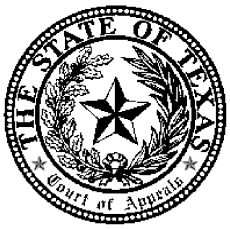
Affirmed and Opinion filed September 27, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00396-CR

OSCAR ALFONSO MEIJA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 819,779

O P I N I O N

On July 31, 1999 at approximately 2:00 a.m., Texas Department of Public Safety Trooper Derrick Rodriguez arrested appellant, Oscar Alfonso Meija, for suspicion of driving while intoxicated. Appellant was subsequently charged by indictment for the felony offense of driving while intoxicated. The offense was enhanced to a third degree felony based upon appellant's two prior convictions for the same offense. The trial court found appellant guilty and assessed his punishment at two years confinement in the Institutional Division of the Texas Department of Criminal Justice. In three points of error, appellant challenges the

constitutionality of his initial detention and asserts that the trial court erred in denying his motion for mistrial. We affirm.

Appellant's first and second issues challenge the constitutionality of his initial detention. In his first issue, appellant specifically contends that Trooper Rodriguez lacked a reasonable basis for suspecting that he had committed a criminal offense. Appellant concedes that he swerved outside of his lane, but asserts that this did not constitute a traffic offense because his "tires just barely went over the white line." In his second issue, appellant contends the trial court erred in denying appellant's motion to suppress because Trooper Rodriguez lacked the requisite probable cause necessary to stop appellant for the offense of driving while intoxicated.

When reviewing a trial court's decision on a motion to suppress, we recognize the trial court is the sole trier of fact and judge of the weight and credibility of the evidence. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App.1999). Accordingly, we must view the evidence in the light most favorable to the trial court's ruling. *Maestas v. State*, 987 S.W.2d 59, 62 (Tex. Crim. App.1999). The Transportation Code requires the operator of a motor vehicle on roadways divided into two or more lanes to drive as nearly as practical within a single lane and not to move from that lane unless the movement can be made safely. TEX. TRANS. CODE ANN. § 545.060(a) (Vernon 1999). According to his testimony, Trooper Rodriguez stopped appellant after he observed appellant's vehicle swerve out of its lane and almost strike another vehicle. It is well settled that a peace officer is empowered to detain motorists when he observes the motorist commit a traffic violation. *Valencia v. State*, 820 S.W.2d 397, 399 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). Accordingly, Trooper Rodriguez was authorized to stop appellant. Appellant's first and second issues are overruled.

In his third issue, appellant contends the trial court erred in denying his motion for mistrial. Appellant moved for a mistrial at the conclusion of the State's evidence when it was brought to the trial court's attention that appellant had not been formally arraigned prior to

the trial. The trial court denied appellant's motion for mistrial; arraigned appellant; accepted appellant's plea of not guilty; and proceeded with the trial. On appeal, appellant asserts, without citing any authority, that the proceedings that occurred prior to his arraignment are void.

The Legislature has provided that in "all felony cases . . . there shall be an arraignment." TEX. CODE CRIM. PROC. ANN. art. 26.01 (Vernon 1989). The arraignment, however, is not a part of the trial. *Wood v. State*, 515 S.W.2d 300, 303 (Tex. Crim. App. 1974). The purpose of arraignment is to read the indictment to the accused, hear his plea thereto and fix his identity; it is often the point where the trial court also determines if the accused has counsel and if appointment of counsel is necessary. *Id*.; TEX. CODE CRIM. PROC. ANN. art. 26.02 (Vernon 1989). A defendant cannot be arraigned until at least two days after indictment has been served on the defendant unless the time is waived by the defendant or he is on bail, but the statute does not specify the proper time for arraignment relative to trial. TEX. CODE CRIM. PROC. ANN. art. 26.03 (Vernon 1989). However, the very purpose of arraignment has already been served in most instances if arraignment is delayed until the commencement of trial; thus, the ideal time for arraignment is long before the commencement of trial. *Wood*, 515 S.W.2d at 303.

Here, the record reflects that appellant was represented by counsel; his identity was consistent with the allegations in the indictment; and his presumed plea of not guilty was formally confirmed. Appellant appears to have been properly served with a copy of the indictment; he does not contend the allegations were a surprise; or that he needed additional time to prepare. Moreover, appellant did not object to proceeding to trial without a formal arraignment; rather, appellant objected to the lack of arraignment only after the State had presented its evidence. If appellant knew that he was not arraigned and did not want to waive arraignment, he should have raised the question before the conclusion of the evidence and given the trial court an opportunity to have him arraigned. *Eckels v. State*, 220 S.W.2d 175, 177-78 (Tex. Crim. App. 1949).

Even if appellant had properly preserved his complaint for appeal, our holding would remain the same. While the trial court's oversight constitutes error, it does not rise to the level of reversible error; a conviction will not be set aside on appeal simply because the record shows an arraignment at an improper time. *Morris v. State*, 16 S.W.2d 757, 757 (Tex. Ct. App. 1891). Under the record presented here, we are satisfied that the court's delay in arraigning appellant was harmless beyond any reasonable doubt. Accordingly, appellant's third issue is overruled and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed September 27, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
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