



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

THE STATE OF TEXAS,	§	No. 08-15-00081-CR
	§	
Appellant,	§	Appeal from
	§	
v.	§	41st District Court
	§	
CHRISTINA GARCIA,	§	of El Paso County, Texas
	§	
Appellee.	§	(TC # 20130D01209)
	§	

OPINION

The State of Texas appeals from the trial court's order granting a motion to suppress evidence. We reverse.

FACTUAL SUMMARY

At around 9:15 p.m. on August 10, 2012, Texas Department of Public Safety Trooper Gilbert Limas conducted a traffic stop unrelated to this case. Trooper John Valenzuela remained in the patrol car, which was parked on the shoulder of the two-lane road, while Trooper Limas spoke to the driver of the vehicle. The posted speed limit on the road was 30 miles per hour. As Trooper Limas returned to the patrol car, a vehicle driven by Christina Garcia drove by in the lane closest to the patrol car. The video of the incident shows Trooper Limas taking two or three steps backwards from the roadway and onto the shoulder in an apparent effort to avoid Garcia's vehicle.

Both troopers concluded that Garcia had passed the patrol car at an unsafe distance and Trooper Limas immediately pursued her. Garcia drove approximately a quarter mile before pulling into the driveway of her home. Trooper Limas pulled the patrol car into the driveway and both troopers exited the patrol car. Garcia exited her car with two small children, and according to Trooper Valenzuela, she began yelling at them and “saying that she’s at her house.” Valenzuela smelled alcohol on Garcia’s breath from a distance of about four feet. Based on Garcia’s performance on the standard field sobriety tests, the troopers placed Garcia under arrest for driving while intoxicated with a child passenger.

Garcia filed a pre-trial motion to suppress on the ground that she was unlawfully detained without reasonable suspicion or probable cause. Although the motion to suppress alleged that Garcia was arrested without reasonable suspicion or probable cause, Garcia argued at the suppression hearing that the State was required to show the officers had probable cause to believe she had committed a traffic violation.

The evidence showed that the troopers had pulled Garcia over for violating Section 545.157 of the Transportation Code which requires an operator of a motor vehicle, upon approaching a stationary emergency vehicle with its emergency equipment activated, to slow to a speed not to exceed 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or more. *See* TEX.TRANSP.CODE ANN. §545.157(b)(2)(A)(West Supp. 2016). During cross-examination, Trooper Valenzuela agreed with defense counsel that Garcia’s vehicle was not traveling over 10 miles per hour, but Trooper Limas testified that the vehicle was traveling between 10 and 15 miles per hour. The trial court expressly found the troopers’ testimony on the issue of speed to be credible. Both troopers testified that Garcia’s vehicle almost struck Trooper Limas. The court found that Garcia’s vehicle passed close to the emergency vehicle at a slow rate of speed,

but the court did not find the troopers' testimony credible that Garcia's vehicle had almost struck Trooper Limas. The trial judge granted the motion to suppress based on her conclusion that Garcia "passed the emergency vehicle at a rate of speed in conformity with Texas Transportation Code §545.157."

REASONABLE SUSPICION

In its sole issue, the State contends that the trial court abused its discretion by granting the motion to suppress because Trooper Limas had objectively reasonable suspicion to believe that Garcia violated Section 545.157 of the Transportation Code at a speed in excess of that allowed by law.

Standard of Review and Applicable Law

The denial of a motion to suppress evidence is analyzed under a bifurcated standard of review. *St. George v. State*, 237 S.W.3d 720, 725 (Tex.Crim.App. 2007). We review the trial court's determination of historical facts for an abuse of discretion, but the trial court's application of law to the facts is reviewed *de novo*. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex.Crim.App. 2013). When reviewing the trial court's determination of historical findings, we are required to give those findings almost total deference if they are supported by the evidence. *Tucker v. State*, 369 S.W.3d 179, 184 (Tex.Crim.App. 2012). When the trial court makes findings of fact and conclusions of law finding the officers to be credible and accepting the State's version of events, the only question before the appellate court is whether the trial court properly applied the law to the facts it found. *State v. Alderete*, 314 S.W.3d 469, 472 (Tex.App.--El Paso 2010, pet. ref'd).

A law-enforcement officer is justified in detaining a person for investigative purposes if the officer has a reasonable suspicion to believe the individual is violating the law. *Ford v. State*,

158 S.W.3d 488, 492 (Tex.Crim.App. 2005); *Alderete*, 314 S.W.3d at 472. An officer may lawfully stop and detain a person for a traffic violation that the officer witnesses. *See Garcia v. State*, 827 S.W.2d 937, 944 (Tex.Crim.App. 1992). The decision to stop an automobile is reasonable when an officer has reasonable suspicion to believe that a traffic violation has occurred. *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex.Crim.App. 2015); *Guerra v. State*, 432 S.W.3d 905, 911 (Tex.Crim.App. 2014). The reasonable suspicion determination disregards the subjective intent of the officer making the stop and looks solely to whether there was an objective basis for the stop. *Ford*, 158 S.W.3d at 492; *Alderete*, 314 S.W.3d at 472. In determining whether reasonable suspicion existed, we must determine whether an objective basis for the stop exists based on the totality of the circumstances. *Ford*, 158 S.W.3d at 492.

Applying the Law to the Facts

Garcia argues that the State failed to articulate a “ticketable offense” at the suppression hearing, but the record shows that the issue at the suppression hearing was whether the troopers had reasonable suspicion to believe Garcia had violated Section 545.157 of the Transportation Code. To the extent Garcia argues that the State was required to justify the stop by establishing that the troopers had probable cause to believe she had violated the statute, she is incorrect. The decision to stop an automobile is reasonable when an officer has reasonable suspicion to believe that a traffic violation has occurred. *Jaganathan*, 479 S.W.3d at 247.

Section 545.157(b)(2)(A) requires an operator of a motor vehicle, upon approaching a stationary emergency vehicle with its emergency equipment activated, to slow to a speed not to exceed 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or more. *See* TEX.TRANSF.CODE ANN. § 545.157(b)(2)(A). As testified to by the witnesses and found by the trial court, the posted speed limit on the roadway was 30 miles per

hour. Consequently, Garcia was required to slow her vehicle to a speed of no more than 10 miles per hour as she approached the stationary patrol car. Garcia also claims that the trial court found Trooper Limas to lack credibility, but the trial court expressly found different parts of Trooper Limas's testimony to be credible. Significant to the issue presented on appeal, the court found Trooper Limas credible when he testified that Garcia's vehicle was traveling at a rate of 10 to 15 miles per hour. The trial court concluded that Garcia did not violate Section 545.157(b)(2)(A), but the issue before the trial court was not whether Garcia was ultimately guilty of the traffic violation. The State was not required to prove beyond a reasonable doubt that Garcia actually committed the traffic offense. *See Madden v. State*, 242 S.W.3d 504 508 n.7 (Tex.Crim.App. 2007). The issue was whether an objective basis for the stop existed based on the totality of the circumstances. More specifically, the question is whether Trooper Limas had reasonable suspicion to believe Garcia had violated the statute by traveling in excess of 10 miles per hour when she drove by the stationary patrol car. *See Jaganathan*, 479 S.W.3d at 247 ("The question in this case is not whether appellant was guilty of the traffic offense but whether the trooper had a reasonable suspicion that she was."). The facts found by the trial court, namely that Garcia was traveling between 10 and 15 miles per hour when her vehicle passed the stationary patrol car, objectively support a reasonable suspicion that Garcia violated Section 545.157(b)(2)(A). The trial court erred by concluding otherwise. We sustain the sole issue presented, reverse the trial court's order granting Garcia's motion to suppress, and remand the cause for further proceedings.

June 14, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Hughes, JJ.
Hughes, J., not participating

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