



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00093-CR

Israel Alfredo **GOMEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 9, Bexar County, Texas
Trial Court No. 530706
Honorable Gloria Saldana, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: December 9, 2020

AFFIRMED

Israel Alfredo Gomez appeals the trial court's order for deferred adjudication based his plea of guilty to obstructing a passageway. *See* TEX. PENAL CODE § 42.03(a)(1). He argues the trial court erred by denying his motion to suppress. We affirm the order.

BACKGROUND

Gomez was charged by information and complaint with operating a motor vehicle while intoxicated. Gomez filed a motion to suppress illegally obtained evidence, arguing he was detained without reasonable suspicion and arrested without probable cause. The trial court heard the motion

at a suppression hearing. At the hearing, Jason Portillo, a San Antonio Police Department (SAPD) officer who arrested Gomez, was the only witness to testify. The trial court also admitted two incident reports into evidence.¹

The evidence at the suppression hearing showed Gomez was asleep inside his car at 2:57 a.m., with the headlights on and the engine running. Gomez's car was in a parking lot, parked² parallel to the shoulder of the road and next to a building on the roadside, but perpendicular to and obstructing several designated parking spaces adjacent to the building's sidewalk. Gomez's car was not parked in any designated parking space.

Officer Portillo and another SAPD officer parked their patrol cars, respectively, in front of and behind Gomez's car. After Gomez awoke, the officers conducted field sobriety tests and concluded Gomez was intoxicated. At the suppression hearing, counsel for Gomez stated, "[W]e will stipulate that when [Officer Portillo] completes his field sobriety test that he would have reason to believe that the defendant was intoxicated at that point in time."

The trial court took the matter under advisement and then signed an order denying Gomez's motion to suppress. The State then moved to amend the information to add a charge of obstruction of a passageway, and Gomez entered a plea of guilty. The trial court granted the State's motion, made findings of fact and conclusions of law, and signed an order of deferred adjudication noting Gomez's plea of guilty to obstructing a passageway. Gomez timely filed a notice of appeal.

¹ Although a videorecording from a body camera was played during the hearing, the record does not show the trial court admitted the videorecording into evidence. However, the trial court's findings state the videorecording was admitted into evidence.

² Officer Portillo testified the car's gear was in "neutral," not in "park." We use term "park" because the car was idle and not moving and Officer Portillo did not know the car was in neutral until approaching the car.

MOTION TO SUPPRESS

In two issues, Gomez argues the trial court erred by denying his motion to suppress. He argues the evidence does not support the trial court's findings of fact and conclusions of law. Gomez contends he was arrested when the patrol cars were parked both in front of and behind his car because his movement was restricted and Officer Portillo had already started to fill out an arrest form. He argues his arrest at that time was not supported by probable cause.

A. Standard of Review

“A trial court’s ruling on a motion to suppress is reviewed on appeal for abuse of discretion.” *State v. Cortez*, 543 S.W.3d 198, 203 (Tex. Crim. App. 2018). “We can sustain the trial court’s decision if we conclude that the decision is correct under any applicable theory of law.” *Id.* “A trial court’s ruling should be reversed only if it is arbitrary, unreasonable, or outside the zone of reasonable disagreement.” *Id.* (quotation marks omitted). “We use a bifurcated standard of review to evaluate whether the totality of circumstances is sufficient to support an officer’s reasonable suspicion of criminal activity.” *Id.* “First, we give almost total deference to the trial court’s determination of the historical facts that the record supports, and second, we review *de novo* the trial court’s application of the law to facts, which do not turn on credibility and demeanor.” *Id.* at 203-04 (quotation marks omitted). We also “review *de novo* whether the totality of circumstances is sufficient to support an officer’s reasonable suspicion of criminal activity.” *Id.* at 204 (quotation marks omitted).

B. Applicable Law

There are three types of police–citizen interactions: “(1) consensual encounters that do not implicate the Fourth Amendment; (2) investigative detentions that are Fourth Amendment seizures of limited scope and duration that must be supported by a reasonable suspicion of criminal activity; and (3) arrests, the most intrusive of Fourth Amendment seizures, that are reasonable only if

supported by probable cause.” *Melendez v. State*, 467 S.W.3d 586, 592 (Tex. App.—San Antonio 2015, no pet.). “Which type of encounter exists under a given set of historical facts is a question of law that is reviewed de novo.” *Id.* “Reasonable suspicion exists if the 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) engaged in criminal activity.” *Cortez*, 543 S.W.3d at 204 (quotation marks omitted).

“Both an arrest and a detention are restraints on a person’s freedom; however, an arrest involves a greater degree of restraint.” *Melendez*, 467 S.W.3d at 592. “We evaluate whether a person has been detained to the degree associated with arrest on an *ad hoc*, or case-by-case, basis.” *Id.* (quotation marks omitted). In making this determination, “the primary question is whether a reasonable person would perceive the detention to be a restraint on his movement comparable to a formal arrest, given all the objective circumstances.” *Id.* (quotation marks omitted). “The following factors may be considered when determining whether a seizure was a detention or an arrest: (1) the amount of force displayed; (2) the duration of a detention; (3) the efficiency of the investigative process and whether it is conducted at the original location or the person is transported to another location; (4) the officer’s expressed intent—that is, whether he told the detained person that he was under arrest or was being detained only for a temporary investigation; and (5) any other relevant factors.” *Id.* at 592-93.

C. Analysis

The trial court concluded Gomez was not under arrest until after the field sobriety tests were performed, but was detained for an investigation before the field sobriety tests. Gomez argues he was under arrest before the field sobriety tests, and his arrest was inevitable, because Officer Portillo had decided to arrest Gomez before the field sobriety tests by preemptively filling out an arrest form. We hold the trial court correctly concluded that before the field sobriety tests, Gomez

was only detained for an investigation, and not under arrest. Initially, Gomez was asleep in his car when the patrol cars arrived and while Officer Portillo filled out the arrest form. The only show of force was that the patrol cars had their lights on and were parked in front of and behind Gomez's car. The duration of the detention was approximately 30 minutes. During the detention, before the field sobriety tests were conducted, Gomez's physical movement was not restrained, and Gomez was not restrained when subjected to field sobriety tests. At no time before the end of the field sobriety tests did any officer express that Gomez was under arrest.

We hold that under these objective circumstances, Gomez was not under arrest until after the field sobriety tests. Although Gomez argues Officer Portillo subjectively decided to arrest Gomez before the field sobriety tests, Officer Portillo's subjective state of mind or intent to arrest Gomez was not expressed; and the test for whether a seizure is an arrest or an investigatory detention is an objective test. *See id.* Gomez stipulated in the trial court that after the field sobriety tests, there was probable cause to arrest Gomez. Consequently, the only remaining issue is whether Officer Portillo had reasonable suspicion to detain Gomez for an investigative detention to conduct the field sobriety tests.

On the issue of reasonable suspicion, the trial court found that “[u]pon initial observation, the vehicle was parked in an unusual manner, vertically with the road, against the lines of the parking spaces. [Gomez] was asleep at the wheel of the vehicle.” Because the evidence supports these findings of historical fact, we defer to the trial court's findings. Officer Portillo testified that in his training and experience in dealing with intoxicated drivers, he is aware that alcohol is a depressant and can cause a person to pass out. *See State v. Gomez*, No. 04-18-00384-CR, 2019 WL 1139834, at *4 (Tex. App.—San Antonio Mar. 13, 2019, no pet.) (mem. op.) (holding reasonable suspicion existed when, among other facts, driver was “as asleep at the wheel in an airport parking lot on a Saturday at 2:20 a.m.”). Furthermore, the evidence shows Gomez's car

was parked on the side of the road obstructing parking spots adjacent to a building, which he does not dispute constitutes obstruction of a pathway. *See* TEX. PENAL CODE § 42.03(a)(1). We therefore hold the trial court correctly concluded there was reasonable suspicion for an investigative detention.³

CONCLUSION

Because we conclude the trial court did not abuse its discretion by denying Gomez's motion to suppress, we affirm the order of deferred adjudication.

Luz Elena D. Chapa, Justice

DO NOT PUBLISH

³ Gomez argues Officer Portillo could not credibly rely on a community caretaking function, but the trial court did not conclude the seizure constituted reasonable community caretaking, and the detention was otherwise supported by reasonable suspicion. We therefore need not address the issue. *See* TEX. R. APP. P. 47.1.