



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00658-CR  
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The **STATE** of Texas,  
Appellant

v.

Ruben **RODRIGUEZ**,  
Appellee

From the 399th Judicial District Court, Bexar County, Texas  
Trial Court Nos. 2015CR10288 & 2015CR10289  
Honorable Ray Olivarri, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: August 9, 2017

**REVERSED AND REMANDED**

Appellee Ruben Rodriguez filed a motion to suppress the State's evidence. After an evidentiary hearing, the trial court granted Rodriguez's motion. The State appeals, arguing the trial court erred by concluding there was no reasonable suspicion to conduct an investigative detention of Rodriguez. We reverse and remand.

**BACKGROUND**

The night of August 30, 2015, San Antonio Police Department Officers Justin Irving and Juan Peña were on patrol in separate vehicles. Officer Irving drove the lead vehicle. At

approximately 11:00 pm, Officer Irving encountered three people, two men and one woman, walking in the roadway of Grant Avenue in a part of San Antonio Officer Irving knew was a high-crime area. The three people were walking on the left side of the roadway, facing oncoming traffic rather than walking on the adjacent sidewalk. The woman, later identified as Veronica Vargas, and Rodriguez were pushing, rather than riding, bicycles. The second man was later identified as Oscar Garcia.

Officer Irving testified he initially stopped the three for being in violation of Texas Transportation Code § 552.006, which provides that “[a] pedestrian may not walk along a roadway if an adjacent sidewalk is provided and is accessible to the pedestrian.” As Officer Irving explained during the suppression hearing, “It’s pedestrian in roadway. If there is a sidewalk provided to the pedestrian, the pedestrians need to be on the sidewalk versus the middle of the roadway or on the roadway.”

During the initial encounter, Officer Irving observed that Oscar Garcia had a lock-blade knife clipped to his pocket. He testified that at the time, carrying a lock-blade knife was prohibited in San Antonio. Officer Irving testified that in addition to having the knife, Garcia was making furtive movements. For those reasons, Officer Irving detained Garcia and placed him in handcuffs. Officer Peña arrived at the scene simultaneously to Officer Irving, detained Rodriguez and placed him in handcuffs before conducting a pat down/protective frisk. Officer Peña explained during the suppression hearing that this was for safety because there were only two officers and, in his training and experience, where there was one weapon such as the knife, there was a greater likelihood there were more weapons. During that pat down, Officer Peña discovered Rodriguez had a handgun tucked into his waistband. Rodriguez confirmed he did not have a license to carry the handgun, and Officer Peña placed Rodriguez under arrest for unlawfully carrying a firearm.

Following the arrest, Officer Peña conducted a more thorough search of Rodriguez during which Officer Peña discovered contraband later identified as methamphetamine and heroin.

Rodriguez was subsequently charged with the following offenses in a single indictment: possession of a controlled substance, methamphetamine; possession of a controlled substance with intent to deliver, methamphetamine; possession of a controlled substance, heroin; and possession of a controlled substance with intent to deliver, heroin. Rodriguez was also charged in a separate indictment with the offense of being a felon in possession of a firearm.

Rodriguez filed a motion to suppress any statements and physical evidence resulting from his detention and arrest. Following a hearing on the motion to suppress at which only the arresting officers testified, the trial court granted Rodriguez's motion.

The State appeals the trial court's grant of the motion to suppress.

#### **STANDARD OF REVIEW**

We review a trial court's denial of a motion to suppress under a bifurcated standard of review. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). In reviewing the trial court's decision, we do not engage in our own factual review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony. *Turrubiate*, 399 S.W.3d at 150. We give almost total deference to the trial court's findings of historical fact that are supported by the record and to mixed questions of law and fact that turn on an evaluation of credibility and demeanor. *Johnson v. State*, 414 S.W.3d 184, 192 (Tex. Crim. App. 2014). However, we review de novo mixed questions of law and fact that do not depend upon credibility and demeanor. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). Accordingly, the question of whether a certain set of historical facts gives rise to reasonable suspicion is one which we review de novo. *Wade v. State*, 422 S.W.3d 661, 668 (Tex. Crim. App. 2013).

When reviewing the trial court's ruling on a motion to suppress, we view the evidence in the light most favorable to the trial court's ruling. *Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007). When the trial court makes explicit fact findings, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those fact findings. *State v. Kelly*, 204 S.W.3d 808, 818-19 (Tex. Crim. App. 2006). We then review the trial court's legal ruling de novo unless its explicit fact findings that are supported by the record are also dispositive of the legal ruling. *Id.* at 818.

We uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007).

#### **TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The trial court made the following findings and conclusions when granting Rodriguez's motion to suppress:

1. While on patrol at approximately 11:00 p.m. on August 30, 2015, Officer Irving spotted three individuals walking in the roadway next to the sidewalk on the 900 block of Grant Avenue.
2. Officer Irving knew the area to be a high crime area and testified that the pedestrians were committing the traffic violation of walking in a roadway.
3. Officer Irving testified that two of the individuals, including the defendant, were pushing their bicycles while in the roadway, facing oncoming traffic.
4. According to the Transportation Code, a pedestrian may not walk along and on a roadway if an adjacent sidewalk is provided and is accessible to the pedestrian.
5. According to the City of San Antonio Municipal Code, it "shall be unlawful for any person to drive or propel or park or stand any vehicle upon any sidewalk."
6. The Court finds that the defendant was not technically a pedestrian because he was pushing a bicycle; the Court further finds that the defendant was not technically a bicyclist because he was not operating the bicycle at the time Officer Irving detained him. Given the circumstances, it was more appropriate

for the defendant, while on the roadway and not operating his bicycle, to be facing oncoming traffic.

7. The Court finds that the defendant was within the law to push the bicycle in the roadway rather than pushing the bicycle on the sidewalk, therefore the officer lacked reasonable suspicion or probable cause for the initial stop of the defendant.
8. Based on the forgoing, the Court concludes that the warrantless search of the defendant was unreasonable, the Motion to Suppress is GRANTED.

### **REASONABLENESS OF THE INITIAL DETENTION**

In its sole issue on appeal, the State argues the trial court erred by concluding Officer Irving's initial detention of Rodriguez was unreasonable. The State's argument focuses on the trial court's determination of unreasonableness. The State contends the officer's initial stop was reasonable because Officer Irving had reason to believe Rodriguez was committing an offense.

### **Applicable Law**

A traffic violation — or violation of the Transportation Code — can constitute a reasonable basis for a detention. *Whren v. United States*, 517 U.S. 806, 810 (1996). Under the Fourth Amendment, a warrantless detention that amounts to less than a full-blown custodial arrest must be justified by reasonable suspicion. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011). Reasonable suspicion exists if an officer has “specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaging in criminal activity.” *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015). This standard is an objective one that disregards the actual subjective intent of the arresting officer and looks instead to whether there was an objectively justifiable basis for the detention. *Derichsweiler*, 348 S.W.3d at 914. It also looks to the totality of the circumstances, and while those circumstances may all seem innocent in

isolation, if they combine to reasonably suggest the imminence of criminal conduct, an investigative detention is justified. *Id.*

The question in this case is then not whether the defendant could have been guilty of violating the Transportation Code, but whether Officer Irving had reasonable suspicion that he was. *See Jaganathan*, 479 S.W.3d at 247. “A determination that reasonable suspicion exists ... need not rule out the possibility of innocent conduct.” *Id.* at 248 (quoting *United States v. Arvizu*, 534 U.S. 266, 277 (2002)). The reasonable suspicion standard “accepts the risk that officers may stop innocent people.” *Id.* (quoting *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)). The mere possibility that an act is justified will not negate reasonable suspicion. *Id.*

### **Discussion**

Although the trial court made the legal conclusions that Rodriguez was technically neither a pedestrian nor a bicyclist and it was more appropriate for him to have been on the roadway than the sidewalk, we are not bound by those legal conclusions. *See Wade*, 422 S.W.3d at 668; *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). This case does not turn on Rodriguez’s status, but rather on whether Officer Irving had reasonable suspicion for the initial encounter with Rodriguez. *See Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

Officer Irving testified the area where he encountered the three individuals, including Rodriguez, was known as a high-crime area. The record indicates Rodriguez, Garcia, and Vargas were walking together in the roadway, against traffic, at 11:00 at night and were spaced across the left half of the roadway. There was an available sidewalk adjacent to the roadway. Officer Irving testified he initiated the encounter with the group because pedestrians were walking in the roadway. It is undisputed Garcia was a pedestrian. Officer Irving observed Garcia carrying a prohibited knife and making furtive movements. Officer Peña then conducted a pat down of Rodriguez and found a firearm, thereafter placing him under arrest.

Officer Irving and Officer Peña articulated specific facts that, when combined with rational inferences from those facts, lead to an objectively justifiable reason for the initial encounter with Rodriguez. *See Crain v. State*, 315 S.W.3d 43, 52-53 (Tex. Crim. App. 2010) (the reasonableness of an officer's suspicion is gleaned only from information known to the officer at the time of the detention). Accordingly, even viewing the evidence in the light most favorable to the trial court's ruling, we conclude the record does not support the trial court's ruling.

#### CONCLUSION

Based on the forgoing reasons, we hold the trial court erred by granting Rodriguez's motion to suppress. Therefore, we reverse the trial court's judgment and remand the case for further proceedings consistent with this opinion.

Irene Rios, Justice

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