Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-19-00518-CR

Camron Leo **SANCHEZ-VASQUEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 226th Judicial District Court, Bexar County, Texas
Trial Court No. 2018CR8320
The Honorable Velia J. Meza, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Luz Elena D. Chapa, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 13, 2020

AFFIRMED

Appellant Camron Leo Sanchez-Vasquez was indicted for the offense of racing on a highway resulting in death. After the trial court denied his pretrial motion to quash the indictment, Sanchez-Vasquez entered a plea of nolo contendere. On appeal, he argues the trial court erred in denying his motion to quash because the offense of racing on a highway is unconstitutionally vague and violates his right to intrastate travel. We affirm the trial court's judgment.

BACKGROUND

The State charged Sanchez-Vasquez with racing on a highway in violation of section 545.420 of the Texas Transportation Code. The indictment alleged Sanchez-Vasquez intentionally or knowingly participated in a: (1) race in an attempt to outgain and outdistance another vehicle; and (2) drag race and acceleration contest through the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other. The indictment also alleged Oscar Ricardo Chavez-Manzanarez died as a result.

Sanchez-Vasquez moved to quash the indictment, raising two constitutional challenges. First, he argued section 545.420 was unconstitutionally vague because the statute criminalizes ordinary highway driving such as lawful passing. Second, he argued the statute violated his intrastate right to travel because it limits his right to move freely within the state by automobile.

At the hearing on the motion to quash, the parties stipulated to the truth of the evidence detailed in the police report describing the incident. Marisol Reyna told police officers Sanchez-Vasquez and her boyfriend, Chavez-Manzanarez, agreed to race each other's vehicles on a dead-end stretch of road known as Research Plaza. Reyna sat in the passenger seat of Chavez-Manzanarez's vehicle and the two vehicles started the race after Sanchez-Vasquez pressed his horn three times. Both vehicles accelerated side by side. As they approached an intersection, Chavez-Manzanarez's vehicle hit a bump in the road and became airborne. Chavez-Manzanarez's airbags deployed and he lost control of his vehicle, which landed upside down in a small pond.

Sanchez-Vasquez called 9-1-1 to report the crash. When the police arrived, they transported Reyna and Sanchez-Vasquez to the police station where they provided videotaped statements. Chavez-Manzanarez was transferred to the hospital where he died. The autopsy shows he drowned.

After hearing the parties' arguments, the trial court denied Sanchez-Vasquez's motion. Sanchez-Vasquez then pled no contest, and the trial court deferred his finding of guilt, placed him on deferred adjudication community supervision for ten years, and assessed a fine and court costs against him. This appeal followed.

ANALYSIS

Vagueness Challenge

Sanchez-Vasquez first argues the trial court erred in denying his motion to quash because section 545.420 is unconstitutionally vague. Although he characterizes this constitutional challenge as an as-applied challenge, in his briefing, he also relies on hypothetical driving facts that differ from the stipulated facts. Because challenges to hypothetical factual scenarios present facial challenges, we treat Sanchez-Vasquez's brief as presenting both an as-applied and a facial challenge. *See* TEX. R. APP. P. 38.1(f) (instructing appellate courts to treat appellate briefs "as covering every subsidiary question that is fairly included").

According to Sanchez-Vasquez, the statute criminalizes ordinary highway driving, such as lawful passing, and does not require speed limit violations, recklessness, or intent. As a result, he claims, the statute does not inform a person of ordinary intelligence what conduct is prohibited. Sanchez-Vasquez further argues the statute provides inadequate guidance to law enforcement, encouraging arbitrary and discriminatory enforcement. The State responds section 545.420 is not vague as applied to Sanchez-Vasquez's conduct because he stipulated he was drag racing and did not provide any evidence his conduct constituted ordinary driving. The State further contends the constitutionality of the statute is not dependent on a mens rea element.

Preservation

As-applied challenges may not generally be raised in pretrial motions because such challenges depend on the facts developed at trial. *London v. State*, 490 S.W.3d 503, 509 (Tex.

Crim. App. 2016); *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 910 (Tex. Crim. App. 2011). Here, however, the parties stipulated to the evidence regarding the conduct that gave rise to the racing on the highway charge. By stipulating to this evidence, the parties presented the trial court with the particular facts and circumstances necessary to determine an as-applied challenge. *See London*, 490 S.W.3d at 509 (holding intermediate court could have addressed appellant's as-applied challenge because record was sufficient to consider claim).

Standard of Review

We review a trial court's ruling on a motion to quash an indictment de novo because the sufficiency of a charging instrument is a question of law. *Smith v. State*, 309 S.W.3d 10, 13–14 (Tex. Crim. App. 2010). Whether a statute is constitutional is also a question of law we review de novo. *Ex parte Lo*, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013). We begin our review of the constitutionality of a statute with the presumption that the statute is valid and assume the Legislature did not act arbitrarily and unreasonably in enacting the statute. *Id.*; *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). "If we can determine a reasonable construction that will render the statute constitutional, we must uphold the statute." *Ex parte Zavala*, 421 S.W.3d 227, 231 (Tex. App.—San Antonio 2013, pet ref'd); *see also Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978) (noting if statute can be construed two ways, one of which sustains its validity, then court must adopt that interpretation). The burden rests upon the party challenging the statute to establish its unconstitutionality. *Ex parte Lo*, 424 S.W.3d at 15.

Applicable Law

In general, a statute is unconstitutionally vague if its prohibitions are not clearly defined and it encourages arbitrary and erratic arrests and convictions. *Wagner v. State*, 539 S.W.3d 298, 313 (Tex. Crim. App. 2018); *Cain v. State*, 855 S.W.2d 714, 718 (Tex. Crim. App. 1993). A statute need not be mathematically precise to survive a vagueness challenge. *Roberts v. State*, 278

S.W.3d 778, 791 (Tex. App.—San Antonio 2008, pet. ref'd). Instead, it must provide a person of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. *Wagner*, 539 S.W.3d at 314. In determining whether a statute is unconstitutionally vague, we interpret the plain meaning of the statute's language unless the language is ambiguous or the plain meaning leads to an absurd result. *Sanchez v. State*, 995 S.W.2d 677, 683 (Tex. Crim. App. 1999). "A statute is not unconstitutionally vague merely because the words or terms used are not specifically defined." *Wagner*, 539 S.W.3d at 314. The words or terms must be read in context, and we must construe them under rules of grammar and common usage. *Id*. "A statute satisfies vagueness requirements if the statutory language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id*. (internal quotations omitted).

Under Section 545.420, an individual commits an offense if he "participate[s] in any manner in a race; . . . drag race or acceleration contest[.]" TEX. TRANSP. CODE ANN. §§ 545.420(a)(1), 545.420(a)(3). The section defines "drag race" as "the operation of . . . two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other." *Id.* § 545.420(b)(1)(A). It defines "race" as "the use of one or more vehicles in an attempt to outgain or outdistance another vehicle or prevent another vehicle from passing." *Id.* § 545.420(b)(2)(A).

Application

We must determine whether section 545.420 "conveys sufficient definite warning as to the proscribed conduct when measured by common understanding and practices." *Wagner*, 539 S.W.3d at 314.

As-Applied Challenge

In addressing an as-applied challenge, we do not address hypothetical situations. *Bynum v. State*, 767 S.W.2d 769, 774 (Tex. Crim. App. 1989). Instead, we consider whether the statute is vague as applied to the defendant's conduct. *Id*. In other words, a defendant must show that the statute is unconstitutional when applied to his specific situation. *Id.*

The racing statute prohibits a person from participating in a race or drag race, and it defines race as, inter alia, an attempt to outdistance or outgain another vehicle, and drag race as, inter alia, the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other. TEX. TRANSP. CODE §§ 545.420(b)(1)(A), 545.420(b)(2)(A). These definitions give a person of ordinary intelligence a reasonable opportunity to understand that Sanchez-Vasquez's conduct was prohibited in that individuals are prohibited from using their vehicles in side-by-side competition where they attempt to outdistance one another. *See Wagner*, 539 S.W.3d at 314; *Sanchez*, 995 S.W.3d at 683. Elements of mens rea are not necessary to understand what conduct the statute prohibits. *See* TEX. PEN. CODE ANN. 6.02(c) (providing intent, knowledge, or recklessness suffice to establish criminal responsibility when offense does not prescribe a culpable mental state); *see, e.g.*, *Byrne v. State*, 358 S.W.3d 745, 750 (Tex. App.—San Antonio 2011, no pet.) (pointing out Texas Court of Criminal Appeals has held the absence of a *mens rea* requirement does not render strict liability crimes unconstitutional); *In re Shaw*, 204 S.W.3d 9, 16 (Tex. App.—Texarkana 2006, pet. ref'd) (holding section 21.21 of Texas Penal Code is not vague even though it does not prescribe culpable mental state).

Here, Sanchez-Vasquez stipulated he engaged in the prohibited conduct. He and Chavez-Manzanarez met at a gathering spot for local car clubs and agreed to race on Research Plaza. After they actually met on Research Plaza, Sanchez-Vasquez pressed his horn three times to start the race. "Both vehicles had been traveling side-by-side and racing" before Chavez-Manzanarez lost

control of his vehicle. Although the speed limit is 45 miles per hour, "the speed they were traveling on Research Plaza during the race felt like highway speed." The stipulated facts therefore demonstrate that Sanchez-Vasquez used his vehicle in a side-by-side competition where he attempted to outdistance Chavez-Manzanarez. Because the racing statute criminalizes that behavior, and because it also "conveys sufficient definite warning as to [Sanchez-Vasquez's] proscribed conduct when measured by common understanding and practices," we overrule Sanchez-Vasquez's as-applied challenge. *See, e.g., Wagner*, 539 S.W.3d at 314.

Facial Challenge

If a defendant establishes that a statute is unconstitutional as applied to him, then he may also argue that the statute is unconstitutional on its face. *See Bynum*, 767 S.W.2d at 774. But a defendant "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Id*.

On appeal, Sanchez-Vasquez argues the statute penalizes "ordinary driving," such as when a driver speeds up or slows down to pass, merge, or exit. For support, he relies on two concurring opinions from this court, both authored by then-Justice Marion. *See Herrera v. State*, No. 04-08-00547-CR, 2009 WL 2265244, at *3 (Tex. App.—San Antonio July 29, 2009, no pet.) (mem. op.) (Marion, J., concurring) ("urg[ing] the Legislature to amend its definition of 'race' because 'the statutory definition places an ordinary law-abiding person into the position of committing an offense, even if he is otherwise observing the speed limit, simply by using his vehicle to pass another vehicle."); *Urdiales v. State*, 349 S.W.3d 1, 8 (Tex. App—San Antonio 2009, pet. ref'd) (Marion, J., concurring) ("urg[ing] the Legislature to amend its definition of 'race' so that the statute does not become a trap for the innocent.").

While we acknowledge the arguments Sanchez-Vasquez raises, and the concerns expressed in the concurring opinions in *Uridales* and *Herrera* that this statute may criminalize lawful passing,

here, the stipulated facts do not show that Sanchez-Vasquez's driving constituted "ordinary, every-day, lawful driving." *See Bynum*, 767 S.W.2d at 774.[1] Because Sanchez-Vasquez has not established that the racing statute is unconstitutional as applied to him, he cannot succeed on a facial challenge, arguing that the statute is unconstitutional in all applications. *See id*. As a result, we overrule Sanchez-Vasquez's facial challenge.[2]

Unconstitutional Delegation of Discretion

Finally, Sanchez-Vasquez contends the statute is unconstitutionally vague because it delegates too much discretion to law enforcement. He contends the statute allows officers to make enforcement decisions without any guidance or uniformity. As with his facial vagueness challenge, this is a hypothetical scenario and not the case actually before us. Here, Sanchez-Vasquez failed to present any evidence that law enforcement officers arbitrarily applied the racing statute to him. *See id*; *see also Griffin Indus. v. State*, 171 S.W.3d 414, 419 (Tex. App.—Corpus Christi 2005, pet. ref'd) (rejecting as-applied vagueness argument that statute unconstitutionally delegated discretion to law enforcement in the absence of evidence law enforcement acted arbitrarily). Instead, the stipulated facts show Sanchez-Vasquez called 9-1-1 to report the crash and after police investigated, they learned Sanchez-Vasquez and Chavez-Manzanarez not only agreed to race but also actually drove their vehicles in a side-by-side competition. Accordingly, we overrule Sanchez-Vasquez's argument that the racing statute delegates an unconstitutional amount of discretion to law enforcement.

[1] Even if the statute could result in two interpretations—one criminalizing lawful passing and the other criminalizing side-by-side competition—we are required to adopt the interpretation that sustains the statute's validity and uphold the statute. *See Ex parte Granviel*, 561 S.W.2d at 511; *Ex parte Zavala*, 421 S.W.3d at 231.

[2] We express no opinion about whether this statute could survive a facial challenge brought by a defendant who was lawfully passing.

Intrastate Right to Travel Challenge

Sanchez-Vasquez also asserts section 545.420 violates his fundamental right to intrastate travel. Relying on the Second, Third, and Sixth Circuit Courts of Appeals, which have recognized a protected right to intrastate travel, Sanchez-Vasquez argues the terms "drag race" and "race" violate his right to move freely by automobile, because those terms criminalize ordinary highway driving. Sanchez-Vasquez further contends the statute is not narrowly tailored to meet a significant or compelling interest because the statute applies "wholesale to all drivers, at all times, on all highways" without criminalizing reckless behavior.

The State responds that Texas has not recognized a right to intrastate travel—a point Sanchez-Vasquez concedes. The State also argues the Second, Third, and Sixth Circuit's references to the right to intrastate travel were dicta.

Applicable Law

The Texas Court of Criminal Appeals has not recognized a constitutional right to intrastate travel. Only one of our sister courts—the First Court of Appeals—has discussed the constitutional right to travel in a criminal context by analyzing civil cases. *See Ex parte Robinson*, 80 S.W.3d 709, 715–16 (Tex. App.—Houston [1st Dist.] 2002, pet. granted), *aff'd*, 116 S.W.3d 794 (Tex. Crim. App. 2003). That court wrote:

> A state law implicates the right to travel when it actually deters travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right. Travelers, however, do not have a constitutional right to the most convenient form of travel. The right to travel is subject to reasonable regulation.

Id. (internal quotations omitted).

Application

Here, nothing in section 545.420 restricts Sanchez-Vasquez's ability to travel intrastate. Section 545.420 allows him to travel where he pleases and imposes a reasonable regulation that

prevents him from drag racing or racing when he drives. At most, section 545.420 imposes an indirect burden on his ability to travel, and we conclude such a minor restriction does not impair any fundamental right to travel. *See id.* at 716. We therefore overrule Sanchez-Vasquez's argument that section 545.420 violates his intrastate right to travel.

CONCLUSION

We affirm the trial court's judgment.

Beth Watkins, Justice

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