Affirmed as Modified; Opinion Filed January 21, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01589-CR

REGINALD DARRELL THOMAS a/k/a KEVIN DOBSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F14-00358-V

MEMORANDUM OPINION

Before Justices Bridges, Francis, and Myers
Opinion by Justice Myers

Appellant was convicted by a jury of the theft of property valued at $20,000 or more but less than $100,000. The trial court sentenced him to six years' imprisonment, probated for five years, and a $1000 fine. In two issues, appellant contends the non-accomplice evidence is insufficient to support the conviction and that the State impermissibly argued at closing that appellant had some burden to prove his innocence. As modified, we affirm the trial court's judgment.

BACKGROUND AND PROCEDURAL HISTORY

A Dallas County grand jury indicted appellant on July 30, 2014, for the third-degree felony offense of theft of a motor vehicle valued at $20,000 or more but less than $100,000, without the effective consent of the owner. *See* TEX. PENAL CODE ANN. § 31.03(e)(5). The vehicle in question, a gray 2009 Volkswagen Jetta four-door sedan, was owned by Metro

Volkswagen.

Harold Banks, the accomplice witness in this case, testified that he worked as a salesman at Metro Volkswagen from 2004 to 2006. In 2007 or 2008, he and appellant devised a plan to steal two vehicles from Metro. As part of their plan, while visiting Metro during business hours, appellant conversed with an employee in the "make ready" area of the dealership to distract him while Banks secretly grabbed a pair of car keys that were hanging on a peg board on a nearby wall. Banks and appellant left with the keys. Banks testified that appellant knew at the time Banks had stolen the keys.

The two men later returned to the dealership at night after it had closed. Appellant used a cutting tool he brought to cut the lock on the gate to the dealership. Once inside, appellant and Banks used the stolen keys to steal two cars—a 2006 Audi and a 2006 Lexus—from the lot. Banks kept the Audi; appellant kept the Lexus.[1]

Banks drove the stolen Audi until sometime in 2009, when it was towed for a parking violation. He decided he needed a new car. Relying on the fact that the people at Metro Volkswagen, his former place of employment, knew and trusted him, Banks devised a plan with appellant to steal a car from Metro after a test-drive. Banks testified that appellant was aware he was unemployed at the time and had not worked at Metro for years.

Appellant and Banks visited Metro in April of 2009 and, just as they had planned, asked to test-drive some diesel Volkswagen Jettas. Banks testified that he was trusted enough at the dealership so that one of the salesmen gave him the keys to four or five Jettas. Banks and appellant test drove two of those vehicles. They did so on their own; they were not accompanied by any Metro employees. After the final test-drive, appellant and Banks switched out two keys from the dealership with two older but identical-looking keys appellant had brought. To switch

[1] Appellant was not indicted for the theft of the Lexus; this was alleged as an extraneous offense.

the keys, the men used a tool kit supplied by appellant to remove the wire attached to each original key fob and to replace it with a new wire, which appellant also supplied. After concluding their last test-drive, appellant and Banks gave the two switched-out keys, along with the remaining keys they had not disturbed, to Metro and left the dealership with the two stolen keys.

Luis Melendez, an employee of Metro and Banks's former co-worker, testified at trial that all Volkswagen keys, even those from different years, looked the same and that it would have been impossible to visually identify a false set of Volkswagen keys from the ones owned by the dealership. A plastic "tie wrap" containing the vehicle's stock number was attached to each key to identify it. As Melendez explained, however, those "tie wraps" were easily obtainable at a store like Home Depot. He added that "[a]ll you have to do is take out the key, put everything back, and nobody is going to expect anything."

A few days after they left the Metro dealership with the stolen keys, appellant drove with Banks back to the dealership after midnight, when it was closed. Walking around the gates onto the property, they used the two Jetta keys they had stolen to either sound the car horns to the corresponding cars or flash their lights in order to find the car to which each key belonged. After finding the two cars, appellant and Banks each drove one of the cars out of the lot and kept it. Appellant used his computer to make temporary dealer tags, which he and Banks placed on the stolen vehicles. Banks took an unused registration sticker that he found in the glove box of appellant's Infiniti vehicle and, with appellant's knowledge, placed it on the windshield of appellant's stolen Jetta.

In late April of 2009, Metro employees doing an inventory discovered two Jettas were missing from the dealership lot. The last person known to have test-driven the vehicles was Banks during his visit earlier that month. Metro employees found two sets of Volkswagen keys

that did not belong to either of the missing Jettas or any of the cars on the dealership lot. There was no documentation on file to show anyone had purchased or leased the missing Jettas.

The State charged Banks with the theft of one of the Volkswagen Jetta vehicles from Metro. In 2011, Banks pleaded guilty to the same offense for which appellant was indicted in the present case: theft of property valued at $20,000 or more but less than $100,000, without the effective consent of the owner. At his May 2011 sentencing hearing, Banks identified appellant as his accomplice. The trial court sentenced Banks to ten years' imprisonment, suspended the sentence, and placed him on community supervision for ten years. Banks testified that neither the police nor the State promised or gave him anything in exchange for his identification of appellant.

During photographic lineups conducted on July 23, 2009, Luis Melendez and Kevin Pak, employees of Metro and Banks's former co-workers, each identified appellant as the person who test-drove the stolen Jettas with Banks in April of 2009. On the following day, July 24, Irving and Fort Worth police officers went to a house on 3700 Jade Street in Fort Worth, Texas, appellant's suspected location, to execute a warrant for his arrest. When they arrived at the home, officers found a newer-looking blue Jetta—later confirmed to be the stolen vehicle—parked in the driveway.

Officers loudly knocked and even pounded on the door of the home for approximately two hours, off and on, but no one responded. Officers also used a metal baton to pound on the door. There was no response. Irving Police detective Rocky Bailey testified that when he and the other officers realized no one was going to answer the door, he had an opportunity to take a closer look at the Jetta and believed it was the stolen vehicle. When they ran the license plate number displayed on the vehicle, it did not belong to a Volkswagen Jetta, and the registration sticker was for only one year. This was suspicious because the Jetta appeared to be a new

vehicle and registration stickers for new vehicles were for two years, not one.

At some point, Detective Bailey approached the side of the home and yelled, but still there was no response. While waiting for a wrecker to arrive to tow the Jetta, officers heard a "chirp" and a "click," which indicated someone nearby was remotely locking the doors on the vehicle using a key fob. Since there was no one present outside other than officers, it appeared to the police that someone in the house was locking the vehicle to prevent officers from taking it. Convinced there were people inside the house, Detective Bailey asked Forth Worth Police detective Dewayne Browning, who was assisting in the arrest, for his help in obtaining a search warrant for the residence.

Detective Browning testified that after he returned to the scene, the officers continued "to pound on the door even harder." Still there was no response. After knocking and pounding on the door with no response, officers used the public address system on a patrol car to make "loud announcements" informing appellant they had a warrant for his arrest and requesting him to come outside. Detective Browning testified that the announcements were loud enough that "the entire neighborhood" could hear them, and he recalled that "neighbors were coming out of all the houses around there looking and wondering what's going on and listening." No one, however, answered the door. Having received no response, police officers kicked the front door of the house open and entered the residence pursuant to the search warrant for the home.

When the officers entered the home, Detective Browning immediately spotted, in plain-view, two sets of keys sitting on top of a counter. He pointed out the keys to Irving police officers, who seized them. Appellant and his girlfriend emerged from a bedroom, and officers immediately arrested appellant. According to Detective Browning, appellant did not appear to be surprised when the police entered the home and seemed to know why the police were there. No one else was present in the home. During their search of the house, officers found no

documentation pertaining to the stolen Jetta and appellant did not indicate to officers that there was paperwork for the Jetta in the house or in the vehicle. Officers tested the key fobs found inside the residence, and one of them operated the Jetta in the driveway.

Officers later discovered that the vehicle's registration sticker, which showed an April 2010 expiration date, had been tampered with. The eight-digit portion of the vehicle identification number (VIN) found on the bottom-right corner of the sticker did not match the "fake" VIN displayed on the Jetta or any other VIN. A check of the Jetta's license plate number, shown in the upper-left part of the sticker, revealed it belonged to a 1972 Plymouth that was last registered in 1990 to someone named Tony Alberts in Odessa, Texas. Detective Bailey testified that the registration sticker had been altered; a piece of paper created on a computer had been inserted over a valid registration sticker, which expired in April 2009, making it look like a current, up-to-date registration sticker that expired in April 2010. The license plate number and portion of the VIN on the valid April 2009 sticker belonged to a 2005 Infiniti that was legally registered to appellant. The detective explained that the valid registration sticker "would have had to have been removed from a vehicle" and "the fake part created somehow and placed on top of it, covering up the 04, 09."

After appellant's arrest, his attorney contacted Detective Bailey and explained that appellant thought he had purchased the Jetta from Banks. Detective Bailey testified that, from examining appellant's legitimately owned Infiniti vehicle, it appeared he knew how to apply for and transfer title. Brian Hagestad, the former general manager and owner of the dealership, agreed that an unknowledgeable buyer would be unlikely to know the proper documented procedure for buying a vehicle. Attempting to cast doubt on evidence that appellant was the source of the forged registration documents, the defense pointed out during its cross-examination of Detective Bailey that the police did not seize Banks's computer or attempt to retrieve

fingerprints from the registration sticker or license plates. Additionally, other evidence showed that appellant purchased a part at Metro Volkswagen three weeks after the theft; a manager agreed with defense counsel that he had never heard of a person stealing a car from a dealership and then returning back three weeks later to buy a part.

DISCUSSION

I. Corroboration of the Accomplice Witness Testimony

In his first issue, appellant contends the non-accomplice evidence is insufficient to support the conviction. A challenge to the sufficiency of the evidence corroborating accomplice testimony is not the same as a challenge to the sufficiency of the evidence supporting the verdict as a whole. *Simons v. State*, No. 05–12–01539–CR, 2014 WL 3700667, at *6 (Tex. App.—Dallas July 24, 2014, pet. ref'd) (not designated for publication) (citing *Cathey v. State*, 992 S.W.2d 460, 462–63 (Tex. Crim. App. 1999); *Cantelon v. State*, 85 S.W.3d 457, 460 (Tex. App.—Austin 2002, no pet.)). To corroborate accomplice witness testimony, the law requires that there be some non-accomplice evidence which tends to connect the accused to the commission of the offense. *Id*. (quoting *Hernandez v. State*, 939 S.W.2d 173, 178–79 (Tex. Crim. App. 1997)); *see* TEX. CODE CRIM. PROC. ANN. art. 38.14. Corroboration is insufficient if it merely shows the offense was committed. TEX. CODE CRIM. PROC. ANN. art. 38.14; *Smith v. State*, 332 S.W.3d 425, 439 (Tex. Crim. App. 2011). To determine the sufficiency of the corroboration, we eliminate all of the accomplice testimony from consideration and then examine the remaining portions of the record to see if there is any evidence that tends to connect the accused with the commission of the offense. *Castillo v. State*, 221 S.W.3d 689, 691 (Tex. Crim. App. 2007). We view the corroborating evidence in the light most favorable to the jury's verdict. *Brown v. State*, 270 S.W.3d 564, 567 (Tex. Crim. App. 2008).

The corroborating evidence may be direct or circumstantial, and need not be sufficient by

itself to establish the defendant's guilt. *Smith*, 332 S.W.3d at 442; *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008). The Texas Court of Criminal Appeals has noted that "[t]here need only be some non-accomplice evidence tending to connect the defendant to the crime, not to every element of the crime." *Joubert v. State*, 235 S.W.3d 729, 731 (Tex. Crim. App. 2007). Furthermore, "circumstances that are apparently insignificant may constitute sufficient evidence of corroboration." *Malone*, 253 S.W.3d at 257 (citing *Trevino v. State*, 991 S.W.2d 849, 852 (Tex. Crim. App. 1999)). Evidence that the defendant was in the company of the accomplice at or near the time or place of the crime is proper corroborating evidence, but such evidence alone is not conclusive corroboration. *Hernandez*, 939 S.W.2d at 178; *Nolley v. State*, 5 S.W.3d 850, 854 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

We look at the particular facts and circumstances of each case and consider the combined force of all the non-accomplice evidence that tends to connect the accused to the offense. *Smith*, 332 S.W.3d at 442; *Malone*, 253 S.W.3d at 257. No precise rule can be formulated as to the amount of evidence that is required to corroborate the testimony of an accomplice. *Dowthitt*, 931 S.W.2d at 249. In determining whether non-accomplice evidence tends to connect a defendant to the offense, the Court of Criminal Appeals has stated that "'the evidence must simply link the accused in some way to the commission of the crime and show that rational jurors could conclude that this evidence sufficiently tended to connect [the accused] to the offense.'" *Simmons v. State*, 282 S.W.3d 504, 508 (Tex. Crim. App. 2009) (quoting *Malone*, 253 S.W.3d at 257).

Appellant argues that the non-accomplice evidence in this case is "precisely in accordance with his defensive theory," which was that he possessed the car but did not know it was stolen. But the Court of Criminal Appeals has stated that "when there are two permissible views of the evidence (one tending to connect the defendant to the offense and the other not

tending to connect the defendant to the offense), appellate courts should defer to the view of that evidence chosen by the fact-finder." *Simmons*, 282 S.W.3d at 508; *see also Smith*, 332 S.W.3d at 442 ("[W]hen there are conflicting views of the evidence—one that tends to connect the accused to the offense and one that does not—we will defer to the factfinder's resolution of the evidence."); *Patterson v. State*, No. 05–13–00450–CR, 2015 WL 2400809, at *6 (Tex. App.—Dallas May 19, 2015, pet. denied) (not designated for publication) (concluding that despite conflicting testimony, jury was free to believe one version of the evidence over another and the non-accomplice testimony tended to connect defendant to the offense). "The issue then is not how an appellate court would independently assess the non-accomplice evidence but whether a rational fact-finder could conclude that the non-accomplice evidence 'tends to connect' appellant to the offense." *Simmons*, 282 S.W.3d at 509.

Viewed in the light most favorable to the verdict, the evidence showed that appellant was present at the scene of the offense and in the company of Banks near the period of time when the Jettas were stolen. Metro Volkswagen employees Melendez and Pak each identified appellant as the person who test-drove the Jettas with Banks in April of 2009. The non-accomplice evidence further showed appellant was in possession of one of the stolen Jettas shortly after his visit to Metro and the disappearance of the Jettas from the dealership. Detectives Browning and Bailey both testified that one of the stolen Jettas was found parked in the driveway of the house at which appellant was arrested and that the keys to that Jetta were inside the home.

Moreover, the State presented non-accomplice evidence from which the jury could rationally find appellant knew the vehicle was stolen. Detective Bailey's testimony and the State's evidence showed the registration sticker on the Jetta had been tampered with to make it look like a current, up-to-date registration that expired in April 2010. The VIN on the sticker did not match the VIN displayed on the Jetta, which Detective Baily described as "fake vin."

The license plate number belonged to a 1972 Plymouth that was last registered in 1990 to an individual in Odessa, Texas. The license plate number and VIN on the valid April 2009 sticker that was revealed when the forged part of the registration sticker was removed matched a 2005 Infiniti that was legally registered to appellant. That appellant had himself applied for the title to the Infiniti after purchasing it from a legitimate dealer was evidence he knew how to obtain a title and, thus, would have known he did not have good title to the Jetta. Furthermore, no documentation relating to the stolen Jetta was discovered or produced, nor did appellant indicate to officers that such documentation existed when they were searching the home when he was arrested. Other evidence showed the Jetta was remotely locked while it was parked in appellant's driveway after the police arrived, and that appellant attempted to avoid the police by hiding in the house during frequent and loud police announcement informing him there was a warrant for his arrest. *See*, *e.g.*, *Davila v. State*, Nos. 05–03–00689–CR & 05–03–00690–CR, 2004 WL 1173395, at *3 (Tex. App.—Dallas—May 27, 2004, no pet.) (not designated for publication) (defendant's attempt to avoid the police was evidence that tended to connect him to the robbery).

Even if non-accomplice evidence is insufficient, standing alone, to establish a defendant's guilt, non-accomplice evidence, as we stated earlier, need not be sufficient by itself to establish guilt beyond a reasonable doubt—there simply needs to be "other" evidence "tending to connect" the defendant to the offense alleged in the indictment. *Castillo*, 221 S.W.3d at 691; *McDuff v. State*, 939 S.W.2d 607, 613 (Tex. Crim. App. 1997). "It may confirm a 'mere detail' rather than the elements of the offense." *Medrano v. State*, 421 S.W.3d 869, 883 (Tex. App.—Dallas 2014, pet. ref'd (quoting *Lee v. State*, 29 S.W.3d 570, 577 (Tex. App.—Dallas 2000, no pet.)). "Even 'apparently insignificant incriminating circumstances' may provide sufficient corroboration. *Id*. (quoting *Trevino*, 991 S.W.2d at 852).

The evidence in the present case satisfies this standard. The combined force of all the non-accomplice evidence in this case shows that a rational jury could have found it tended to connect appellant to the offense. *Smith*, 332 S.W.3d at 442; *Simmons*, 282 S.W.3d at 508. Viewing all the non-accomplice evidence in the light most favorable to the verdict, we therefore conclude a reasonable jury could have found the non-accomplice evidence tended to connect appellant to the offense. Accordingly, the evidence is sufficient to support the conviction. We overrule appellant's first issue.

II. Jury Argument

In his second issue, appellant contends the State impermissibly argued to the jury that appellant had some burden to prove his innocence. Appellant's complaint arises out of an exchange that occurred during closing arguments at the guilt–innocence phase of the trial. The relevant portion of the record reads as follows:

> [PROSECUTOR]: I don't know if you remember opening statements, but remember in opening statements you heard 10, to 15 minutes worth of evidence that you were going to hear that defense counsel talked about and that is not evidence. Anything he said during that time is not evidence. He mentioned to you that there was a sublease, that you were going to hear about a sublease and that it was cash paid up front. You didn't hear any of that, right? No evidence. Nobody came here and testified from the stand that there was any sort of sublease or that there was any sort of evidence that he had paid cash up front. Zero. Those were just words out of the defense counsel's mouth. No evidence. You don't consider that.
>
> He also said that you would hear that the defendant had gone—you know, had been back to the dealership and there would be receipts showing that and everything. There are no receipts showing that the defendant went back to the dealership. That one guy they called, Tim, who they tried to put in that receipt through him that had some random date in 2009 on it. Remember? That is not evidence. The Judge took that out of evidence because it couldn't be linked at all to this defendant, this case, or any of these vehicles. It was a receipt with no name, no vehicle, no identification of what the parts were. You didn't hear about any receipts, or the defendant going back to this dealership that was suppose [sic] to help prove his innocence, like defense counsel argued. That was all words out of his mouth, just like his questions going on and on, very long, putting a lot of things out there. The questions themselves are not evidence. It's the answers that matter. The witness said, I don't know, I don't remember. That's your evidence.

> That's all you have. There's no evidence of that. So those are the things you're looking at.
>
> There are no documents in this case because they don't exist. Don't you know that if there was a title, if there was a lease contract—
>
> [DEFENSE COUNSEL]: Prosecutor is shifting the burden.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: If there was a sublease contract that you would have gotten those documents. Don't you know you would have gotten them if they existed. Who here has ever bought anything important without a contract? A house, an apartment that you're renting, a car that you buy, a car that you're renting. You can't even go to a gym without signing a contract. If those things are going on, there are contracts. There's no evidence regarding any of that, and the fact that there is no evidence you can use as evidence.
>
> [DEFENSE COUNSEL]: Your Honor, I object. That's not the law. She's continuing to shift the burden.
>
> THE COURT: Overruled.

We review a trial court's ruling on an objection to improper jury argument for abuse of discretion. *Garcia v. State*, 126 S.W.3d 921, 924 (Tex. Crim. App. 2004). Proper jury arguments generally fall within one of four areas: (1) summation of the evidence, (2) reasonable deduction from the evidence, (3) answer to opposing counsel's argument, and (4) plea for law enforcement. *Freeman v. State*, 340 S.W.3d 717, 727 (Tex. Crim. App. 2011). When examining challenges to jury argument, we consider the remark in the context in which it appears. *Jackson v. State*, 17 S.W.3d 664, 675 (Tex. Crim. App. 2000) (citing *Gaddis v. State*, 753 S.W.2d 396, 398 (Tex. Crim. App. 1988)).

Courts have long held that, during jury argument, a prosecutor may comment on a defendant's failure to produce witnesses and evidence so long as the comment does not fault the defendant for exercising his right not to testify. *See Pope v. State*, 207 S.W.3d 352, 365 (Tex. Crim. App. 2006) (stating that "a party may always comment on the fact that the opponent failed to call an available witness and then argue 'Don't you know, if Mr. X had anything favorable to

say, my opponent would have called him.'"); *Jackson v. State*, 17 S.W.3d 664, 674 (Tex. Crim. App. 2000) ("We have held that the prosecutor may comment on the defendant's failure to produce witnesses and evidence so long as the remark does not fault the defendant for exercising his right not to testify."); *Patrick v. State*, 906 S.W.2d 481, 491 (Tex. Crim. App. 1995) ("[I]f the language can reasonably be construed to refer to appellant's failure to produce evidence other than his own testimony, the comment is not improper."). Jury argument pointing out that the defendant has failed to present evidence in his favor does not shift the burden of proof but instead summarizes the state of the evidence and is a reasonable deduction from the evidence. *See Jackson*, 17 S.W.3d at 674 (prosecutor's argument that "the defense would have called its [DNA] expert to the stand if it had seriously disputed the State's evidence" did not shift burden of proof to defense and was permissible comment on state of the evidence); *Caron v. State*, 162 S.W.3d 614, 618 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (prosecutor's statement that "[i]f there is something out there that is going to exonerate you, you want to make it known" was permissible jury argument). In summarizing the evidence, the State is entitled to argue that the jury should not be concerned with evidence not presented at trial. *See Harris v. State*, 122 S.W.3d 871, 884–85 (Tex. App.—Fort Worth 2003, pet. ref'd) (comment during jury argument on defendant's failure to produce testimony from other witnesses concerning any motive for victims to falsely accuse defendant of sexual assault was "merely a summation of the evidence presented at trial, coupled with an argument that the jury should not be concerned with evidence not presented at trial."); *Hogan v. State*, No. 05–12–00405–CR, 2013 WL 2389925, at *6 (Tex. App.—Dallas May 30, 2013, no pet.) (mem. op., not designated for publication) (argument referring to testimony of two witnesses and stating that "[i]f there was anybody in the world to say that they were not truthful or honest people, the defense could have brought that to you," and that "if the defense wanted a witness here, they could have gotten them here," "was merely a

summation of evidence presented at trial, coupled with an argument that jury should not be concerned with evidence not presented at trial.")

In this case, the challenged argument by the State was not an attempt to shift the burden of proof to the defense but, instead, constituted a proper summary of the state of the evidence, coupled with an argument that the jury should not be concerned with evidence that was not presented at trial. This was permissible jury argument. *See, e.g., Jackson*, 17 S.W.3d at 674; *Caron*, 162 S.W.3d at 618; *Harris*, 122 S.W.3d at 884–85; *Hogan*, 2013 WL 2389925, at *6. Therefore, the trial court did not err by overruling appellant's objections to the State's jury argument. We overrule appellant's second issue.

III. MODIFICATION OF JUDGMENT

We also note that the trial court orally pronounced a fine of $1000 at sentencing, but the judgment recites the fine as "N/A." When a conflict exists between the oral pronouncement and the written judgment, the oral pronouncement controls. *See Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998). We modify the judgment to include the $1000 fine. *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.

/ Lana Myers/
LANA MYERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

REGINALD DARRELL THOMAS a/k/a KEVIN DOBSON, Appellant

No. 05-14-01589-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. F14-00358-V.
Opinion delivered by Justice Myers. Justices Bridges and Francis participating.

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

"Fine: $N/A" should be changed to "Fine: $1000."

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

Judgment entered this 21st day of January, 2016.