that "[t]he 'place' called 'this state' is the place in which the use of 'funny money' is not instantly fraud," but is instead a choice of law. He again relies on his definition of transportation as requiring the State to prove a commercial aspect—particularly, "'hire' in the form of 'funny money.'" He also argues in Issue 8 that the State lacked standing because Stevens never engaged in transportation because his activity lacked a commercial aspect. In Issue 20, Stevens contends that the municipal court shifted the burden of proof because it did not require the State to prove that he moved someone from one place to another for hire. As discussed above, the statutes defining Stevens's offenses do not contain a commercial element. *See* Tex. Transp. Code §§ 521.025, 545.302(a)(4). We overrule issues 8, 8.6, and 20.

Similarly, by Issue 17, Stevens contends that the state failed to submit evidence of "carrying passengers or cargo"or hire and therefore failed to prove transportation. By Issue 21, he contends that the lack of proof of transportation required that the municipal court dismiss these cases. The police officer who testified identified Stevens as the person to whom he issued the citations. He described the offenses, the streets in the City of Austin where he observed the offenses, and Stevens's car. Stevens himself testified that "I was traveling with my wife in our car." He also testified that he was at the wheel of the car and agreed that if he put his foot on the brake, the car

would stop. This evidence supported the exercise of jurisdiction and raised issues for the jury. We overrule issues 17 and 21.

By Issue 25, Stevens argues that the judgment is void because of a combination of these errors. Having concluded that Stevens has not shown that the municipal court erred, we overrule Issue 25.

By Issue B, Stevens contends that the county court at law erred when it "short[ed] Appellant 15 days regarding Briefs." He contends that the county court told him his brief was due in 15 days, relying on Tex. Gov't Code § 30.00021(b), rather than 30 days, as set out by Tex. R. App. P. 38.6. Stevens also concedes that "[t]he matter was never pressed; hence, this may be moot." A general prerequisite to presenting complaints for appellate review to this Court is presenting them on the record to the trial court by a timely request, objection, or motion. Tex. R. App. P. 33.1(a). Stevens did not do so and does not show that this complaint is exempt from the general requirement. Further, the government code provision specifically governs appeals from municipal courts of record (which the Austin municipal court is, *see* Tex. Gov't Code §§ 30.00001(b)(1), 30.00731). It does not conflict with the rules of appellate procedure governing other appeals and the more specific provision would control in the event of conflict with a rule of procedure. *See id.* § 311.026(b). The county court at law properly applied the 15-day limit in Government Code section 30.00021(b) when setting the time limit for the brief in the appeal from the Austin Municipal Court to the county court at law. We overrule Issue B.

CONCLUSION

We affirm the judgments.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Field

Affirmed

Filed: February 18, 2016

Do Not Publish