COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

RODNEY SANCHEZ LOPEZ,	§	
		No. 08-15-00010-CR
Appellant,	§	
		Appeal from the
v.	§	
		143rd District Court
THE STATE OF TEXAS,	§	
		of Reeves County, Texas
Appellee.	§	
		(TC# 13-08-07799-CRR)
	§	

O P I N I O N

Lopez was charged with possession with intent to deliver methamphetamine (one gram or more, but less than four grams).[1] A jury found him guilty and Lopez was sentenced to fifteen years' imprisonment. Lopez appeals his conviction based on the trial court's denial of his (1) motion for continuance of the trial, and (2) motion to suppress.

The Stop

On July 19, 2013, Trooper John David Shock with the Texas Department of Public Safety was on patrol in Reeves County, outside his usual post and on his way home. At around 10:00

[1] This case is a companion case to 08-15-00008-CR (TC #13-08-07797-CRR; possession with intent to deliver heroin four grams or more, but less than 200 grams); 08-15-00009-CR (TC #13-08-07798-CRR; possession with intent to deliver cocaine 4 grams or more but less than 200 grams).

p.m. that evening, Shock conducted a traffic stop on a black Chevrolet Tahoe that was driving ten miles over the speed limit. Appellant was the driver of the Tahoe and the passenger was Orlando Munoz. The stop was conducted about four miles south of Pecos on U.S. 285.

The dash-cam video[2] shows that after pulling Appellant over, Shock approached the driver's window and asked Appellant if there was a reason for his speed. Appellant explained that he was coming from Fort Stockton and was in route to meet his sister in Pecos to take his mother to the emergency room in Odessa. After asking Appellant for his license and registration, Shock asked Appellant why his mother needed to go to the emergency room. Appellant explained that his mother had various health issues. Trooper Shock asked Appellant several questions about his license, address, and vehicle. He then walked around the vehicle, asked Appellant if there were any weapons in the vehicle, to which Appellant responds in the negative, and finally informed Appellant that he would be receiving a citation in addition to a warning for an issue with his license.

Shock returned to his patrol vehicle and five minutes after the initial detention, called Trooper Oscar Valles for canine assistance, explaining that a sergeant had warned him about Appellant's alleged reputation for selling methamphetamine. He informed Valles his information on Appellant was that if Appellant was carrying any contraband, he would have it on the weekends (the stop occurred on a Friday). Nevertheless, Shock explained, "the only thing I've got on him right now is just the fact that he's going to a location he's nowhere near and the fact that [the sergeant] recently gave me information that he is a known methamphetamine dealer here in Pecos."

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[2] "[W]e review indisputable recorded evidence *de novo*" but "defer to the trial court's reasonable perception" of events in the event of ambiguity, as well as in determining what witnesses actually saw, heard, or experienced during an encounter. *State v. Villegas*, 506 S.W.3d 717, 741 (Tex.App.--El Paso 2016, pet. granted)(citing *State v. Gobert*, 275 S.W.3d 888, 891–92 (Tex.Crim.App. 2009) and *Carmouche v. State*, 10 S.W.3d 323, 332 (Tex.Crim.App. 2000)).

Shock went on to say that "neither one are nervous; neither one are doing anything, acting any strangely."

Shock concluded his conversation with Valles explaining he would ask Appellant to get out of the vehicle and for consent to search the vehicle, which he believed Appellant would deny, but nevertheless hold Appellant until Valles arrived with the canine. Seven minutes later, and still in his patrol vehicle, Shock called the sergeant who had given him the information on Appellant and informed him he had detained Appellant. Shock went on to say that he believed he could detain Appellant until a canine arrived based on Appellant's odd story and the information.

Three minutes later, and about twenty minutes after the initial detention, Shock reproached the driver's side of the vehicle and asked Appellant to step out, directing him towards the back of the vehicle and in front of the patrol car. There, Shock asked Appellant for his passenger's name and how he knew him, to which Appellant responded that he did not know his "personal name" and he had come to know him through family and friends in Pecos. Shock directed Appellant to stay in front of the squad car while he approached and spoke to the passenger.

Shock then approached the passenger, requested his identification, and inquired into his association to Appellant, but did not ask the passenger if he knew Appellant's name. The passenger, Orlando Munoz, explained he met Appellant on an occasion where he misidentified Appellant for Appellant's younger brother. Munoz also explained he lived in Pecos but had joined Appellant in his travels around Fort Stockton to "hang out." Munoz also responded in the negative when asked if he possessed weapons.

Shock then re-reproached Appellant to ask why they had been in Fort Stockton and Appellant responded that they had planned to "go out to the bar." After asking a few other questions, Shock returned to his vehicle. After three minutes in the squad car, and twenty-six

minutes after the initial detention, Shock returned Munoz's license, and asked Munoz if the vehicle contained contraband, to which Munoz responded in the negative. After some further conversation with Munoz, Shock re-approached Appellant.

Shock then issued Appellant the traffic citation and a change of address warning, with specific details as to the follow-up procedures. After handing Appellant the citation, warning, and his driver's license, Shock asked if he could continue to ask more questions—now thirty minutes after the initial detention.

Shock asked if the vehicle contained contraband, to which Appellant responded in the negative; he asked for consent to search the vehicle, which Appellant refused to give; and he asked if Appellant had any drug-related offenses, which Appellant said he did not, but then clarified that many years ago, he had been involved in a situation where drugs were tangentially implicated in a charged offense. Shock asked about "the marijuana arrest in Midland" and Appellant explained that he had been arrested for that drug related offense, however, that incident had occurred long before the first situation he had previously explained.

Finally, Shock asked Appellant for consent to search the vehicle for a third time, which Appellant refused to give. He then told Appellant that he had probable cause to search the vehicle for drugs and a canine was on its way to assist in the search. Shock explained that the vehicle, Appellant, and Munoz were going to be held until the canine's arrival. Shock said that once the canine arrived, it would conduct a drug sniff; thereafter, if there was no alert, he and Munoz would be free, as he had already issued the citation. Shock went back to his squad car to contact Valles, and then returned to inform Appellant that the canine was about ten to fifteen minutes away.

Now thirty-six minutes into the detention, Shock asked Appellant for consent to search his person, which Appellant refused to give. He then re-approached the passenger side of the vehicle

and asked Munoz if he could exit the vehicle. After asking about Munoz's wallet, he asked Munoz to stay calm, explained Appellant had not given consent to search the vehicle, and asked Munoz for consent to search his person, which Munoz gave. In conducting the consensual search, and after some confusion and reluctance, Shock asked specifically for what Munoz had retrieved in his pocket. Munoz muttered a response and refused to turn over what was in his hand, Shock then asked Munoz to get on the ground, at which point Munoz ran from Shock. Shock turned towards Appellant and commanded him to get on the ground and place his hands behind his back. Munoz had not run far, and so Shock yelled at Munoz to do the same. Now thirty-nine minutes after the initial detention, Shock placed Appellant, still face-down on the ground, in handcuffs and then approached Munoz and placed him in handcuffs. Shock inquired into what Munoz had tried to conceal. Shock returned to the squad car to radio in what had occurred. Shock thereafter called the informing-sergeant to update the sergeant on what occurred, explaining that Munoz ran "straight into the fence[.]" Valles finally arrived and both troopers then began searching for "spice," which was the substance Munoz explained he concealed.

After finding what they believed to be the substance Munoz concealed, Shock asked Valles if they should run a probable cause search—presumably by sweeping the canine around the car to see if there was an alert—or if probable cause to search the vehicle had already been established. Valles declined to opine and stated that he would defer to Shock's judgment. Shock stated that he believed probable cause was established, and thus, a canine search was not necessary.

Shock searched Appellant's person as Valles stood by and then told Munoz he was under arrest. About an hour into the stop, both Munoz and Appellant were still in handcuffs. The troopers placed Munoz in Shock's squad car and left Appellant in front of the squad car as they began searching the vehicle. The dash-cam video recording included the officers finding a double-

edged throwing knife, a handgun with two magazines, a large amount of currency, a set of digital scales, a broken glass pipe, and a bottle of prescription pills not prescribed to either Appellant or Munoz. The video did not show when or how the troopers uncovered a black bag containing heroin, cocaine, and methamphetamine (the "exterior contraband") from the back cavity of the back-right taillight.

Procedural Background

On September 18, 2013, Appellant filed a motion to suppress all the physical evidence seized as a result of the stop, including the exterior contraband. On November 15, 2013, the trial court held a hearing on the motion.

At the suppression hearing, Trooper Shock testified he conducted a warrantless search of Appellant's vehicle based on the following:

> 1) Trooper Shock had been told by Sergeant Orr that multiple sources had identified Appellant as the "largest methamphetamine dealer in the area;"
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> 2) Appellant's explanation regarding the location he was travelling to and from did not make sense geographically and was improbable to Trooper Shock;
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> 3) Trooper Shock found Appellant's explanation of why his mother needed to go the emergency room was not exact or specific, other than "she has a lot of problems" and "[s]he goes to the ER a lot" suspicious;
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> 4) Appellant told Trooper Shock he had known Munoz for two-three months but did not know Munoz's name;
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> 5) Munoz stated Appellant had helped him secure employment, but was unable to tell Trooper Shock Appellant's name;
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> 6) Munoz and Appellant told Trooper Shock that they had rented a hotel room that night in Ft. Stockton and they were going to "party" at a popular nightclub together, however they could not identify one another;
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> 7) Munoz told Trooper Shock he knew Appellant through Appellant's brother, Roger, a person Trooper Shock had previously arrested for possession of marijuana;
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> 8) Trooper Shock observed Munoz to be agitated, his hands were shaking, and

> he could not make eye contact with the Trooper. Munoz appeared to be experiencing tremors and Trooper Shock concluded Munoz was "extremely nervous;"
>
> 9) Lopez was calm and collected while Munoz was agitated which Trooper Shock found suspicious;
>
> 10) As Trooper Shock searched Munoz, Munoz attempted to hide in his hand a substance in plastic which Trooper Shock, based on his experience and training, believed to be a controlled substance;
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> 11) Munoz ran from the Trooper Shock;
>
> 12) Munoz admitted to Trooper Shock he possessed "spice," a synthetic form of cannabinoid;
>
> 13) Trooper Shock arrested Munoz.

These accumulated facts, according to Trooper Shock, gave rise to his belief that there was probable cause to believe the vehicle contained a controlled substance.

The State, on redirect examination, asked Shock if the troopers had actually conducted a canine sweep, to which Shock answered they decided against using the canine as he had already established probable cause to search the vehicle when Valles arrived.

Valles also testified as to his version of the course of events. Shock explained that both searched the car and they found a package of synthetic marijuana in the driver's floorboard that was similar to what Munoz attempted to conceal. In the passenger compartment, they found a loaded handgun and "[i]n the front right driver or front right passenger panel," an illegal knife. In the center console, the troopers found a wallet with a large amount of cash, a set of digital scales, and a piece of a glass pipe. In a back, middle seat compartment, the troopers found a toiletry bag with a bottle of prescription medication not prescribed to either Appellant or Munoz.

Once completing a search of the interior of the vehicle, Valles noticed a "hanging clip" on the "rear area" and noticed that the corner panel was loose. It was Valles' belief that the taillight

had been "taken off more than once not just to replace the tail lamp." Valles then unscrewed and disassembled the taillight, where the troopers found a cavity. Inside was a bundle containing what was later confirmed as heroin, cocaine, and methamphetamine (the "exterior contraband").

In their closing arguments at the hearing, the State and Appellant presented different legal theories each believed was applicable: the automobile exception, posed by the State, and the search incident to arrest exception, posed by Appellant.

In a written order denying the motion to suppress, the trial court stated:

> Under the second prong of Arizona v. Gant, there was reasonable cause to believe that relevant evidence of the crime for which the passenger was under arrest would be found in the automobile.

The trial court additionally stated that "under the totality of the circumstances, there was probable cause to believe that contraband or other relevant evidence of the crime for which the passenger was under arrest would be found in the automobile."

In addition, on the first day of trial, Appellant's trial counsel requested a continuance due to his illness. On the second day of trial, Appellant's trial counsel moved for a mistrial due to his illness as he could not thus effectively represent Appellant. The jury found Appellant guilty and Appellant was sentenced to fifteen years' imprisonment and a fine of $5,000. Appellant timely filed his notice of appeal.

DISCUSSION

On appeal, Appellant raises two issues. First, Appellant asserts that the trial court erred when it denied his trial counsel's motion for mistrial based on Appellant's trial counsel's illness. Second, Appellant argues that the trial court erred in denying his motion to suppress the exterior contraband because Trooper Shock lacked probable cause to search the vehicle.

The State responds the trial court did not abuse its discretion in denying Appellant's motion

for mistrial due to defense counsel's illness. The State urges us to uphold the trial court's suppression ruling finding Trooper Shock had sufficient probable cause to search Appellant's vehicle under the totality of the circumstances.

Mistrial

Standard of Review

In his first issue, Appellant contends that the trial court abused its discretion in denying his motion for mistrial based on defense counsel's illness. Appellant's trial began Monday, January 6, 2014. Sometime that afternoon, after the State and Appellant rested their respective cases, Appellant's trial counsel told the trial court, "—since I'm sicker than a dog, could we argue in the morning?" The State then presented two rebuttal witnesses, after which the State and Appellant closed. The trial court dismissed the jury and instructed them to be back for closing argument the next day at 8:30 a.m.

The next morning, Tuesday, January 7, 2014, Appellant's counsel made a motion for mistrial because he was sick. Appellant's counsel told the trial judge:

> Saturday I got sick. I spent Saturday afternoon and Saturday night in bed. Sunday in bed. I came down here, and I almost didn't come in defiance of the Court. I should have gone to the doctor's office and stayed at home. I came down here, tried to litigate this case as best I can and didn't do a very good job. I feel like I've been ineffective as far as this man's right to effective representation by counsel is concerned.
>
> Last night I went home, I was driven home by Mr. Shaffer, went to bed. This morning someone drove me up here, I slept all the way up here, and here I am, but I'm sick . . . .

The trial court overruled the motion.

We review a trial court's ruling on a motion for mistrial under the abuse of discretion standard, and we will not find an abuse of discretion where the decision was within the zone of reasonable disagreement. *Wead v. State*, 129 S.W.3d 126, 129 (Tex.Crim.App. 2004);

Montgomery v. State, 810 S.W.2d 372, 391 (Tex.Crim.App. 1990)(opin. on reh'g); *Balderas v. State*, 517 S.W.3d 756, 783 (Tex.Crim.App. 2016), *cert. denied*, 137 S.Ct. 1207, 197 L.Ed.2d 251 (2017). We review the facts in the light most favorable to the ruling. *State v. Doyle*, 140 S.W.3d 890, 893 (Tex.App.--Corpus Christi-Edinburg 2004, pet. ref'd). Further, the appellate court must review the trial court's ruling in light of the arguments that were before the trial court at the time it ruled. *Wead*, 129 S.W.3d at 129.

A trial judge's discretion to declare a mistrial is based on manifest necessity which is limited to "very extraordinary and striking circumstances." [Internal citations omitted]. *Brown v. State*, 907 S.W.2d 835, 839 (Tex.Crim.App. 1995). While the Supreme Court has not delineated the exact circumstances in which manifest necessity exists, manifest necessity exists when the circumstances render it impossible to arrive at a fair verdict, when it is impossible to continue with trial, or when the verdict would be automatically reversed on appeal because of trial error. *Brown*, 907 S.W.2d at 839. "Only in extreme circumstances, where the prejudice is incurable, will a mistrial be required." *Archie v. State*, 221 S.W.3d 695, 699-700 (Tex.Crim.App. 2007), *citing Hawkins v. State*, 135 S.W.3d 72, 77 (Tex.Crim.App. 2004). The trial judge is required to consider and rule out "less drastic alternatives" before granting a mistrial. *Brown*, 907 S.W.2d at 839; *Ex parte Little*, 887 S.W.2d 62, 66 (Tex.Crim.App. 1994); *Harrison v. State*, 788 S.W.2d 18, 22 (Tex.Crim.App. 1990); *Torres v. State*, 614 S.W.2d 436, 442 (Tex.Crim.App. 1981).

"[W]hether a mistrial should have been granted involves most, if not all, of the same considerations that attend a harm analysis." *Hawkins*, 135 S.W.3d at 77. The determination of whether a mistrial is necessary is made by examining the particular facts of the case. *Ladd v. State*, 3 S.W.3d 547, 567 (Tex.Crim.App. 1999).

Turning to the facts of this case, our analysis focuses on whether Appellant's trial counsel

was so ill or disabled that he was unable to render constitutionally effective counsel. First, we note at the outset that Appellant does not point to any part of the record to demonstrate any deficiencies by his trial counsel. Our review of the two-day trial in which Appellant put on six defenses witnesses and one punishment witness do not reveal any constitutional infirmities of trial counsel's performance. On the contrary, in the punishment phase, conducted on Tuesday after the motion for mistrial was denied, the State in closing asked the jury to sentenced Appellant to fifteen years and a $10,000 fine. The jury sentenced Appellant to fifteen years and a fine of $5,000.

Viewing Appellant's trial counsel's performance in the light most favorable to the ruling, we cannot say that it was deficient. Appellant has failed to point out any incident at trial by his trial counsel that rendered it impossible to reach a fair verdict, that trial counsel was unable to continue, or that the verdicts in guilt-innocence and punishment are subject to automatic reversal on appeal because of trial error. The trial court did not abuse its discretion in overruling the motion for mistrial.

We overrule Appellant's first point of error.

Motion to Suppress

Standard of Review

We review a trial court's ruling on a motion to suppress for an abuse of discretion and will overturn a trial court's ruling on a motion to suppress only if it is arbitrary, unreasonable, or "outside the zone of reasonable disagreement." *Martinez v. State,* 348 S.W.3d 919, 922 (Tex.Crim.App. 2011); *State v. Dixon,* 206 S.W.3d 587, 590 (Tex.Crim.App. 2006); *Montgomery,* 810 S.W.2d at 391-392. That discretion is tested under a bifurcated standard of review. *Furr v. State,* 499 S.W.3d 872, 877 (Tex.Crim.App. 2016). At a suppression hearing, the trial court is the sole and exclusive trier of fact and judge of the witnesses' credibility and may choose to believe

or disbelieve all or any part of the witnesses' testimony. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex.Crim.App. 2002); *State v. Ross*, 32 S.W.3d 853, 855 (Tex.Crim.App. 2000). We give almost total deference to the trial court's resolution of questions of historical fact and of mixed questions of law and fact that turn on the weight or credibility of the evidence. *Arguellez v. State*, 409 S.W.3d 657, 662 (Tex.Crim.App. 2013). We review *de novo* mixed questions of law and fact that do not turn on credibility and demeanor. *Wade v. State*, 422 S.W.3d 661, 667 (Tex.Crim.App. 2013); *Arguellez*, 409 S.W.3d at 662. Under a *de novo* review, we look to whether the totality of the circumstances is sufficient to support an officer's reasonable suspicion of criminal activity. *Arguellez*, 409 S.W.3d at 662.

When the trial court fails to make explicit findings of fact, such as in this case, we infer the necessary fact-findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, would support those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex.Crim.App. 2008); *Wiede v. State*, 214 S.W.3d 17, 25 (Tex.Crim.App. 2007). We will sustain the ruling of the trial court if it is correct under any applicable theory of law. *Arguellez*, 409 S.W.3d at 662-663.

Error

Appellant argues no probable cause existed prior to the search of his vehicle. He asserts based on the totality circumstances prior to the search, the State's only evidence of probable cause was: (1) the inconsistent statements by Lopez and Munoz; (2) Lopez's family reputation; and (3) Munoz's actions and subsequent flight.

"Pursuant to the Fourth Amendment, a warrantless search of either a person or property is considered per se unreasonable subject to a 'few specifically defined and well established exceptions.'" *McGee v. State*, 105 S.W.3d 609, 615 (Tex.Crim.App. 2003). When a warrantless

search has been conducted, the State carries the burden in a motion to suppress to establish the application of the exception for the requirement to obtain a warrant. *See id.* Many permissible searches without a warrant are based on probable cause, like with the automobile exception to obtaining a search warrant. *See Marcopoulos v. State,* 538 S.W.3d 596, 600 (Tex.Crim.App. 2017). Under the automobile exception, law enforcement officials may conduct a warrantless search of a vehicle if it is readily mobile and there is probable cause to believe that it contains contraband or evidence of a crime. *See Keehn v. State*, 279 S.W.3d 330, 335 (Tex.Crim.App. 2009); *Powell v. State*, 898 S.W.2d 821, 827 (Tex.Crim.App. 1994).

Probable cause exists where the facts and circumstances known to law enforcement officers are "sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." [Internal quotations omitted]. *Brinegar v. United States,* 338 U.S. 160, 175-76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949)(quoting *Carroll v. United States,* 267 U.S. 132, 161-62, 45 S.Ct. 280, 288, 69 L.Ed. 543 (1925)). For a trial court to find probable cause exists, there must be "a 'fair probability' of finding inculpatory evidence at the location being searched." *Neal v. State,* 256 S.W.3d 264, 282 (Tex.Crim.App. 2008). We are instructed to measure this "probabilit [y]" by "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar,* 338 U.S. at 175, 69 S.Ct. at 1310. Further, the reviewing court must take into account "the totality of the circumstances" known to the officer, forgoing a "divide-and-conquer" or "piecemeal" approach. *Wiede,* 214 S.W.3d at 25.

An appellate court may take judicial notice of an adjudicative fact *sua sponte.* *See* TEX.R.EVID. 201(f); *In re Baylor Medical Center at Garland,* 280 S.W.3d 227, 229 n.6 (Tex. 2008)(orig. proceeding)(taking judicial notice *sua sponte* that trial judge had been replaced by

election during pendency of mandamus case); *see also O'Quinn v. Hall,* 77 S.W.3d 438, 447 (Tex.App.--Corpus Christi-Edinburg 2002, no pet.)(discussing nature of "adjudicative facts"); *Harper v. Killion,* 162 Tex. 481, 485, 348 S.W.2d 521, 523 (1961)(holding intermediate appellate court could take judicial notice that entire city of Jacksonville was located in Cherokee County, Texas); *City of Dallas v. Moreau,* 718 S.W.2d 776, 781 (Tex.App.--Corpus Christi-Edinburg 1986, writ ref'd n.r.e.)(concluding appellate court could take judicial notice of city charter on appeal when city charter showed trial court lacked authority to submit wrongful-termination appeal to a jury). Judicially noticed facts cannot be subject to reasonable dispute in that they are either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. TEX.R.EVID. 201(b).

Analysis

Appellant told Trooper Shock, in response to why he was speeding, that he was coming from Fort Stockton and was on his way to meet his sister in Pecos to take his mother to the emergency room in Odessa. Our review of *Google* maps indicates that coming from Ft. Stockton to meet in Pecos, Appellant was taking the most direct route to meet his sister and then proceed to Odessa with his mother.[3] TEX.R.EVID. 201(b); *International-Great N. R. Co. v. Reagan,* 121 Tex. 233, 49 S.W.2d 414, 416 (1932)(taking judicial notice of maps). Viewed from an objective standard, Appellant's route does not appear to be geographically improbable.

Appellant was unable to specifically state why his mother needed to go to the emergency room, which viewed objectively is suspicious. Most individuals can articulate the "emergency" that is precipitating the need to go to a hospital emergency room. Munoz's extreme nervousness,

[3] https://www.google.com/maps/dir/Pecos,+TX

to the point of his body experiencing visible tremors, also heightens the trooper's suspicions. The fact that Appellant nor Munoz could not identify each other, despite knowing each other for two-three months; Appellant had helped Munoz get a job; and they were spending the night in a hotel room to "party" also contributed to the trooper's suspicions.

Turning to Trooper Shock's information Appellant was the "largest methamphetamine dealer in the area," can be a factor in determining probable cause, but in and of itself is not enough to justify a search of the vehicle. *Hernandez v. State,* 523 S.W.2d 410, 412 (Tex.Crim.App. 1975)(known burglar and narcotic addict, parked in front of motel with partially covered television set in trunk along with adding machine believed to be stolen was sufficient probable cause to arrest). Multiple anonymous sources regarding sales of narcotics can be used as one of the factors to determine probable cause. *State v. McLain,* 337 S.W.3d 268, 273 (Tex.Crim.App. 2011).

However, in *Marcopoulos*, the Court of Criminal Appeals discussed *Sibron*, which bears upon the issue of associating with known narcotics addicts or places known to sell narcotics. *Marcopoulos*, 538 S.W.3d at 600-601, *citing Sibron v. New York,* 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968). The *Marcopoulos* court found no probable cause to search a vehicle based on the driver's visit to a known establishment of sales of narcotics coupled with furtive gestures. *Marcopoulos,* 538 S.W.3d at 603-04. Likewise, the *Sibron* court found no probable cause for Sibron's arrest after officers observed the defendant converse with known narcotics addicts for eight hours. *Sibron,* 392 U.S. at 45, 88 S.Ct. at 1893.

Last, passenger Munoz's attempt to hide contraband in his hand upon being searched; running from law enforcement; admitting to the possession of a controlled substance; and his subsequent arrest are factors in our analysis of whether Trooper Shock had sufficient probable cause.

Viewed in the light most favorable to the trial court's ruling, we find the denial of the motion to suppress is not arbitrary, unreasonable, or "outside the zone of reasonable disagreement." Here, multiple reports of Appellant's alleged drug activity; not knowing the identity of the individual in his vehicle despite their personal history; inability to articulate the "emergency;" passenger Munoz's extreme nervousness; his attempted escape; and subsequent arrest for a controlled substance collectively constitute probable cause to search Appellant's vehicle. Under the totality of circumstances, the facts are sufficient to support the conclusion that a person of reasonable belief, an offense has been or is being committed. Given all the circumstances, there was a fair probability of finding inculpatory evidence in Appellant's car that evening.

Appellant's second point of error is overruled.

CONCLUSION

Finding no error, we affirm the judgment of the trial court.

May 11, 2018

YVONNE T. RODRIGUEZ, Justice

Before McClure, C.J., Rodriguez, and Hughes, JJ.
Hughes, J. (Not Participating)

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