Opinion issued August 16, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00464-CR

EX PARTE LUCAS VIEIRA, Appellant

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Case No. 1736891

O P I N I O N

Appellant, Lucas Vieira, challenges the trial court's order denying his pretrial "Application for Writ of Habeas Corpus and Motion to Dismiss Under Statute of Limitations."[1] In his sole issue, appellant contends that the trial court "improperly denied" his application for writ of habeas corpus and motion to dismiss.

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1 *See* TEX. R. APP. P. 31.

We affirm.

Background

Appellant is charged with the felony offense of aggravated assault by a public servant.[2] On July 9, 2021, a Harris County Grand Jury issued a true bill of indictment alleging that, on or about July 7, 2019, appellant:

> did then and there unlawfully, while a public servant, to-wit: a Houston Police Officer, acting under color of his office and employment, intentionally and knowingly threaten [complainant] with imminent bodily injury by using and exhibiting a deadly weapon, namely, handcuffs.[3]

On July 23, 2021, appellant filed a pretrial "Application for Writ of Habeas Corpus and Motion to Dismiss Under Statute of Limitations," and "Memorandum in Support" of his habeas application and motion to dismiss, arguing that "the State is barred" from prosecuting appellant, because "[o]n its face, the indictment shows that the [appellant] was indicted more than two years after the date of the alleged offense," which, appellant argues, is outside the applicable statute of limitations. The trial court held two hearings on appellant's habeas application and motion to dismiss, on August 13, 2021 and August 17, 2021. At the conclusion of the August 17, 2021 hearing, the trial court signed an order denying appellant's requested habeas relief and motion to dismiss.

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2 *See* TEX. PENAL CODE ANN. § 22.02(a)(2), (b)(2)(A).

3 *See id.*

Appellant timely filed a notice of appeal from the trial court's denial of his pretrial habeas application and motion to dismiss. In the sole issue raised in his appellant's brief, appellant argues that the "trial court improperly denied [his] Application for Writ of Habeas Corpus and Motion to Dismiss Under Statute of Limitations finding that an indictment returned on July 9, 2021, based on an event that occurred on July 7, 2019, was within the two-year statute of limitations."

Standard of Review

In his appeal, appellant challenges the sufficiency of the indictment, specifically, whether the indictment was timely returned pursuant to the applicable statute of limitations. "The sufficiency of an indictment is a question of law." *See State v. Moff,* 154 S.W.3d 599, 601 (Tex. Crim. App. 2004). Where "the resolution of a question of law does not turn on an evaluation of the credibility and demeanor of a witness . . . the trial court is not in a better position to make the determination" than an appellate court on review, and as such "appellate courts should conduct a *de novo* review of the issue." *Id.*

Here, the resolution of appellant's application for habeas relief and motion to dismiss on limitations grounds do "not turn on an evaluation of the credibility and demeanor of a witness." *Id.* Accordingly, we will review the trial court's denial of appellant's application for habeas relief and motion to dismiss on limitations grounds *de novo*. *Id.*; *see also Brice v. State*, No. 14-13-00935-CR, 2015 WL

545557, at *1 (Tex. App.—Houston [14th Dist.] Feb. 10, 2015, no pet.) (mem. op., not designated for publication) ("We review *de novo* the trial court's denial of the motion [to dismiss on limitations grounds] because it turned on a question of law, not on the credibility and demeanor of witnesses, and thus, the trial court was in no better position than our court to decide the motion.").

Analysis

In his sole issue, appellant argues that the trial court erred in denying his application for writ of habeas corpus and motion to dismiss under statute of limitations.

Appellant was charged with the felony offense of aggravated assault by a public servant. TEX. PENAL CODE ANN. § 22.02(a)(2), (b)(2)(A). The true bill of indictment, issued by a Harris County Grand Jury, alleged that, on or about July 7, 2019, appellant "unlawfully, while a public servant, to-wit: a Houston Police Officer, acting under color of his office and employment, intentionally and knowingly threaten[ed] [complainant] with imminent bodily injury by using and exhibiting a deadly weapon, namely, handcuffs." The indictment was returned on July 9, 2019.

The parties agree that the applicable statute of limitations for the indicted offense, aggravated assault, is two years. *See* TEX. CODE CRIM. PROC. ANN. art. 12.02(a), 12.03(d); *see also State v. Schunior*, 506 S.W.3d 29, 37–38 (Tex. Crim.

App. 2016) (concluding that the statute of limitations for aggravated assault is two years where "the primary crime is misdemeanor assault"). The parties further agree that the alleged offense took place on July 7, 2019, and that the indictment was returned on July 9, 2021.

Importantly, the parties disagree regarding whether July 9, 2021 is within the two-year limitations period. In his brief, appellant argues that the indictment "was, on its face, filed two years and two days after the events on which the [i]ndictment was based occurred and clearly outside of the two-year limitations period," and as such "the prosecution against [appellant] was barred by the statute of limitations and should be dismissed with prejudice." On the other hand, the State contends that "[a]ppellant's argument fails because appellant has not properly computed the limitations period applicable to his case." Accordingly, the issue presented is, on its face, straight-forward: was the indictment, dated July 9, 2021, returned within the two-year limitations period set forth in article 12.02(a) of the Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 12.02(a).

A. General Principles of Statutory Interpretation

The determination regarding whether the indictment was returned within the two-year limitations period requires us to interpret the applicable statutes. "In interpreting statutes, we seek to effectuate the Texas Legislature's collective intent, and we presume that the Legislature intended for the entire statutory scheme to be

effective." *Tiscareno v. State*, 608 S.W.3d 434, 437 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd). Giving effect to the Legislature's intent requires that we look to "the plain meaning of the statute's language unless it is ambiguous or the plain meaning would lead to absurd results that the [L]egislature could not have possibly intended." *Lopez v. State*, 600 S.W.3d 43, 45 (Tex. Crim. App. 2020). To determine the plain meaning of a statute, we must "presume that every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible." *Lang v. State*, 561 S.W.3d 174, 180 (Tex. Crim. App. 2018) (quoting *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).

If, however, the language of the statute is ambiguous, or the application of the statute's plain meaning "would lead to absurd consequences that the Legislature could not *possibly* have intended . . . then and only then . . . is it constitutionally permissible for a court to consider" extratextual factors. *See Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (emphasis in original). "A statute is ambiguous when it 'may be understood by reasonably well-informed persons in two or more different senses.'" *Lang*, 561 S.W.3d at 180 (quoting *Bryant v. State*, 391 S.W.3d 86, 92 (Tex. Crim. App. 2012)). A statute is unambiguous where it permits only one reasonable understanding. *See Yazdchi v. State*, 428 S.W.3d 831, 838 (Tex. Crim. App. 2014).

B. Applicable Limitations Period to Offense Charged

At issue in this appeal is the interpretation of the statute of limitations for the offense appellant has been charged with, aggravated assault by a public servant. *See* TEX. PENAL CODE ANN. § 22.02(a)(2), (b)(2)(A). Limitations periods for criminal offenses are governed by Chapter 12 of the Code of Criminal Procedure, entitled, "limitation." *See generally* TEX. CODE CRIM. PROC. ANN. art. 12.01, *et. seq.*

The offense of aggravated assault by a public servant is a first-degree felony. *See* TEX. PENAL CODE ANN. § 22.02(b)(2)(A) ("An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if . . . the offense is committed by a public servant acting under color of the servant's office or employment."). However, the Code of Criminal Procedure provides that "any offense that bears the title 'aggravated' shall carry the same limitation period as the primary crime." *See* TEX. CODE CRIM. PROC. ANN. art. 12.03(d). The "primary crime" charged against appellant is misdemeanor assault. *See Schunior*, 506 S.W.3d at 37–38.

The limitations period of misdemeanor assault is set by article 12.02 of the Code of Criminal Procedure, which states that "[a]n indictment or information for any Class A or Class B misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward." TEX. CODE CRIM. PROC. ANN. art. 12.02(a). Accordingly, as the parties have agreed, the limitations period

for the offense of aggravated assault is two years. However, in calculating the limitations period, the Code of Criminal Procedure further provides that "[t]he day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time." TEX. CODE CRIM. PROC. ANN. art. 12.04 (titled "computation").

C. Charge to Ensure Entire Statutory Scheme is Effective

According to appellant, on its face, the July 9, 2021 indictment was returned "two years and two days" after the date of the alleged offense, July 7, 2019, and as such, "the statute of limitations had expired before [appellant] was indicted, [and] the trial court's decision should be reversed, and the charges against him should be dismissed with prejudice."

However, in interpreting statutes, our charge is to "effectuate the Texas Legislature's collective intent," and to interpret statutes to ensure that the "entire statutory scheme . . . [is] effective." *See Tiscareno*, 608 S.W.3d at 437. To do so, we must look beyond the language of only article 12.02 of the Code of Criminal Procedure, and "presume that every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible." *Lang*, 561 S.W.3d at 180 (quoting *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)). In effectuating the Legislature's collective intent, we cannot ignore that article 12.04 of the Code of Criminal Procedure, titled

"computation," requires that, in computing limitation periods, "[t]he day on which the offense was committed *and* the day on which the indictment or information is presented *shall be excluded* from the computation of time." TEX. CODE CRIM. PROC. ANN. art. 12.04 (emphasis added).

In his brief, appellant contends that the indictment "was, on its face, filed two years and two days" after the alleged offense, and that "in order to prosecute [appellant] for the offense, the State was required to present 'an indictment or information' against him by July 7, 2021, 'and not afterward.'" However, appellant's argument ignores the language of article 12.04, thus failing to account for the "entire statutory scheme."

In his brief, appellant briefly addresses article 12.04, and its applicability to this situation, stating:

> The State will contend that under [a]rticle 12.04 of the Texas Code of Criminal Procedure, the date of the event and that date of the [i]ndictment are not counted. In this case, that would mean that July 7, 2019 (the day of the event) is not counted in the calculation. As such, the first day counted would be July 8, 2019. The last day of the two-year period would be July 7, 2021. And, by not counting the day of the indictment, an indictment filed on July 8, 2021 would have been timely (i.e., filed on the last day).

However, looking only at the plain language of articles 12.02 and 12.04 of the Code of Criminal Procedure, appellant's conclusion is faulty on its face, and inconsistent with his own analysis elsewhere in his brief.

First, despite correctly acknowledging that article 12.04 requires that the day of the alleged offense be excluded from the computation and conceding that "the first day counted would be July 8, 2019," appellant concludes that the "last day of the two-year period would be July 7, 2021." This is inconsistent with the conclusion reached by appellant's analysis of the limitations period pursuant to article 12.02(a), where he contends that by "the express language of article 12.02(a) . . . the State was required to present 'an indictment or information' against him by July 7, 2021, 'and not afterward.'" Appellant argues throughout his brief, without accounting for article 12.04, that the limitations period ran from July 7, 2019 to July 7, 2021.[4]

[4] Appellant's brief cites to several cases for the proposition that a limitations period ends on the same calendar date as it begins, absent any question of tolling. *See e.g., State v. Drummond*, 472 S.W.3d 857, 861 (Tex. App.—Houston [1st Dist.] 2015, *rev'd*, 501 S.W.3d 78 (Tex. Crim. App. 2016)) ("[P]ursuant to the express language of article 12.02(a), the State, to prosecute appellee for the offense [occurring on September 10, 2011], was required to present 'an *indictment* or *information*' against him by September 10, 2013, *'and not afterward*.'") (emphasis in original); *Anderson v. State*, 322 S.W.3d 401, 408 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd) ("Therefore, the statute of limitations on the offense of theft began to run on June 1, 2000, meaning that it expired on June 1, 2005."); *Gallardo v. State*, 768 S.W.2d 875, 880 (Tex. App.—San Antonio 1989, pet. ref'd) ("The three year limitation period being applicable to the instant offense, and the date alleged in the indictment being December 1, 1982, appellant's prosecution was barred on December 1, 1985 . . ."). Appellant argues that these cases support his contention that the limitations period ended on July 7, 2021, and the July 9, 2021 indictment was therefore untimely. We note however, that none of the cases cited by appellant include any discussion or analysis of the application of article 12.04. Similarly, we are not aware of any precedent from the Court of Criminal Appeals addressing the application of article 12.04 to the computation of limitations periods. This does not mean however, that we can simply ignore the express and unequivocal language of article 12.04, and its impact on the calculation of the limitations period at issue under the facts presented in this appeal. *See Tiscareno v. State*, 608 S.W.3d 434, 437 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd) ("In interpreting statutes, we seek to

Applying this logic, if "the first day counted [was] July 8, 2019," as appellant correctly acknowledges, it naturally follows that the last day of the two-year period would be July 8, 2021, not July 7, 2021.

Applying the express language of article 12.04 of the Code of Criminal Procedure, requiring that "[t]he day on which the offense was committed . . . shall be excluded from the computation of time," to the facts here, we conclude that the first day counted for purposes of computation of time related to the statute of limitations is July 8, 2019. TEX. CODE CRIM. PROC. ANN. art. 12.04. Further, given the unambiguous language of article 12.02(a), we conclude that the two-year period ended on July 8, 2021.

This does not end the necessary analysis because, in addition to excluding the day of the offense from the computation of time, article 12.04 further requires that "the day on which the indictment or information is presented shall be excluded from the computation of time." TEX. CODE CRIM. PROC. ANN. art. 12.04. Returning to appellant's analysis of the State's expected argument, appellant states that, accounting for article 12.04 of the Code of Criminal Procedure, "the first day counted would be July 8, 2019," and "[t]he last day of the two-year period would be July 7, 2021," leading appellant to conclude that, "by not counting the day of the

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effectuate the Texas Legislature's collective intent, and we presume that the Legislature intended for the entire statutory scheme to be effective.").

indictment, an indictment filed on July 8, 2021 would have been timely (i.e., filed on the last day)."

We agree with appellant's analysis, in part. As discussed above, we disagree with appellant's analysis regarding the calculation of the "last day of the two-year period," and conclude that the last day of the two-year period was July 8, 2021. However, we agree with appellant and conclude that the unambiguous language of article 12.04 leads to only one reasonable interpretation: the date an indictment is returned is not included in the computation of the statute of limitations. *See* TEX. CODE CRIM. PROC. ANN. art. 12.04. Accordingly, pursuant to the express language of article 12.04, an indictment that is returned one day after the end of the two-year period is within the limitations period provided by article 12.02(a).

Here, the alleged offense occurred on July 7, 2019. Pursuant to article 12.04, July 7, 2019 is excluded from the computation of the limitations period, and the first day of the period was July 8, 2019. *See* TEX. CODE CRIM. PROC. ANN. art. 12.04 ("The day on which the offense was committed . . . shall be excluded from the computation of time."). Applying the plain language of the statute, the two-year limitations period for aggravated assault ended on July 8, 2021. *See* TEX. CODE CRIM. PROC. ANN. art. 12.02(a), 12.03. However, as appellant acknowledges, taking into account the language of article 12.04, we must not "count[] the day of the indictment," and therefore, an indictment dated July 9, 2021 would be "filed on the

last day." *See* TEX. CODE CRIM. PROC. ANN. art. 12.04 (". . . the day on which the indictment or information is presented shall be excluded from the computation of time."). Accordingly, we conclude that the indictment, dated July 9, 2021, was returned within the limitations period. *See* TEX. CODE CRIM. PROC. ANN. art. 12.02(a), 12.04.

D. Conflict Between Articles 12.02(a) and 12.04

Appellant argues that this conclusion "directly conflicts with the clear language" of article 12.02(a), and that "on its face, July 7, 2019-July 9, 2021 is more than two years." And, according to appellant, the "plain language of the statute is clear, and any interpretation that allows a date after two years conflicts with the statute."

In support of this argument, appellant relies on the final clause of article 12.02(a), which states that an indictment must be "presented within two years from the date of the commission of the offense, **and not afterward**." TEX. CODE CRIM. PROC. ANN. art. 12.02(a) (emphasis added). Appellant argues that the language of article 12.02(a) "is not ambiguous and a literal interpretation of the plain language of [the] statute does not lead to an absurd result," which, according to appellant means that any indictment returned after July 7, 2021 should be barred as outside of the limitations period.

Contrary to appellant's assertions, it is this conclusion that "directly conflicts with the clear language of the statute." The conclusion advocated for by appellant, that the limitations period ended on July 7, 2021, would require us to ignore the language of article 12.04, which we must not do. *See Tiscareno*, 608 S.W.3d at 437 ("In interpreting statutes, we seek to effectuate the Texas Legislature's collective intent, and we presume that the Legislature intended for the entire statutory scheme to be effective."). We must give effect to the entire statutory scheme, and "read the statute in context and give effect to each word, phrase, clause, and sentence if reasonably possible." *Lang*, 561 S.W.3d at 180 (quoting *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).

In article 12.02 of the Code of Criminal Procedure, the "[L]egislature provided for a period of limitations upon prosecutions." *See Rendon v. State*, 695 S.W.2d 1, 5 (Tex. App.—Corpus Christi–Edinburg 1984, pet. ref'd) (concluding there is "no conflict" between articles 12.02(a) and 12.04); TEX. CODE CRIM. PROC. ANN. art. 12.02(a). Then, in article 12.04, the Legislature "prescribed the method of computing this period." *See Rendon*, 695 S.W.2d at 5; TEX. CODE CRIM. PROC. ANN. art. 12.04. This is a statutory scheme which the Legislature "clearly ha[s] the authority to" implement, and we see "no conflict" between the limitations period provided by article 12.02(a), and the computation of that limitations period as

provided by article 12.04 of the Code of Criminal Procedure. *See Rendon*, 695 S.W.2d at 5.

Conclusion

Accordingly, we overrule appellant's sole issue and affirm the order of the trial court.

Amparo Guerra
Justice

Panel consists of Justices Landau, Guerra, and Farris.

Publish. TEX. R. APP. P. 47.2(b).