

Affirmed and Opinion filed June 14, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00814-CR

RAUDMOND DEWAYNE COLLINS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 00CR0062**

OPINION

Raudmond Dewayne Collins appeals a conviction for unlawful possession of a firearm by a felon on the grounds that: (1) the trial court erred in denying his motion to suppress; (2) his arrest for a Class C misdemeanor was unreasonable; and (3) section 543.001 of the Texas Transportation Code violates article 1, section 9 of the Texas Constitution. We affirm.

Background

Appellant was stopped by Officer Golden for walking in the middle of a road. Golden performed a weapons pat down on appellant and discovered a pistol in the back pocket of his pants. Appellant was arrested and indicted for possession of a firearm by a felon.¹ He filed, and the trial court denied, a motion to suppress the evidence of the weapon found in his pocket. Appellant was found guilty by the court and sentenced to six years confinement.

Motion to Suppress

Appellant's first point of error contends that the trial court abused its discretion in denying his motion to suppress because the police lacked probable cause to arrest appellant. Appellant claims that he was walking in the street lawfully because the evidence proved that there was not a sidewalk² and that he was walking on the left side of the street.

In reviewing a ruling on a motion to suppress, an appellate court affords almost total deference to the trial court's determination of historical facts which are supported by the record and based on an evaluation of the witnesses' credibility and demeanor. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000). Such deference is also afforded to a trial court's ruling on an application of law to fact question which turns on an evaluation of credibility and demeanor. *Id.* Mixed questions of law and fact not falling within that category are reviewed *de novo*. *Id.*

Where, as here, an adjacent sidewalk is not provided along a roadway, a pedestrian walking along and on a highway shall, if possible, walk on the left side of the roadway or the shoulder of the highway facing oncoming traffic. TEX. TRANS. CODE ANN. § 552.006(b) (Vernon 1999). An officer may, without a warrant, arrest a person found committing a violation of section 552.006. *See* TEX. TRANS. CODE ANN. § 543.001 (Vernon 1999).

¹ Appellant was convicted of felony possession of a controlled substance in 1996.

² The State does not dispute that there was no sidewalk along the road on which appellant was walking.

In this case, Golden testified that appellant was walking down the middle of a roadway. Conversely, appellant and his companion, Gregory Stevenson, testified that they were walking on the left side of the roadway. In denying appellant's motion to suppress, the trial court stated that it believed Golden's testimony and disbelieved the testimony of appellant and Stevenson on this issue. Given this conflicting evidence and the trial court's stated reason for denying the motion to suppress, we must defer to the trial court's determination of fact based on an evaluation of credibility and demeanor. Accordingly, we overrule appellant's first issue.

Reasonableness of Arrest for a Class C Misdemeanor

Appellant's second issue contends that it is unreasonable for a law enforcement officer to arrest, *i.e.*, rather than merely cite, a citizen for the commission of a class C misdemeanor, such as walking in a roadway, because the law prohibiting such action is designed to protect the citizen from his own conduct.

As noted above in discussing the first issue, the evidence showed that the officer had legal authority to arrest appellant. Appellant has cited no authority suggesting that a conviction can be reversed because an officer's exercise of his authority, though legal, is arguably unwarranted under the circumstances. However, the Fourth Amendment has been held not to forbid a warrantless arrest for a minor criminal offense punishable only by a fine. *See Atwater v. City of Lago Vista*, 121 S.Ct. 1536 (2001). Therefore, appellant's second issue is overruled.

Constitutionality of Section 543.001

Appellant's third issue contends that section 543.001 of the Texas Transportation Code violates article I, section 9 of the Texas Constitution because it allows for arbitrary and discriminatory enforcement. Based on the authority cited by appellant, he is apparently arguing that section 543.001 is overbroad because it would allow officers, for example, to arrest persons who happen to be out jogging or walking in a street.

A statute is overbroad if, in addition to proscribing activities which may constitutionally be forbidden, it sweeps within its coverage conduct which is constitutionally protected. *Clark*

v. State, 665 S.W.2d 476, 482 (Tex. Crim. App. 1984). In analyzing a facial challenge to the overbreadth of a law, a court must first determine whether the enactment reaches a substantial amount of constitutionally protected conduct. *Id.* If it does not, then the overbreadth challenge fails. *Id.* Because appellant cites no authority suggesting that walking or jogging in the middle of a roadway is constitutionally protected conduct, his third issue is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed June 14, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.³

Do not publish — TEX. R. APP. P. 47.3.

³ Senior Chief Justice Paul C. Murphy sitting by assignment.