Motion for En Banc Reconsideration Granted; December 2, 2021 Majority and Dissenting Opinions Withdrawn; Affirmed and Substitute Majority and Dissenting Opinions filed October 18, 2022.

In The

Fourteenth Court of Appeals

NO. 14-20-00754-CR

LLOYD ANDREW CHAMBERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 5823

M A J O R I T Y O P I N I O N O N E N B A N C R E C O N S I D E R A T I O N

We grant appellant's motion for en banc reconsideration, withdraw the opinions and judgment issued on December 2, 2021, and issue the following opinion and judgment. *See* Tex. R. App. P. 49.5.

A City of Houston municipal court jury found appellant Lloyd Andrew Chambers guilty of operating a commercial vehicle when not properly restrained

with a seat belt.[1] He appealed to Harris County criminal court at law, which affirmed his conviction.[2]

In a further appeal to this court, appellant seeks reversal for essentially two reasons. First, appellant argues that the municipal court erred in denying his motion to quash the complaint because, based on the doctrine of *in pari materia*, he was improperly charged under a federal regulation when he should have been charged under a different statute in the Texas Transportation Code. Second, he contends that the State failed to prove the charge beyond a reasonable doubt, including that appellant was not "properly restrained" by the seat belt.

We affirm.

Background

Houston Police Department Officer Lawrence Watkins was assigned to the department's Truck Enforcement Unit. Officer Watkins stopped appellant for failing to wear a seat belt across his shoulder. Appellant was driving an 18-wheel tractor trailer, a commercial vehicle, equipped with a seat belt assembly installed at the driver's seat. In Officer Watkins's words, "It had the normal [seat belt] with the strap that goes across the shoulder and around the waist." Officer Watkins testified that appellant was wearing a neon green shirt and that the seat belt was "dark-colored" and would have been easily visible had appellant been wearing it across his shoulder. Based on his observations, Officer Watkins did not believe that appellant was "properly restrained with a seatbelt assembly."

According to Officer Watkins, during the traffic stop appellant "stated he had the belt under his arm and he didn't like wearing it over the shoulder because it

[1] *See* Tex. Transp. Code §§ 644.051, 644.151; 37 Tex. Admin. Code § 4.11 (2013); *see also* 49 C.F.R. § 392.16.

[2] *See* Tex. Gov't Code § 30.00014(a).

bothers his neck." Officer Watkins issued appellant a citation, which concluded the traffic stop.

The State's complaint alleged that appellant "on or about 5/16/2019, . . . unlawfully operate[d] a commercial motor vehicle, which had a seat belt assembly installed at the driver's seat, . . . when not properly restrained with the seat belt assembly." The charged offense is based on Title 49, Part 392, section 392.16 of the Federal Motor Carrier Safety Regulations ("Regulation 392.16"), which requires commercial motor vehicle drivers to be "properly restrained" by a seat belt. *See* 49 C.F.R. § 392.16. The director of the Texas Department of Public Safety has adopted Regulation 392.16. *See* 37 Tex. Admin. Code § 4.11(a). The Texas Legislature has made the violation of a federal regulation adopted by the state public safety director, such as Regulation 392.16, a Class C misdemeanor, punishable by a fine not to exceed $500. *See* Tex. Transp. Code § 644.151; *see also* Tex. Penal Code § 12.23. The complaint referenced Transportation Code section 644.151.

Appellant pleaded not guilty and proceeded to jury trial. Before trial, appellant moved to quash the complaint. He argued that Regulation 392.16 is *in pari materia* with Texas Transportation Code section 545.413(a)(1), which prohibits persons over the age of fifteen years from failing to wear a seat belt when riding in a "passenger vehicle" equipped with a seat belt. *See* Tex. Transp. Code § 545.413(a)(1). Appellant argued that he should have been charged under section 545.413(a)(1)—applicable to persons riding in passenger vehicles—because it is more narrowly tailored than Regulation 392.16—applicable to drivers of commercial motor vehicles. Section 545.413(a)(1) applied, appellant argued, because a "truck tractor" is included in the definition of "passenger vehicle." *Id.* §§ 545.013(h), 545.012(f)(2). A violation of Section 545.413(a) is punishable by a

fine of $25 to $50. *See id.* § 545.413(d). The trial court denied appellant's motion to quash the complaint.

The jury found appellant guilty as charged in the complaint and assessed a $150 fine. Appellant timely filed a motion for new trial raising the matters at issue here.

Appellant appealed his conviction to the county criminal court at law. *See* Tex. Gov't Code § 30.00014(a) (authorizing appeal from judgment or conviction in municipal court of record); *see also id.* § 30.00014(b) (review based on errors set forth in appellant's motion for new trial and that are presented in the record). The county criminal court affirmed the municipal court's judgment, and appellant now appeals to this court. *See id.* § 30.00027(a)(1) (authorizing appeal to court of appeals when judgment affirmed and fine assessed is greater than $100). The record and briefs from the county criminal court at law have been filed in this court and constitute the record and briefs in this appeal. *See id.* § 30.00027(b). Thus, we review the same issues raised in the briefs submitted to the county criminal court at law. *See id.*

Jurisdiction

Before reaching the merits of appellant's issues, we first address a question of jurisdiction.

Our dissenting colleagues would dismiss appellant's appeal for lack of jurisdiction because the judge of the County Criminal Court at Law No. 4 of Harris County—the "appellate court" in this case[3]—signed no final judgment or appealable order when it signed its opinion deciding the appeal and affirming the

[3] *See* Tex. Gov't Code §§ 30.00014(a), (b), 30.00024.

municipal court judgment. For that reason, the dissenting justices believe we lack jurisdiction over this further appeal.

Our record contains a judgment from City of Houston Municipal Court No. 11, a municipal court of record. Appellant appealed that judgment to the Harris County Criminal Court at Law No. 4. *See* Tex. Gov't Code § 30.00014(a) (providing for appeal to county criminal court from conviction in municipal court of record). The Government Code provides that the county criminal court, as the appellate court, may: (1) affirm the judgment; (2) reverse and remand for new trial; (3) reverse and dismiss; or (4) reform and correct the judgment. *Id.* Further, in "each case decided," the "appellate court . . . shall deliver a written opinion or order either sustaining or overruling each assignment of error presented" and "shall set forth the reasons for its decision." *Id.* § 30.00024(c). The appellant then has a right of further appeal to our court under certain delineated circumstances, which are present here. *Id.* § 30.00027(a).

The county criminal court affirmed the judgment of the municipal court of record and did so by "deliver[ing] a written opinion" overruling each assignment of error. *See id.* § 30.00024(a)(1), (c). The appellate court issued a written opinion addressing every issue presented and explaining its reasons for rejecting them. In the "conclusion" section, the opinion states, "According[ly], the judgment of conviction entered by the municipal court of record in this cause is hereby AFFIRMED."

Government Code section 30.00024—entitled "Disposition on Appeal"—requires only a "written opinion or order" to conclude an appeal from municipal court. *Id.* § 30.00024(c). It does not require a written opinion *and* an order, or a written opinion *and* a "judgment." The judge of the county criminal court produced a written opinion, after which the proceedings were concluded. No

further issues required resolution. The written opinion satisfied the statute. No part of Government Code chapter 30 requires more than a "written opinion" or an "order" to allow the defendant's further appeal to our court or to vest our court with jurisdiction upon timely filing of a proper notice of appeal. While section 30.00025(a) refers to the "judgment" of the "appellate court," this language is reasonably construed as a reference to section 30.00024(c)'s requirement for a written opinion or order because that section of the code is the only section addressing the appeal's "disposition."[4] The county criminal court's written opinion thus is an appealable order or judgment, and we are not the only court of appeals to reach that conclusion in a similar context. *See, e.g.*, *Miller v. State*, No. 05-08-00207-CR, 2009 WL 32893, at *3 (Tex. App.—Dallas Jan. 7, 2009, no pet.) (mem. op., not designated for publication) (county criminal court opinion affirmed municipal court judgment; court of appeals concluded it had jurisdiction over subsequent appeal and characterized the written opinion as a "judgment").

Our dissenting colleagues are concerned that the county criminal court's written opinion is "undated." To be sure, the judge did not write the date next to her signature, but the opinion is signed and file-stamped, which in the absence of contrary evidence is facially sufficient to establish the date of signing. *Accord Dallas County v. Gonzales*, 183 S.W.3d 94, 103 (Tex. App.—Dallas 2006, pet. denied) (op. on reh'g) (clerk's file stamp is rebuttable prima facie evidence of date of filing). The opinion is file-stamped September 21, 2020, and the record contains no contrary evidence of any alternative signing date. Because the opinion is a document generated by the court alone and was not filed by any party, the file-stamp on the opinion's face is a reasonable indication of its date of signing because

[4] Tex. Gov't Code § 30.00025(a) ("When the *judgment* of the appellate court becomes final, the clerk of that court shall certify the proceedings and the *judgment* and shall mail the certificate to the municipal clerk.") (emphasis added).

only the court would be in the position to know the date of signing. Moreover, the clerk mailed it to the attorneys and the municipal court the following day, September 22. Appellant then noticed his appeal to this court on October 12, which was within the next thirty days. *See* Tex. R. App. P. 26.2(a) (time to perfect appeal in criminal cases); Tex. Gov't Code § 30.00027(a)(1) (defendant has right to appeal to court of appeals if "the fine assessed against the defendant exceeds $100 and the judgment is affirmed by the appellate court [county criminal court]").[5]

For these reasons, we have jurisdiction to consider the merits of appellant's appeal.

Merits Analysis

A. *In Pari Materia*

In his first issue, construed liberally, appellant argues that the municipal court erred by denying his motion to quash the complaint and by instructing the jury on Regulation 392.16 because he should have been charged under Transportation Code section 545.413(a)(1) instead.

"The doctrine of *in pari materia* is a rule of statutory construction that seeks to carry out the Legislature's intent." *Jones v. State*, 396 S.W.3d 558, 561 (Tex. Crim. App. 2013). The doctrine arises "where one statute deals with a subject in comprehensive terms and another [statute] deals with a portion of the same subject in a more definite way." *Id.* (internal quotation omitted). When two statutes are *in*

[5] Accordingly, there is no indication that confusion, if any, regarding the signing date prejudiced appellant (or the State). *Accord, e.g.*, *Chapa v. State*, No. 05-19-00609-CR, 2020 WL 1129980, at *1 n.1 (Tex. App.—Dallas Mar. 9, 2020, no pet.) (mem. op., not designated for publication) ("Having timely perfected appeal, however, Chapa has exhibited knowledge of his right to appeal and is not prejudiced by this omission. Thus, we address the merits of his appeal.") (discussing lack of defendant's signature on the trial court's certification of his right to appeal, as required by Texas Rule of Appellate Procedure 25.2).

pari materia, the doctrine requires that the statutes be "taken, read, and construed together, each enactment in reference to the other, as though they were parts of one and the same law." *Id.* (internal quotation omitted). "Any conflict between their provisions will be harmonized, if possible, and effect will be given to all the provisions of each act if they can be made to stand together and have concurrent efficacy." *Azeez v. State*, 248 S.W.3d 182, 192 (Tex. Crim. App. 2008) (internal quotation omitted). But when statutes conflict irreconcilably, "the more detailed enactment will prevail, regardless of whether it was passed prior to or subsequently to the general statute, unless it appears that the legislature intended to make the general act controlling." *Jones*, 396 S.W.3d at 562 (internal quotation omitted). "[S]uch conflict implicates due process rights that require the State to prosecute the defendant under the special statute where two statutes are *in pari materia*." *Id.*

The Court of Criminal Appeals has made clear that the statutes' respective purposes are the most significant factor to consider when determining whether they are *in pari materia*. *Id.* at 561. "[T]he adventitious occurrence of like or similar phrases, or even of similar subject matter, in laws enacted for wholly different ends will not justify applying the rule." *Id.* (internal quotation omitted). With this in mind, we turn to the text and purpose of each statute.[6]

Regulation 392.16 provides: "No driver shall operate a commercial motor vehicle . . . that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly." 49 C.F.R. § 392.16(a).[7]

---

[6] Whether Regulation 392.16 and section 545.413 are *in pari materia* is a question of law we review de novo. *Garrett v. State*, 424 S.W.3d 624, 631-32 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd); *see also Bearnth v. State*, 361 S.W.3d 135, 141 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

[7] "'Commercial motor vehicle' means: (A) a commercial motor vehicle as defined by 49 C.F.R. Section 390.5, if operated interstate; or (B) a commercial motor vehicle as defined by Section 548.001, if operated intrastate." Tex. Transp. Code § 644.001(1) (citing 49 C.F.R.

Texas Transportation Code section 545.413 similarly requires use of a seat belt in a "passenger vehicle." Under section 545.413(a)(1), a person commits an offense if he: (1) is at least 15 years of age; (2) is riding in a passenger vehicle while the vehicle is being operated; (3) is occupying a seat that is equipped with a safety belt; (4) and is not secured by a safety belt. *See* Tex. Transp. Code § 545.413(a)(1). A violation of section 545.413(a) is a misdemeanor punishable by a fine of between $25 and $50. *See id.* § 545.413(d).

According to appellant, section 545.413 is more narrowly tailored than Regulation 392.16. Because his tractor trailer qualifies as a "passenger vehicle" under section 545.413, appellant argues, the narrower statute should have been applied.

In determining the ultimate question whether Regulation 392.16 and section 545.413 are *in pari materia*, we are aided by a decision from the First Court of Appeals, which has examined this precise question and concluded that they are not. *Garrett*, 424 S.W.3d at 631-32. As the court did in *Garrett*, we begin by considering the two provisions' plain language in context. Although they require similar safety measures in operating motor vehicles—the use of a seat belt—they were not written with the same purpose or to achieve the same objective. *See Jones*, 396 S.W.3d at 561.

Regulation 392.16 was promulgated pursuant to Subchapter III, "Safety Regulations," of the Federal Motor Carrier Safety Act. *See* 49 U.S.C. § 31136(a) ("[T]he Secretary of Transportation shall prescribe regulations on commercial

---

§ 390.5 ("[c]ommercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater); Tex. Transp. Code § 548.001(1) ("[c]ommercial motor vehicle" means a vehicle with a gross weight rating of more than 26,000 pounds)).

motor vehicle safety . . . ."). Regulation 392.16 is part of a regulatory scheme designed to minimize safety threats to the public at large posed by commercial motor vehicle operators. *See id.* § 31131(a)(1) (one purpose of regulation is "to promote the safe operation of commercial motor vehicles"); *see also id.* § 31131(b)(1) (one of congressional findings underpinning regulatory scheme was that "it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage"). As the *Garrett* court noted, commercial motor vehicles are "typically large trucks carrying heavy and potentially hazardous loads." *Garrett*, 424 S.W.3d at 631. To further the stated legislative goals, Regulation 392.16 prescribes the circumstances under which a driver may operate such a vehicle: properly restrained by a seat belt. To this end, Regulation 392.16 applies to a narrow class of persons, namely, those who drive a commercial motor vehicle.

Section 545.413(a)(1), in contrast, addresses a broader class of people. Section 545.413 applies to anyone over the age of fifteen years riding in a passenger vehicle equipped with a safety belt. *See* Tex. Transp. Code § 545.413(a)(1). From the statute's plain text, we can discern the legislature's intent to promote the welfare and safety of all persons over fifteen years of age riding in any passenger vehicle while the vehicle is in use. While section 545.413(a)(1) undoubtedly applies to drivers of passenger vehicles, and thus like Regulation 392.16 encourages safe operation of those vehicles, the statute's textual reach indicates more expansive goals. *See Garrett*, 424 S.W.3d at 631 ("focal point" of statute is passenger seat belt restraint).

The difference in punishment ranges supports this reading. "The imposition of a higher fine for violating Regulation 392.16 indicates that the gravamen of that offense is of greater significance than that of violating section 545.413(a)(1)." *Id.*

at 632. It underscores that Regulation 392.16 is designed to avoid the unsafe operation of a commercial vehicle, which potentially poses a risk to the public at large, whereas the lower fine for violation of section 545.413 "is to protect the passenger from injury resulting from his own conduct." *Id.*

We agree with the *Garrett* court that the two provisions are not *in pari materia*. *See id.* Thus, the county criminal court at law correctly ruled that the trial court did not err by denying appellant's motion to quash the complaint or by instructing the jury pursuant to Regulation 392.16.

We overrule appellant's first issue.

B. Sufficiency of the Evidence

In his second and third issues, appellant challenges the legal sufficiency of the evidence, including whether the State met its burden to prove that appellant was not properly restrained within the vehicle. Because both issues concern the State's burden to prove all elements of the offense, we address them together.

In determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt, we apply the standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Under that standard, when assessing the sufficiency of the evidence to support a criminal conviction, we consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences to be drawn therefrom, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319; *Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017). The jury alone determines witness credibility, and we will not usurp this role by substituting our judgment for

that of the jury. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). The sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

Under the jury instructions in today's case, the State was required to prove that appellant: (a) operated a commercial motor vehicle; (b) which had a seat belt assembly installed at the driver's seat; (c) without being restrained by a safety belt; (d) upon a public street. *See* 49 C.F.R. § 392.16(a).

Officer Watkins was the only witness at trial. Officer Watkins testified that appellant was driving a tractor trailer with a gross vehicle weight rating of greater than 26,000 pounds, which Officer Watkins testified is a commercial motor vehicle. Officer Watkins testified that the vehicle was equipped with a seat belt assembly at the driver's seat, that appellant was not wearing the seat belt across his upper torso, and that the officer stopped appellant on a public street in Houston. Officer Watkins's testimony therefore established each element of the charged offense.

Appellant complains that the State failed to prove that he was not "properly restrained." As the county criminal court at law noted, the terms "restrained" or "properly restrained" are not statutorily defined in the federal regulations. We found no Texas case addressing the issue or offering an applicable definition. According to a dictionary definition, the verb restrain means "to prevent from doing, exhibiting, or expressing something" or "to limit, restrict, or keep under control." *Restrain*, Merriam-Webster, *available at* https://www.merriam-webster.com/dictionary/restrain. In the context of a seat belt assembly, we believe the word "restrained" means to prevent the person from moving with the force of the vehicle (such as during a collision) or otherwise limit, restrict, or keep under

control the movement of the person upon the seat where the seat belt assembly is installed. When the seat belt assembly consists of a lap belt and a shoulder harness, "properly restrained" means the use of both, which secures the person—i.e., limits forward movement—to the seat.

Our position today finds support from analogous authority in other jurisdictions. For instance, the Fifth Circuit considered whether an officer had probable cause to arrest a suspect under Louisiana law, which requires drivers to have a "'safety belt properly fastened about his or her body at all times when the vehicle is in forward motion.'" *Collier v. Montgomery*, 569 F.3d 214, 218 (5th Cir. 2009) (quoting Louisiana Revised Statutes § 32:295.1(A)(1)). According to an opinion from the Louisiana Attorney General, "when the driver's clasp is fastened, but the shoulder and/or chest harness is not properly across the chest and shoulder, then the safety belt is not 'properly fastened about the body' and La. R.S. 32:295.1 has been violated." La. Att'y Gen. Op. No. 06-0189, 2006 WL 3616631 (Nov. 9, 2006). In *Collier*, the driver admittedly was not wearing his seat belt with the shoulder strap across his chest at the time of the arrest, and so the court, relying on the attorney general's opinion, held that the officer had probable cause to arrest the driver. *Collier*, 569 F.3d at 218.

A state court in California has addressed similar statutory language. *See People v. Overland*, 123 Cal. Rptr. 3d 228, 229 (Cal. App. Dep't Super. Ct. 2011). The California Vehicle Code provides that "[a] person shall not operate a motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt." Cal. Veh. Code § 27315, subd. (d)(1). In *Overland*, the defendant argued that the statutory requirement that all motorists and passengers be "properly restrained by a safety belt" is satisfied by wearing either a lap belt or a lap belt/shoulder harness assembly, and that she was in compliance

with section 27315, subdivision (d)(1) when she only wore a lap belt but had the shoulder strap tucked behind her back. *Overland*, 123 Cal. Rptr. 3d at 229. The court rejected the argument, concluding that, to be "properly restrained by a safety belt" within the statutory meaning, a motorist or passenger in a vehicle that is equipped with a lap-shoulder combination restraint system "must wear the entire shoulder harness and lap belt combination restraint system while the vehicle is being operated." *Id.*

We find these authorities persuasive. Here, the uncontradicted testimony from Officer Watkins established that appellant's truck was equipped with a seat belt restraint system consisting of both a lap belt and a shoulder strap. Appellant had the lap belt secured across his lap but had tucked the shoulder strap behind or under his arm. A rational jury reasonably could find that appellant was not "properly restrained" within the meaning of Regulation 392.16 because he was not wearing the shoulder strap across his shoulder.

We overrule appellant's second and third issues.

Conclusion

Having overruled appellant's three issues, we affirm the county criminal court at law's judgment and appellant's conviction.

/s/ Kevin Jewell
Justice

En banc court consists of Chief Justice Christopher and Justices Wise, Jewell, Bourliot, Zimmerer, Spain, Hassan, Poissant, and Wilson (Spain, J., dissenting, joined by Justices Bourliot and Hassan) (Hassan, J., dissenting, joined by Justices Bourliot and Spain).

Publish — Tex. R. App. P. 47.2(b).