

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00325-CR

The State of Texas, Appellant

v.

Christine Salas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 1 OF HAYS COUNTY
NO. 15-3689CR, HONORABLE ROBERT UPDEGROVE, JUDGE PRESIDING**

MEMORANDUM OPINION

The State of Texas appeals from an order of the trial court granting a motion to suppress filed by appellee Christine Salas, who had been charged with the offense of driving while intoxicated. The trial court had granted the motion on the ground that the arresting officers lacked reasonable suspicion to initiate a traffic stop on Salas's vehicle prior to her arrest. In a single issue on appeal, the State argues that the trial court abused its discretion in granting the motion to suppress. We will reverse the trial court's order and remand for further proceedings consistent with this opinion.

BACKGROUND

At the hearing on the motion to suppress, Officer Lance Cyrus of the San Marcos Police Department testified that on October 11, 2015, at approximately 2:50 a.m., while he was on patrol and stopped at a red traffic light at an intersection in downtown San Marcos, he observed a

red Ford Escape cross the intersection in front of him, at the same time as the red light facing Cyrus turned green. Specifically, Cyrus testified as follows:

Q. [W]hat brought your attention to that vehicle?

A. I was sitting at a—the traffic light.

Q. Okay.

A. My light was red and it changed to green, and I observed the Ford Escape go through the red light and cross my path.

Q. So when you say—so you're looking at the light and in front of you it—it's turned green, and that's when another car came, like, perpendicular to you?

A. Yes.

Q. Okay. So if your light was green, would there—is—is it possible that their light could also have been green?

A. If there is a malfunction with the light, yeah.

Q. Okay. But if everything was operating like it was supposed to, what would you assume had happened?

A. Their light was red.

Cyrus further testified that after observing the Escape cross the intersection, he proceeded to initiate a traffic stop on the vehicle for running a red light. Cyrus also acknowledged that he had not observed the vehicle commit any other traffic violations prior to initiating the stop. According to Cyrus, the driver of the vehicle, later identified as Salas, was subsequently arrested for driving while intoxicated.

A video recording of the stop, taken from Cyrus's patrol-car dash camera, was admitted into evidence and played for the trial court. On the recording, consistent with Cyrus's testimony, Salas's vehicle could be seen driving through the intersection at the same time that the traffic light facing Cyrus turned green. A color photograph depicting Salas's vehicle crossing the intersection, taken from that same recording, was also admitted into evidence. The State elicited the following testimony from Cyrus as to what could be seen in the photo:

Q. In that picture, Officer, can you tell what color the light is?

A. Green.

Q. And who is it green for, you or the defendant?

A. Me.

Q. And is the defendant or you in the middle of the intersection?

A. The defendant.

On cross-examination, Salas offered into evidence a different photograph of the intersection, taken from a different angle and at a different date and time, and showed the photograph to Cyrus. Salas then drew Cyrus's attention to a solid white line located behind the intersection, where, Cyrus acknowledged, traffic should stop when facing a red light. Salas then attempted to elicit testimony from Cyrus tending to show that at the moment when Salas's vehicle crossed that line, the light facing Salas might have been yellow rather than red:

Q. The Transportation Code says, essentially, in the absence of—when you have a stop sign, you're to stop at the stop sign, correct?

A. Yes.

Q. And if there is a—there's a—there's actually a line in the intersection where you're supposed to stop—

A. Correct.

Q. —right? And would you agree with me that this was that line? There was the intersection and there's a line back here you're supposed to stop—

A. Correct.

Q. —correct? Okay. So a stop that's legal technically is one that—is where you're behind the line. Once you've moved passed that line, you've moved into the intersection—

A. Correct.

....

Q. The point I'm making is that when the car enters the intersection, you still have a red light; therefore, her light would be yellow, in theory, if everything is working correct. And I don't know if—so, there, your light is still—still red, her light is yellow. You can see, would you agree, that her car is past the telephone pole?

A. Yes.

Q. Okay. And, if you look at this, the telephone pole is way out in the intersection; would you agree?^[1]

A. Yes.

¹ The record reflects that the telephone pole was located at the corner of the street adjacent to where Salas's vehicle first entered the intersection. The video showed that, at the time the light facing Cyrus turned green, Salas's vehicle had already passed the telephone pole but was not yet halfway through the intersection.

The trial court also heard testimony from Officer Eric Charleswell of the San Marcos Police Department, who was riding with Cyrus at the time of the stop. Charleswell's testimony tended to refute Salas's claim that her light was not red at the time she entered the intersection:

- Q. And when you see a light like this where the light is green for one person and someone comes through it, is there a probability that two lights are green at the same time and crossing traffic?
- A. There's—there's always a possibility of malfunctioning lights as Officer Cyrus said, but that wasn't the case this night.
- Q. Okay. And when a light, for instance, a yellow light—we all know that if you're in the middle of an intersection or in the intersection, you can continue through. As soon as the light turns yellow, does the other light turn green?
- A. No, it does not.
- Q. How does that work?
- A. Especially in the downtown area, what you will have is you will have—a light will turn yellow. For example, in this particular instance, our light was red. The—her light was yellow. Her light turns red, both lights stay red briefly and then our light turns green.

On cross-examination, Charleswell acknowledged that he did not know if the traffic lights were working properly that night. However, on re-direct, the State asked Charleswell what would happen if, hypothetically, “the lights were letting two different lanes that were perpendicular to each other go at once.” Charleswell answered, “There will be collisions in the intersection.”

The trial court took the matter under advisement and subsequently granted the motion to suppress. The trial court later made the following findings of facts and conclusions of law:

- “Christine Salas was lawfully operating a motor vehicle prior to being pulled [over] on October 11, 2015.”
- “Christine Salas did not run a red light on October 11, 2015, prior to being pulled over.”
- “Christine Salas committed no other traffic violations in view of the San Marcos Police Department on October 11, 2015.”
- “The San Marcos Police Department seized the defendant without any reasonable suspicion that she was engaged in criminal activity.”
- “Christine Salas was subsequently arrested unlawfully.”
- “The evidence uncovered subsequent to the arrest was not discovered pursuant to a reasonable investigative detention.”
- “The officer had no arrest warrant, there were no exigent circumstances, and there was no reasonable suspicion to believe the defendant was involved in criminal activity.”
- “This illegal stop and seizure violated the defendant’s rights under the Fourth and Fourteenth Amendments to the United States Constitution, Article 1, Section 9 of the Texas Constitution, and Article 38.23 and Chapter 14 of the Texas Code of Criminal Procedure.”
- “All evidence subsequent to the arrest was discovered in violation of the above-mentioned statutes and should be suppressed in all criminal proceedings hereinafter.”

This appeal by the State followed.

STANDARD OF REVIEW

We review a trial court’s ruling on a motion to suppress for an abuse of discretion.²

“The record will be viewed in the light most favorable to the trial court’s determination, and the

² *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)).

judgment will be reversed only if it is arbitrary, unreasonable, or ‘outside the zone of reasonable disagreement.’”³ Additionally, “[w]e review a motion to suppress evidence under a bifurcated standard.”⁴ “Under the appellate standard of review on Fourth Amendment claims, an appellate court is to afford almost total deference to the trial court’s determination of historical facts, and of application-of-law-to-fact issues that turn on credibility and demeanor, while reviewing de novo other application-of-law-to-fact issues.”⁵ “As the prevailing party at the trial level, appellee gains the benefit of deference on factual findings made in her favor.”⁶ “However, whether the facts, as determined by the trial court, add up to reasonable suspicion or probable cause is a question to be reviewed de novo.”⁷

Moreover, “[t]he recurring requirement” when reviewing suppression rulings “is that deference is due only if the trial court’s rulings are supported by the record.”⁸ This is true whether the trial court’s ruling is based on an officer’s testimony or on a videotape recording admitted into

³ *Id.* (citing *Dixon*, 206 S.W.3d at 590; *Montgomery v. State*, 810 S.W.2d 372, 391–92 (Tex. Crim. App. 1991)).

⁴ *State v. Kerwick*, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)).

⁵ *State v. Ford*, 537 S.W.3d 19, 23 (Tex. Crim. App. 2017) (citing *Guzman*, 955 S.W.2d at 89).

⁶ *Id.* (citing *State v. Krizan-Wilson*, 354 S.W.3d 808, 815–16 (Tex. Crim. App. 2011)).

⁷ *Id.* (citing *Byram v. State*, 510 S.W.3d 918, 923 (Tex. Crim. App. 2017)); *see also State v. Sheppard*, 271 S.W.3d 281, 291 (Tex. Crim. App. 2008) (explaining that factual findings include “who did what, when, where, how, or why” but “do not include legal rulings on ‘reasonable suspicion’ or ‘probable cause’; those are legal conclusions subject to de novo review, not deference”).

⁸ *Miller v. State*, 393 S.W.3d 255, 263 (Tex. Crim. App. 2012).

evidence at a suppression hearing.⁹ Thus, “[w]hen there are factual disputes regarding testimony or the contents of a videotape, the trial court’s findings of historical fact are afforded almost total deference.”¹⁰ “But when evidence is conclusive, such as a written and signed agreed stipulation of evidence or ‘indisputable visual evidence,’ then any trial-court findings inconsistent with that conclusive evidence may be disregarded as unsupported by the record, even when that record is viewed in a light most favorable to the trial court’s ruling.”¹¹

ANALYSIS

In its sole issue on appeal, the State contends that the trial court abused its discretion in granting Salas’s motion to suppress. According to the State, the trial court impermissibly evaluated the traffic stop from the perspective of an “omniscient officer” rather a “reasonable officer” and improperly based its decision on its finding that Salas “did not run a red light.” This was improper, the State urges, because “the issue is not whether [Salas] ran the red light, but whether Officer Cyrus had reasonable suspicion to believe that [Salas] had done so.” Salas argues in response that there were no facts giving rise to reasonable suspicion because, in her view, “the officers merely testified they saw their own light turn green; neither offered testimony whatsoever that they saw Salas’s light turn red.” “Thus,” according to Salas, “their statement that Salas ran a red light is conclusory.”

⁹ See *State v. Duran*, 396 S.W.3d 563, 570 (Tex. Crim. App. 2013) (citing *Montanez v. State*, 195 S.W.3d 101, 109 (Tex. Crim. App. 2006)).

¹⁰ *Miller*, 393 S.W.3d at 263 (quoting *Tucker v. State*, 369 S.W.3d 179, 187 (Tex. Crim. App. 2012) (Alcalá, J., concurring)).

¹¹ *Id.*

“An officer may make a warrantless traffic stop if the ‘reasonable suspicion’ standard is satisfied.”¹² “Reasonable suspicion exists if the officer has ‘specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaging in criminal activity.’”¹³ Additionally, “[t]he question of whether an officer has reasonable suspicion to detain an individual for further investigation is determined from the facts and circumstances actually *known* to the officer at the time of the detention—what he saw, heard, smelled, tasted, touched, or felt—not what that officer could have or should have known.”¹⁴ In other words, “[t]he standard is not what an omniscient officer would have seen, but rather what a reasonable officer would have done with what he actually did see.”¹⁵

A driver’s failure to “comply with an applicable official traffic-control device,” including a stop light, is considered a criminal offense.¹⁶ Accordingly, if an officer is “aware of facts that support a reasonable inference that the defendant drove past” a stop light, the officer has reasonable suspicion to initiate a traffic stop.¹⁷ Moreover, “for a peace officer to stop a motorist to

¹² *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015) (citing *Guerra v. State*, 432 S.W.3d 905, 911 (Tex. Crim. App. 2014)).

¹³ *Id.* (quoting *Abney v. State*, 394 S.W.3d 542, 548 (Tex. Crim. App. 2013)).

¹⁴ *Duran*, 396 S.W.3d at 572 (emphasis in original) (citing *Kolender v. Lawson*, 461 U.S. 352, 368 (1983); *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

¹⁵ *Id.*

¹⁶ See Tex. Transp. Code §§ 542.301, 544.004(a), .007(d).

¹⁷ See *Jaganathan*, 479 S.W.3d at 247.

investigate a traffic infraction, as is the case with any investigative stop, ‘proof of the actual commission of the offense is not a requisite.’”¹⁸ The reasonable-suspicion standard “requires only ‘some minimal level of objective justification’ for the stop.”¹⁹ Thus, “[a]t a suppression hearing, the State need not establish that a crime occurred prior to the investigatory stop, but it must elicit testimony showing sufficient facts to prove that reasonable suspicion existed that a particular person has engaged in, or soon will be engaging in, criminal activity.”²⁰ “This standard is an objective one,” and “the court will take into account the totality of the circumstances in order to determine whether [] reasonable suspicion existed for the stop.”²¹

Here, the trial court concluded that the officers lacked reasonable suspicion to stop Salas based on its finding that Salas “did not run a red light . . . prior to being pulled over” by Officer Cyrus. However, the legality of the traffic stop does not depend on whether Salas “ran a red light” but on whether the officers had reasonable suspicion to believe that she did. In this case, the evidence demonstrating that the officers reasonably believed that Salas had run a red light included the following:

¹⁸ *Leming v. State*, 493 S.W.3d 552, 561 (Tex. Crim. App. 2016) (quoting *Drago v. State*, 553 S.W.2d 375, 377 (Tex. Crim. App. 1977)).

¹⁹ *Hamal v. State*, 390 S.W.3d 302, 306 (Tex. Crim. App. 2012) (quoting *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010)); *see also Trevino v. State*, No. 03-14-00009-CR, 2016 Tex. App. LEXIS 1219, at *21-22 (Tex. App.—Austin Feb. 5, 2016, pet. ref’d) (mem. op., not designated for publication) (“There is no requirement that an actual traffic violation be committed; it is sufficient to show that the officer reasonably believed that a violation was in progress.”).

²⁰ *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011) (citing *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001)).

²¹ *Id.* (citing *Terry*, 392 U.S. at 21–22; *U.S. v. Cortez*, 449 U.S. 411, 417–418 (1981)).

- Cyrus testified that as the traffic light facing him changed from red to green, he “observed the Ford Escape go through the red light and cross [his] path.”
- The video recording of the stop, consistent with Cyrus’s testimony, showed Salas’s vehicle drive through the intersection at the same time as the traffic light facing Cyrus turned from red to green.
- When Cyrus was shown a color photograph taken from the recording, he testified that the color of the light facing him was green and that at the time the light turned green, Salas’s vehicle was already in the middle of the intersection.
- Cyrus further testified that, although it was possible that the light facing Salas might have been green at the same time as his, “[i]f there [had been] a malfunction with the light,” Salas’s light would have been red if the lights had been working properly.
- Officer Charleswell similarly testified that although “there’s always a possibility of malfunctioning lights . . . that wasn’t the case this night.” Although Charleswell later acknowledged that he did not know whether the traffic lights were working properly that night, Salas presented no evidence tending to show that the lights had malfunctioned or were not working properly on the night in question.
- In response to Salas’s theory that the light facing Salas might have been yellow instead of red at the time Salas’s vehicle entered the intersection, Charleswell testified that, in his experience, a traffic light does not turn green as soon as the other light turns yellow. Instead, Charleswell explained, “[h]er light turns red, both lights stay red briefly and then our light turns green.”

It may well be that the evidence could support the trial court’s finding that Salas “did not run a red light.” As Salas observes, neither officer testified that he saw the traffic light facing Salas turn red, and the color of the traffic light facing Salas cannot be seen in either the video recording or the photograph taken from the recording. Additionally, as discussed above, Salas elicited testimony from Cyrus tending to show that it was at least possible, based on the location of Salas’s vehicle in the intersection at the time the light facing Cyrus turned green, that Salas’s light

was yellow when her vehicle first entered the intersection. But again, “[a]t a suppression hearing, the State need not establish that a crime occurred prior to the investigatory stop, but it must elicit testimony showing sufficient facts to prove that reasonable suspicion existed that a particular person has” committed a traffic offense.²² The reasonable-suspicion standard “requires only ‘some minimal level of objective justification’ for the stop,”²³ and “[t]he standard is not what an omniscient officer would have seen, but rather what a reasonable officer would have done with what he actually did see.”²⁴ Here, the State elicited testimony, summarized above, tending to show that prior to initiating the traffic stop, Officer Cyrus saw Salas’s vehicle drive through the intersection at the same time as the traffic light facing him turned from red to green. The State also presented “indisputable visual evidence,” consistent with Cyrus’s testimony, that showed the traffic light facing Cyrus turn green as Salas’s vehicle went through the intersection. Thus, contrary to Salas’s assertion, Cyrus’s testimony that Salas drove through a red light was not “conclusory” but was instead based on “specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect” that Salas had run a red light.²⁵ On this record, we must conclude that

²² See *Martinez*, 348 S.W.3d at 923.

²³ *Hamal*, 390 S.W.3d at 306 (quoting *Foster*, 326 S.W.3d at 614).

²⁴ *Duran*, 396 S.W.3d at 572.

²⁵ See *Ford*, 537 S.W.3d at 23–26; *Leming*, 493 S.W.3d at 561; *Jaganathan*, 479 S.W.3d at 248–49; *Kerwick*, 393 S.W.3d at 274–76; *Baines v. State*, 418 S.W.3d 663, 668–69 (Tex. App.—Texarkana 2010, pet. ref’d); see also *Trevino*, 2016 Tex. App. LEXIS 1219, at *25–26 (“A police officer’s reasonable mistake about the facts may yet legitimately justify the officer’s conclusion that reasonable suspicion to detain exists. . . . Even if [the officer] was mistaken about whether appellant came to a complete stop, we find that this mistake was reasonable under the circumstances under which she observed appellant at the stop sign.”); *State v. Hanath*, No. 01-08-00452-CR, 2010 Tex. App. LEXIS 8011, at *14–17 (Tex. App.—Houston [1st Dist.]

the State satisfied its burden to prove that the officers had reasonable suspicion to initiate a traffic stop on Salas's vehicle. The trial court erred in concluding otherwise and, consequently, abused its discretion in granting the motion to suppress.

We sustain the State's sole issue on appeal.

CONCLUSION

We reverse the trial court's order granting Salas's motion to suppress and remand this cause to the trial court for further proceedings consistent with this opinion.

Bob Pemberton, Justice

Before Justices Puryear, Pemberton, and Field

Reversed and Remanded

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Do Not Publish

Sept. 30, 2010, no pet.) (mem. op., not designated for publication) (concluding that trial court erred in granting motion to suppress when it went beyond determining issue of reasonable suspicion and instead considered whether defendant had committed actual traffic offense); *Newsom v. State*, No. 10-07-00169-CR, 2009 Tex. App. LEXIS 2967, at *5-6 (Tex. App.—Waco Apr. 22, 2009, pet. ref'd) (mem. op., not designated for publication) (rejecting appellant's contention that officer's failure to testify that traffic light facing appellant was red prior to stop rendered traffic stop invalid).