In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-19-00285-CR

ANDY MARTINEZ, Appellant

V.

THE STATE OF TEXAS

On Appeal from County Criminal Court No. 7
Tarrant County, Texas
Trial Court No. 1533666

Before Sudderth, C.J.; Gabriel and Kerr, JJ.
Memorandum Opinion by Justice Gabriel

MEMORANDUM OPINION

After the trial court denied his motion to suppress, a jury convicted appellant Andy Martinez of driving while intoxicated and assessed his punishment at ninety days' confinement. *See* Tex. Penal Code Ann. § 49.04. The trial court suspended the imposition of the sentence and placed Martinez on community supervision for a term of twelve months. In a single point, Martinez argues that the trial court erred by denying his motion to suppress. We will affirm.

I. BACKGROUND

Around 3:35 a.m. on February 18, 2018, Fort Worth Police Officer John Martin observed Martinez driving on Interstate 30 in Fort Worth. The speed limit was sixty-five miles per hour, and, according to Martin, Martinez initially appeared to be driving the speed limit. Martin then observed Martinez's vehicle accelerate past a taxi, and Martin believed that Martinez's vehicle could be speeding. Martin thus accelerated his patrol car to catch up to Martinez's vehicle, and, according to his testimony at trial, Martin was able to pace Martinez's vehicle at seventy miles per hour. He continued following Martinez's vehicle as it crossed from Fort Worth into Westworth Village. Martin then initiated a traffic stop in Westworth Village.

After approaching Martinez's vehicle, Martin detected the odor of alcohol coming from the vehicle and observed that Martinez "had kind of glossed over eyes" and "[a]lmost a glazed look." Martinez told Martin that he was coming from a party at his girlfriend's house and that he had consumed two bottles of beer at the party.

Martin then administered three standard field sobriety tests to Martinez, each of which Martinez failed. Martinez admitted that his poor performance on the tests was due to his alcohol consumption. Martinez then admitted that he had consumed "three to four" bottles of beer at the party.[1] Martin arrested Martinez for driving while intoxicated.

Prior to his trial, Martinez filed a motion to suppress arguing that the traffic stop was illegal.[2] The trial court later denied Martinez's motion to suppress, and a jury found Martinez guilty of driving while intoxicated. This appeal followed.

II. MARTINEZ'S MOTION TO SUPPRESS

In his sole point, Martinez argues that the trial court erred by denying his motion to suppress. As best as we can discern from his briefing, Martinez is making two arguments: (1) that Martin did not have reasonable suspicion to initiate the traffic stop or probable cause to make the arrest; and (2) that the stop and the arrest were illegal because they took place in Westworth Village by Martin, a Fort Worth police officer.

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[1]Videos taken from the dashboard camera of Martin's patrol car and from his body camera were shown to the jury. Those videos showed Martinez's vehicle accelerate past the taxi, Martin's patrol car follow and stop Martinez's vehicle, Martin administer standard field sobriety tests on Martinez, and Martinez admit to drinking "three to four" bottles of beer at the party.

[2]The motion to suppress was titled a "Trial Objection," although it requested that the trial court suppress illegally obtained evidence. The parties and the trial court referred to and treated it as a motion to suppress, and so will we.

A. Standard of Review and Applicable Law

We apply a bifurcated standard of review to a trial court's ruling on a motion to suppress evidence. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). 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); *Best v. State*, 118 S.W.3d 857, 861 (Tex. App.—Fort Worth 2003, no pet.). The trial judge is the sole trier of fact and judge of the witnesses' credibility and the weight to be given their testimony. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). Therefore, we defer almost totally to the trial court's rulings on (1) questions of historical fact, even if the trial court determined those facts on a basis other than evaluating credibility and demeanor, and (2) application-of-law-to-fact questions that turn on evaluating credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Montanez v. State*, 195 S.W.3d 101, 108–09 (Tex. Crim. App. 2006); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002). But when application-of-law-to-fact questions do not turn on the witnesses' credibility and demeanor, we review the trial court's rulings on those questions de novo. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson*, 68 S.W.3d at 652–53.

When the record is silent on the reasons for the trial court's ruling, or when there are no explicit fact findings and neither party timely requested findings and conclusions from the trial court, we imply the necessary fact findings that would

support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings.[3] *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see Wiede*, 214 S.W.3d at 25. We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling. *State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006).

The Fourth Amendment protects against unreasonable searches and seizures by government officials. U.S. Const. amend IV; *Wiede*, 214 S.W.3d at 24. A defendant seeking to suppress evidence on Fourth Amendment grounds bears the initial burden to produce some evidence that the government conducted a warrantless search or seizure that he has standing to contest. *State v. Martinez*, 569 S.W.3d 621, 623–24 (Tex. Crim. App. 2019) (quoting *Russell v. State*, 717 S.W.2d 7, 9 (Tex. Crim. App. 1986), *disavowed in part on other grounds by Handy v. State*, 189 S.W.3d 296, 299 n.2 (Tex. Crim. App. 2006)); *Handy*, 189 S.W.3d at 298–99; *see, e.g.*, *Rawlings v. Kentucky*, 448 U.S. 98, 104–05 (1980). Once the defendant does so, the burden shifts to the State to prove either that the search or seizure was conducted pursuant to a warrant

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[3]Following his trial, Martinez requested findings of fact and conclusions of law. Although the trial court did not make findings of fact and conclusions of law, Martinez does not complain on appeal about the trial court's failure to do so. *See Beem v. State*, No. 08-09-00090-CR, 2011 WL 1157684, at *2 n.3 (Tex. App.—El Paso Mar. 30, 2011, pet. ref'd) (affirming trial court's denial of motion to suppress after trial court failed to make requested findings of fact and conclusions of law and defendant did not complain about such failure on appeal).

or, if warrantless, was otherwise reasonable. *Martinez*, 569 S.W.3d at 624; *Amador*, 221 S.W.3d at 672–73.

Under the Fourth Amendment, a warrantless arrest is unreasonable per se unless it fits into one of a "few specifically established and well delineated exceptions." *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993); *Torres v. State*, 182 S.W.3d 899, 901 (Tex. Crim. App. 2005). A police officer may arrest an individual without a warrant only if probable cause exists with respect to that individual and the arrest falls within one of the exceptions set out in the Code of Criminal Procedure. *Torres*, 182 S.W.3d at 901; *see* Tex. Code Crim. Proc. Ann. arts. 14.01–.04. To have probable cause for a warrantless arrest, an officer must reasonably believe that—based on facts and circumstances within the officer's personal knowledge or of which the officer has reasonably trustworthy information—a person has committed an offense. *Torres*, 182 S.W.3d at 901–02. The officer must base probable cause on specific, articulable facts rather than the officer's mere opinion. *Id.* at 902. We use the "totality of the circumstances" test to determine whether probable cause existed for a warrantless arrest. *Id.*

A detention, as opposed to an arrest, may be justified on less than probable cause if a person is reasonably suspected of criminal activity based on specific, articulable facts. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000). An officer conducts a lawful temporary detention when he reasonably suspects that an individual is violating the law. *Crain v. State*,

315 S.W.3d 43, 52 (Tex. Crim. App. 2010); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). Reasonable suspicion exists when, based on the totality of the circumstances, the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity. *Ford*, 158 S.W.3d at 492. This is an objective standard that disregards the detaining officer's subjective intent and looks solely to whether the officer has an objective basis for the stop. *Id.*

B. Analysis

Ordinarily, a violation of a traffic law committed in view of a police officer is sufficient authority for a traffic stop. *See Lemmons v. State*, 133 S.W.3d 751, 756 (Tex. App.—Fort Worth 2004, pet. ref'd). A person commits a traffic offense if he drives at a speed greater than is reasonable and prudent under the circumstances. Tex. Transp. Code Ann. § 545.351(a). Under the Texas Transportation Code, "a speed in excess of the limits . . . is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful." *Id.* § 545.352(a).

Here, Martin testified that he observed Martinez driving what appeared to be the speed limit of sixty-five miles per hour on Interstate 30 in Fort Worth. Martin testified that he then observed Martinez's vehicle accelerate past a taxi, and he was able to pace Martinez's vehicle at seventy miles per hour. That testimony supports the conclusion that Martin possessed reasonable suspicion to stop Martinez's vehicle

for speeding. *See Ford*, 158 S.W.3d at 492. Martin further testified that after he stopped Martinez's vehicle, he detected the odor of alcohol coming from the vehicle and observed that Martinez "had kind of glossed over eyes" and "[a]lmost a glazed look." He also testified that Martinez admitted to drinking "three to four" bottles of beer and that Martinez failed three standard field sobriety tests.[4] That evidence supports the conclusion that Martin possessed probable cause to arrest Martinez for driving while intoxicated. *See Torres*, 182 S.W.3d at 901–02. We overrule the portion of Martinez's sole point complaining that Martin lacked reasonable suspicion for the traffic stop and probable cause for the arrest.

Martinez next argues that the stop and arrest were illegal because they took place in Westworth Village by a Fort Worth police officer. Generally, "a peace officer is a peace officer only while in his jurisdiction and when the officer leaves that jurisdiction, he cannot perform the functions of his office." *Martinez v. State*, 261 S.W.3d 773, 775 (Tex. App.—Amarillo 2008, pet. ref'd) (quoting *Thomas v. State*, 864 S.W.2d 193, 196 (Tex. App.—Texarkana 1993, pet. ref'd)). Nevertheless, there are statutory exceptions to this general rule. *Id.* The statutory exception pertinent here is found in Texas Code of Criminal Procedure Article 14.03(g)(2), which provides,

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[4]Through the videos taken from Martin's body camera and the dashboard camera of his patrol car, the jury was able to hear Martinez's admissions to drinking alcohol at the party and was able to see Martinez's poor performance on the standard field sobriety tests.

> [a] peace officer listed in Subdivision (3), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction *may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.*

Tex. Code Crim. Proc. art. 14.03(g)(2) (emphasis added).

An "arrest" under Article 14.03 is not limited to a formal, custodial arrest. *Martinez*, 261 S.W.3d at 776; *State v. Purdy*, 244 S.W.3d 591, 594 (Tex. App.—Dallas 2008, pet. ref'd). The provisions of Article 14.03 also apply when an officer temporarily detains a person based on reasonable suspicion. *Martinez*, 261 S.W.3d at 776; *Purdy*, 244 S.W.3d at 594.

Here, Martin testified that he was a licensed police officer working for the City of Fort Worth. Accordingly, Martin was a police officer under Subdivision (3), Article 2.12 of the Texas Code of Criminal Procedure and was licensed under Chapter 1701 of the Texas Occupations Code. Tex. Code Crim. Proc. Ann. art. 2.12(3); Tex. Occ. Code Ann. § 1701.301; *see Thomas v. State*, 336 S.W.3d 703, 708 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) ("Officer Diaz testified he was a licensed police officer working for Sweeny, Texas. Accordingly, he was a police officer under Subdivision (3), article 2.12 of the Texas Code of Criminal Procedure and was licensed under chapter 1701 of the Texas Occupations Code."). Martin testified that the speeding offense occurred in Tarrant County near the border of Fort Worth and

Westworth Village, and we take judicial notice of the fact that Fort Worth is the county seat of Tarrant County and that Westworth Village is contained within Tarrant County. *See Stevenson v. State*, 963 S.W.2d 801, 803 (Tex. App.—Fort Worth 1998, pet. ref'd) (taking judicial notice that Fort Worth is the county seat of Tarrant County and within Tarrant County); *Barton v. State*, 948 S.W.2d 364, 365 (Tex. App.—Fort Worth 1997, no writ) ("We may take judicial notice of the location of counties because geographical facts are easily ascertainable and capable of verifiable certainty.").

Martin stopped Martinez's vehicle in Westworth Village based on pacing Martinez's vehicle at seventy miles per hour in Fort Worth, in Tarrant County. Therefore, despite the fact that Martin was outside of his city's jurisdiction when he stopped Martinez, because the speeding took place in Tarrant County, a county where Martin was employed and where he witnessed Martinez's speeding, it was within Martin's authority to stop Martinez. *See* Tex. Code Crim. Proc. art. 14.03(g)(2); *Reyna v. State*, No. 02-13-00533-CR, 2014 WL 6840311, at *1 (Tex. App.—Fort Worth Dec. 4, 2014, no pet.) (mem. op., not designated for publication) ("Therefore, despite the fact that Officer Spillane was outside of his city's jurisdiction, because the offense was committed in the county where he was employed and witnessed the traffic violation, it was within his authority to detain Reyna."). At that stop, he personally observed Martinez's glossed over eyes, admission to drinking, and failure of standard field sobriety tests. Therefore, despite the fact that Martin was outside of his city's jurisdiction when he arrested Martinez for driving while intoxicated, it was within his

authority to arrest Martinez because he had personally observed Martinez driving while intoxicated. *See* Tex. Code Crim. Proc. art. 14.03(g)(2).

We overrule the portion of Martinez's sole point complaining that Martin was without authority to stop and arrest him in Westworth Village.

III. CONCLUSION

Having overruled both portions of Martinez's sole point, we affirm the trial court's judgment.

/s/ Lee Gabriel

Lee Gabriel
Justice

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Delivered: July 16, 2020