



**NUMBER 13-19-00653-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**THE STATE OF TEXAS,**

**Appellant,**

**v.**

**SAMUEL MORENO,**

**Appellee.**

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**On appeal from the 94th District Court  
of Nueces County, Texas.**

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## **MEMORANDUM OPINION**

**Before Justices Hinojosa, Perkes, and Tijerina  
Memorandum Opinion by Justice Tijerina**

By one issue, appellant the State of Texas contends that the trial court improperly granted appellee Samuel Moreno's motion to suppress evidence. We reverse and remand.

## I. BACKGROUND

The State indicted Moreno for the offense of possession of a controlled substance, methamphetamine, with the intent to deliver. See TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(6), 481.115 Subsequently, Moreno filed a motion to suppress the evidence on the basis that the officer unlawfully detained him and sought suppression of all evidence obtained as a result of the unlawful detention and arrest. Specifically, Moreno argued that the officer did not have a reasonable suspicion to conduct a traffic stop of his vehicle because he did not commit a traffic violation as alleged by the detaining officer. Moreno argued that he was not required to activate his turn signal because he did not turn his vehicle when he exited a road and entered a driveway. The State filed a response arguing that the initial traffic stop was lawful, and that, in the alternative, if Moreno had no duty to activate his turn signal, the arresting officer made a reasonable mistake pursuant to unsettled law.

The trial court held a suppression hearing, where pursuant to an agreement, the State and Moreno filed stipulated facts, which the trial court accepted. The stipulated facts are as follows:

1. On March 19, 2018, on the 4700 block of Hamlett Dr., a public street, Corpus Christi Police Officers D. Knab and J. Garza made a traffic stop of a vehicle being driven by Defendant Samuel Moreno and thereafter detained Moreno and his passengers, for the offense of failing to signal a turn from that street into a private driveway abutting that street.
2. The street on which Moreno was traveling itself curved some 90 degrees to the left, from Moreno's perspective and direction of travel, and the direction of the private driveway lined up with the direction of the street prior to the curve, such that Moreno was not required to turn the steering wheel of his vehicle any appreciable amount in order to exit the roadway onto this private driveway.

3. The sole justification for the stop and detention was the officers' belief that Moreno had committed a traffic offense by failing to signal a turn into the driveway in question.

At the suppression hearing, Moreno offered a picture of the road where the traffic stop occurred. The picture shows the road curved to the left, and the driveway Moreno entered was at the end of the road. The trial court granted Moreno's motion to suppress. This appeal followed.

## **II. MOTION TO SUPPRESS**

By its sole issue, the State contends that the trial court should have denied Moreno's motion to suppress. Specifically, the State claims that Moreno should have activated his turn signal even though the State concedes that Moreno was not required to "significantly chang[e] the actual direction of travel of his vehicle." In the alternative, the State argues that "in view of the fact that [Moreno's duty to signal a turn] remains a legally unsettled question, it would at least have been an objectively reasonable interpretation of unsettled law, and thus amounted to reasonable suspicion to justify the present traffic stop."

### **A. Standard of Review**

We review a trial court's ruling on a motion to suppress for abuse of discretion. *Crain v. State*, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010). In reviewing a trial court's ruling on a motion to suppress evidence for an abuse of discretion, we use a bifurcated standard. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000) (citing *Guzman v. State*, 955 S.W.2d 85, 88 (Tex. Crim. App. 1997)); see also *Urbina v. State*, 13-08-00562-CR, 2010 WL 3279390, at \*1 (Tex. App.—Corpus Christi Aug. 19, 2010, pet. ref'd) (Tex. App.—Corpus Christi—Edinburg Aug. 19, 2010, pet. ref'd) (mem. op., not designated for

publication). 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. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007) (citing *Guzman*, 995 S.W.2d at 89). We "review de novo 'mixed questions of law and fact' that do not depend upon credibility and demeanor." *Id.* (quoting *Montanez v. State*, 195 S.W.3d 101, 107 (Tex. Crim. App. 2006)); *Guzman*, 995 S.W.2d at 89. In our review, we must view the evidence in the light most favorable to the trial court's ruling. *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006).

## **B. Applicable Law**

An investigative detention is a seizure for purposes of Fourth Amendment analysis. *Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995). To justify the detention, the State must provide evidence showing sufficient facts to prove that reasonable suspicion existed that a particular person had engaged in criminal activity. *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001). Once a defendant shows that a search or seizure occurred without a warrant, then the burden shifts to the State to prove that the search or seizure was conducted pursuant to a warrant or was reasonable. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

A temporary investigative detention is reasonable, and therefore constitutional, if (1) the officer's actions were justified at the detention's inception, and (2) the detention was reasonably related in scope to the circumstances that justified the initial interference. *Terry v. Ohio*, 392 U.S. 1, 18–19 (1968). The officer must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Id.*; *Davis v. State*, 947 S.W.2d 240, 242 (Tex. Crim.

App. 1997). An investigative stop must be temporary and must not last longer than necessary to accomplish the purpose of the investigation. *Davis*, 947 S.W.2d at 243 (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

### C. Discussion<sup>1</sup>

The Texas Court of Criminal Appeals has discussed the meaning of the term “turn” in the transportation code as follows:

The Transportation Code does not explicitly define the word “turn.” Section 545.104, titled “Signaling Turns; Use of Turn Signals,” provides: “(a) An operator shall use the signal authorized by Section 545.106 to indicate an intention to turn, change lanes, or start from a parked position.” Section 545.103, titled “Safely Turning,” provides “An operator may not turn the vehicle to enter a private road or driveway, otherwise turn the vehicle from a direct course, or move right or left on a roadway unless movement can be made safely.”

....

Chapter 545.104(a)’s requirement that an operator shall use a signal to indicate an intention to “turn, change lanes, or start from a parked position” does not incorporate all movements to the “right or left on the roadway.”

....

The language is plain, and unambiguous, and does not lead to an absurd result. Section 545.103 does not purport to define “turn”. None of the sub-sections in Subchapter C do. Statutory terms that are not legislatively defined are generally construed as common usage allows, but terms that have an acquired technical meaning are generally construed in their technical sense. The word “turn” is not a legal term of art—it has no “acquired technical meaning.” “Turn” has many dictionary meanings, but, in the context of driving, “turn” means to change directions—to turn the vehicle from a direct course of the roadway. You either turn left, or you turn right out of the direct course or flow of normal traffic. Indeed, Section 545.103 suggests exactly that when it states that a driver may not “turn the vehicle to enter a private road or driveway, or otherwise turn from a direct course” unless he can do so safely. Thus, if the road itself makes sharp switchback

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<sup>1</sup> It is undisputed by the parties that failure to activate a turn signal while turning is a traffic offense. See TEX. TRANSP. CODE ANN. § 545.104(a).

turns going up the mountain, the driver need not signal these “turns” because he is simply following the “direct course” of the road and of the traffic on that winding road. It is when he turns right or left out of the “direct course” of the road that he must signal his intention.

....

Under the plain language of the Transportation Code, all movements right or left on the roadway must be made safely, but only some—turns, lane changes, or starts from a parked position—require a signal. No statute provides or suggests that a driver who follows the directions of a highway traffic sign stating “Lane Ends—Merge Left” is making a “turn” under the plain language of the Transportation Code.

*Mahaffey v. State*, 316 S.W.3d 633, 638–39 (Tex. Crim. App. 2010). Thus, it is well-settled that a turn occurs when the driver moves the vehicle left or right on the roadway or “change[s] directions—to turn the vehicle from a direct course of the roadway.” *Id.* The driver either turns left or turns right “out of the direct course or flow of normal traffic.” *Id.*

Here, the trial court, as stipulated to by the parties, found that, while driving on a road that curved ninety degrees to the left, Moreno drove his vehicle without following the road to the left, and instead he entered a driveway. The trial court found, again as stipulated to by the parties, that “Moreno was not required to turn the steering wheel of his vehicle *any appreciable amount* in order to exit the roadway onto this private driveway.” (Emphasis added). The picture of the road traveled by Moreno shows the following:



This picture shows that in order to enter the driveway, Moreno, who was driving his vehicle in the direction of the arrow between Ingram Drive and Hamlet Drive, necessarily had to turn his steering wheel to the right as he followed Hamlet Drive. If Moreno had not turned his steering wheel to the right, he would have naturally continued driving on the direct path of Hamlet Drive which veered to the left. If Moreno had not followed Hamlet Drive, he would have driven into the yard of the home at the end of Hamlet Drive. The parties recognized in their agreed stipulation that Moreno turned his steering wheel but not in an “appreciable” amount. As stated by the Texas Court of Criminal Appeals, “You either turn left, or you turn right out of the direct course or flow of normal traffic.” *Id.* Here, the direct course or flow of normal traffic required Moreno to follow Hamlet Drive to the left. Thus, he turned right when he entered the driveway. Because Moreno was required to follow the direct course of Hamlet Drive, he should have followed the curve of the road, and then activated his turn signal to enter the driveway. Accordingly, under the above-stated precedent, Moreno turned his vehicle. See *id.*

Therefore, as a matter of law, the trial court incorrectly concluded that Moreno was not required to activate his turn signal under the transportation code. *See id.*; *see also* *Robinson v. State*, 377 S.W.3d 712, 718 (Tex. Crim. App. 2012) (“Whether or not the appellant was required to use a turn signal at this “meeting” of the two roadways was an application-of-law-to-fact question that is properly left for the trial court’s determination.”). We conclude that the traffic stop was therefore supported by reasonable suspicion, and the trial court abused its discretion by granting Moreno’s motion to suppress. *See Crain*, 315 S.W.3d at 48; *Garcia*, 43 S.W.3d at 530. We sustain the State’s sole issue.<sup>2</sup>

### III. CONCLUSION

We reverse the trial court’s judgment and remand for proceedings consistent with this memorandum opinion.

JAIME TIJERINA,  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
30th day of July, 2020.

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<sup>2</sup> The State also argues that “the question of Moreno’s duty to signal a turn . . . remains a legally unsettled question.” However, we have sustained the State’s first issue as explained above. Therefore, we need not address this argument as it is not dispositive. *See* TEX. R. APP. P. 47.1.