In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00348-CR

JOSE LUIS TELLEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 4
Montgomery County, Texas
Trial Cause No. 10-257478

MEMORANDUM OPINION

After the trial court denied his motion to suppress evidence, Jose Luis Tellez pleaded guilty to the offense of misdemeanor driving while intoxicated. The trial court found him guilty and sentenced him to thirty days in jail. Contending the trial court erred by denying his motion to suppress, Tellez now appeals. Finding no abuse of discretion by the trial court, we affirm the trial court's judgment.

BACKGROUND

On routine patrol, Officer Jeremy Whatley ran a check on a vehicle license plate. Officer Whatley stated it was his normal practice to randomly run license plates when he is on call—"[j]ust something that I do on a regular basis, look for traffic offenses and run license plates." He testified that he entered the license plate number in the "Spillman" database in his car, whose data is maintained and updated by the State of Texas. The system "checks NCIC/TCIC" for, among other things, "insurance information."[1]

Whatley explained the meaning of the information he receives from the system. The printout shows whether insurance is "confirmed" or "unconfirmed," or if the officer needs to verify insurance coverage manually. Whatley stated that "confirmed" means the insurance policy is valid. "Verify manually," which usually "pops up" on new vehicles, means the system "has no information at all." An entry of "unconfirmed" by itself means "expired or no insurance." When the entry is "unconfirmed" coupled with insurance information, "[t]hat means it's just expired." The system gives the policy expiration date. Whatley also testified that an "unconfirmed status" could mean the database is not able to verify whether or not the person has insurance. Based on his experience with the system, Whatley stated it was "very accurate[,]" and the database was operating correctly on that night. He testified he did not know how often the system was updated.

[1] The National Crime Information Center and the Texas Crime Information Center.

The report on the license plate check on the Tellez vehicle stated "unconfirmed," and the insurance information accompanying that notation showed the insurance was expired. Based on this report, Whatley explained he "suspected that there was not a valid insurance policy on the vehicle[,]" and he made the traffic stop. Whatley testified the only indication he had of reasonable suspicion for stopping the vehicle was the "unconfirmed" report on the insurance.

MOTION TO SUPPRESS STANDARD

We review a trial court's ruling on a motion to suppress for abuse of discretion. *Lujan v. State*, 331 S.W.3d 768, 771 (Tex. Crim. App. 2011). We give the trial court almost complete deference in its determination of historical facts, particularly when based on an assessment of credibility and demeanor. *Id*. If resolution of the trial court's rulings on application of the law to questions of fact depends on an evaluation of credibility and demeanor, we give the same deference to the trial court. *Id*. (citing *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000)). We review *de novo* mixed questions of law and fact that do not turn on credibility and demeanor. *Id*. A determination of reasonable suspicion is made by considering the totality of the circumstances, giving almost total deference to the trial court's determination of historical facts and reviewing *de novo* the trial court's application of the law to facts not turning on credibility and demeanor. *Castro v. State*, 227 S.W.3d 737, 741 (Tex. Crim. App. 2007). Because the trial court here did not make explicit findings of fact, we review the evidence in a light most

favorable to the trial court's ruling, and assume implicit findings of fact supported by the record. *Id*.

TRAFFIC STOP

A routine traffic stop is an investigative detention and must be reasonable. *Davis v. State*, 947 S.W.2d 240, 245 (Tex. Crim. App. 1997). Under the Fourth Amendment, a warrantless detention that is less than a full-blown custodial arrest must be justified at least by a reasonable suspicion. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). Reasonable suspicion exists if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead the officer to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity. *Castro*, 227 S.W.3d at 741. Under Texas law, drivers are required to maintain proof of financial responsibility in order to lawfully drive on the public road; failure to comply with the statute is a misdemeanor. *See* Tex. Transp. Code Ann. §§ 601.051, 601.191 (West 2011). To stop or briefly detain a person, an officer must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch[.]"' *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). "[T]he Fourth Amendment totality-of-the circumstances test requires only 'some minimal level of objective justification' for the stop . . . ." *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010).

APPLICATION OF LAW TO FACTS

On appeal, Tellez does not argue the illegality of the use of the computerized database system to randomly check license plates. Instead, he asserts that the information Officer Whatley received from the computer database did not establish "to a certainty" that "unconfirmed" meant there was no insurance, "nor could [Whatley] explain why such information would be unavailable." He essentially argues that the information Whatley received from the computerized system did not establish sufficient indicia of "reasonable suspicion." Tellez relies on two cases from the Seventh Court of Appeals, *Contraras v. State*, 309 S.W.3d 168 (Tex.App.—Amarillo 2010, pet. ref'd) and *Gonzalez-Gilando v. State*, 306 S.W.3d 893 (Tex. App.—Amarillo 2010, pet. ref'd). There, the Court of Appeals found that the information the officers obtained from the computer database system did not give rise to reasonable suspicion to make the traffic stop. *Contraras*, 309 S.W.3d at 172-73; *Gonzalez-Gilando*, 306 S.W.3d at 896-97.

The two cases, which arose out of the same traffic stop, are distinguishable from the stop here. In *Gonzalez-Gilando*, the officers obtained information from the computer database which stated that the information regarding insurance was "not available" or "undocumented." *See* 306 S.W.3d at 894-95. "According to one trooper, the circumstance meant the car could or could not have been covered." *Id*. at 894. The Court concluded that "the information obtained by the officers . . . was hardly suggestive of anything other than the unknown." *Id*. at 896. "[W]ithout other evidence developing the source of the

information comprising the database, explaining what was meant when insurance information was unavailable, explaining why such information would be unavailable, illustrating the accuracy of the database, establishing the timeliness of the information within the database, depicting how often those using the database were told that insurance information was unavailable, proving that the program through which the database was accessed was even operating at the time, and the like, we cannot accept the deputy's inference as reasonable." *Id*. at 897.

Unlike the record in *Contraras* and *Gonzalez-Gilando*, the record here provides information to support a finding that Whatley's suspicion of "no insurance" was reasonable. *See Delk v. State*, 855 S.W.2d 700, 711 (Tex. Crim. App. 1993) (Court of Criminal Appeals considered the legality of a traffic stop based on information obtained from the NCIC computer system and concluded that an officer "could defensibly act in reliance on [a report from NCIC]."), *overruled on other grounds by Ex parte Moreno*, 245 S.W.3d 419, 425 (Tex. Crim. App. 2008); *Crawford v. State*, No. 01-10-00559, 2011 WL 1835270, at **2-4 (Tex. App.—Houston [1st Dist.] May 12, 2011, pet. filed) (not yet released for publication) (Based on report of lapsed insurance from the computer database system, officer had reasonable suspicion to stop vehicle.); *Brown v. State*, 986 S.W.2d 50, 51-53 (Tex. App.—Dallas 1999, no pet.) (holding that NCIC computer database report indicating vehicle was stolen provided officers with probable cause for

warrantless arrest of driver); *see also United States v. Cortez-Galaviz,* 495 F.3d 1203, 1205-11 (10th Cir. 2007).

In denying Tellez's motion to suppress, the trial court was not relying on blind adherence to computer printouts. The trial court had additional information regarding the computer database system used by Whatley. Whatley testified that his experience with the Spillman system showed it to be "very accurate." He indicated he had never received any complaints about any inaccuracies, and he had personally not had any problems with the system's accuracy. He further testified the database was based on information from the State of Texas. Whatley explained the meaning of the terms appearing on the printout. He acknowledged the label "unconfirmed" could have alternate meanings. The license plate check on Tellez's vehicle returned a status of "unconfirmed" and then gave additional insurance information showing the insurance had expired. Viewing the evidence in the light most favorable to the trial court's ruling, we conclude the trial court did not abuse its discretion in denying the motion to suppress.

We overrule Tellez's issue on appeal and affirm the trial court's judgment.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on August 10, 2011
Opinion Delivered August 24, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.