COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JOSEPH VILLA,		§	No. 08-20-00091-CR
	Appellant,	§	Appeal from the
v.		§	41st District Court
THE STATE OF TEXAS,		§	of El Paso County, Texas
	Appellee.	§	(Trial Court No. 20190D04851)

O P I N I O N

Joseph Villa appeals the trial court's denial of his motion to suppress the physical evidence found in his possession following a traffic stop. He contends in two issues the El Paso Police Department did not have reasonable suspicion to conduct a traffic stop, and he did not voluntarily consent to a warrantless search of his pants pockets. Finding no error, we affirm.

BACKGROUND

Factual Background

In August 2019, El Paso Police Department Officer Diego Solis and his partner, Officer Oscar Escajeda, were working in uniform and in a marked unit with the El Paso Police Department gang suppression unit. Solis and Escajeda were traveling eastbound on Wells Road, an area of high gang and narcotics activity, when they observed a Chevy Trailblazer in front of them. The State

introduced a dashcam video taken from the officers' vehicle at the motion to suppress hearing. The footage begins shortly before the driver of the Trailblazer activates his right-turn signal and turns from Wells Road onto North Haven Drive. The Trailblazer momentarily leaves the dashcam's view as it passes over railroad tracks on North Haven Drive and begins to take an immediate left turn onto Roseway Drive. The left turn signal is not on when the Trailblazer comes back into view as it finishes its turn onto Roseway Drive. Officer Solis testified he pulled the Trailblazer over because its driver failed to use the left-turn signal 100 feet before turning, in violation of Section 545.104(b) of the Texas Transportation Code.

Solis and Escajeda approached the Trailblazer and contacted its occupants. Solis approached the driver, who he identified as Anthony Fulk. Escajeda approached Appellant, who was in the vehicle's front passenger seat. Escajeda was equipped with a body microphone, but he did not activate it until several minutes into the encounter. But Solis testified at the motion to suppress hearing that Fulk showed signs of nervousness. And both officers testified that Appellant could not stop moving, was fidgeting with his phones and cigarettes, and was sweating profusely. Based on this behavior, and the dangerous nature of the neighborhood, the officers requested Fulk and Appellant to get out of the vehicle for officer safety. The dashcam video shows Solis escorting Fulk from the driver's side of the Trailblazer to the front of the police car, where he performed a pat-down search. Shortly after that, Appellant exits the vehicle's passenger side and sits on the Trailblazer's bumper. Escajeda then leads Appellant from the Trailblazer to the passenger side of the police car, where Appellant places his hands on the vehicle so Escajeda can perform a pat-down search. A few seconds later, having activated his body microphone, Escajeda asked Appellant, "Do you mind emptying out your pockets for me?" Appellant then takes a pill bottle from his pocket and places it on the hood of the police car. Solis and Escajeda observed three clear

baggies in the pill bottle containing what appeared to be crack cocaine. As a result, they handcuffed and placed Appellant in the back of their patrol car.

Fulk did not consent to the search of the Trailblazer. However, a narcotics detector dog alerted to the vehicle's exterior and a black nylon bag on the front passenger-side floorboard where Appellant had been sitting. Inside the black bag was a bottle of Viagra prescribed to Appellant with a dime-sized crystal substance, two baggies containing a crystal substance, and a syringe filled with a cloudy liquid. The officers found another baggie containing a crystal substance inside the pack of cigarettes Appellant had been fidgeting with. In total, police seized 47.98 grams of methamphetamine, .74 grams of crack cocaine, and less than 1 gram of THC from Appellant.

Procedural Background

A grand jury indicted Appellant for possessing methamphetamine with intent to deliver. TEX.HEALTH & SAFETY CODE ANN. § 481.112(d). It also indicted him for possessing less than one gram of cocaine. *Id.* § 481.115(b).

Appellant filed a motion to suppress all evidence regarding his possession of methamphetamine and cocaine, arguing the traffic stop and subsequent search of his person were unconstitutional. Specifically, Appellant argued the dashcam video shows that Fulk did activate the Trailblazer's left-turn signal before turning left onto Roseway Drive. As a result, according to Appellant, Solis and Escajeda did not have reasonable suspicion to conduct the traffic stop. The State countered the turn signal Appellant referred to was a brake light activated when Fulk slowed down to cross the railroad tracks before turning left. It also argued that even if Fulk did use his turn signal, he did not do so at least 100 feet before the turn as required by Section 545.104(b) of the Texas Transportation Code.

Appellant also argued that Escajeda coerced the consent to search his pockets from him by placing him in custody. At the hearing, the trial court directed the examination of Escajeda regarding his encounter with Appellant:

> THE COURT: And eventually, you get to the point where you're patting him down. And then there's been testimony already that the contents of his pockets end up on the unit—on the hood of the unit. How did that happen?
>
> THE WITNESS: Eventually, we made our way in front of the patrol car. I patted him down again the correct way—I guess, the safer way where we had more room to move around. I felt a bulge on his right pocket and—from his pants. I asked him what was that. He said 'a pill bottle,' or something along those lines. And then I asked him, 'Do you mind if you take it out?' At this point he reached in to his right-hand pocket and he placed it on top of the hood of his patrol car.
>
> THE COURT: Okay. And that ended up being a pill box with narcotics?
>
> THE WITNESS: With crack cocaine. It was three baggies.

The trial court summarily denied Appellant's motion to suppress. Appellant requested the trial court enter findings of fact and conclusions of law regarding its denial of his motion to suppress, but none were entered.

Appellant pled guilty to possessing methamphetamine with the intent to distribute and, based on his criminal history, was sentenced to twenty years in prison. But he preserved his ability to bring this appeal challenging the trial court's denial of his motion to suppress.

DISCUSSION

Issues

Appellant challenges the trial court's denial of his motion to suppress in two issues. In his first issue, he argues the traffic stop was an unconstitutional seizure because Solis and Escajeda did not have reasonable suspicion that Fulk had committed a traffic violation. In his second issue, Appellant asserts the warrantless search of his person was unconstitutional because the State did not prove he voluntarily consented to it.

Standard of Review

We review a ruling on a motion to suppress using a bifurcated standard of review. *See Crain v. State*, 315 S.W.3d 43, 48 (Tex.Crim.App. 2010); *Guzman v. State*, 955 S.W.2d 85, 87-91 (Tex.Crim.App. 1997); *Newbrough v. State*, 225 S.W.3d 863, 866 (Tex.App.—El Paso 2007, no pet.). We afford almost total deference to the trial court's findings of historical facts supported by the record and mixed questions of law and fact that turn on an assessment of a witness's credibility or demeanor. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex.Crim.App. 2010); *Amador v. State*, 221 S.W.3d 666, 673 (Tex.Crim.App. 2007); *Guzman*, 955 S.W.2d at 89. The "party that prevailed in the trial court is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence." *Meekins v. State*, 340 S.W.3d 454, 460 (Tex.Crim.App. 2011). "That same deferential standard of review 'applies to a trial court's determination of historical facts [even] when that determination is based on a videotape recording admitted into evidence at a suppression hearing.'" *State v. Duran*, 396 S.W.3d 563, 570 (Tex.Crim.App. 2013). "Although appellate courts may review *de novo* 'indisputable visual evidence' contained in a videotape, the appellate court must defer to the trial judge's factual findings on whether a witness actually saw what was depicted on a videotape or heard what was said . . . ." *Id.* at 570-71. [Internal citations omitted]. In other words, "the trial court's factual determinations are entitled to almost total deference so long as they are supported by the record, meaning that the video does not indisputably negate the trial court's findings." *State v. Gendron*, No. 08-13-00119-CR, 2015 WL 632215, *3 (Tex.App.—El Paso Feb. 11, 2015, no pet.). When, as here, the trial court does not make explicit findings of fact, we assume the trial court made implicit findings of fact supporting the ruling. *Lerma v. State*, 543 S.W.3d 184, 190 (Tex.Crim.App. 2018).

We review *de novo* the trial court's determination of legal questions and its application of the law to facts that do not turn upon a determination of witness credibility and demeanor. *Valtierra*, 310 S.W.3d at 447; *Amador*, 221 S.W.3d at 673; *Kothe v. State*, 152 S.W.3d 54, 62-63 (Tex.Crim.App. 2004); *Guzman*, 955 S.W.2d at 89. "We uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case." *State v. Iduarte*, 268 S.W.3d 544, 548-49 (Tex.Crim.App. 2008); *see also State v. Stevens*, 235 S.W.3d 736, 740 (Tex.Crim.App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex.Crim.App. 2003), *cert. denied*, 541 U.S. 974 (2004).

Reasonableness of the Traffic Stop

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures by government officials. A traffic stop for a suspected violation of law is a "seizure" of the vehicle's occupants and therefore must be conducted under the Fourth Amendment. *Helen v. North Carolina*, 574 U.S. 54, 60 (2014). Officers, however, need only "reasonable suspicion" a suspect is committing a crime to make a traffic stop. *Id.* Reasonable suspicion exists when a "police officer has 'specific, articulable facts, that, when combined with rational inferences from those facts, would lead him to reasonably conclude that the person detained is, has been, or soon will be engaged in criminal activity.'" *Furr v. State*, 499 S.W.3d 872, 878 (Tex.Crim.App. 2016)(quoting *Wade v. State*, 422 S.W.3d 661, 668 (Tex.Crim.App. 2013)). A reasonable suspicion determination is an objective standard, and an "objectively justifiable basis for the detention" must be established. *Wade*, 422 S.W.3d at 668. The State bears the burden of showing an "officer had reasonable suspicion to believe an individual was violating the law." *Castro v. State*, 227 S.W.3d 737, 741 (Tex.Crim.App. 2007).

On appeal, Appellant argues the State did not meet its burden of showing that Solis and Escajeda had reasonable suspicion to initiate the traffic stop because Solis "did not testify to anything about the objective circumstances—time, location, the vehicle's movements, etc.—[that] would have led a reasonable officer to suspect the driver had committed an infraction." Though he does not cite to it, his argument mirrors that of the appellant in *Castro v. State*, 227 S.W.3d 737, 741 (Tex.Crim.App. 2007) who argued, "that testimony that is conclusory in nature is not sufficient and that it requires specific, articulable facts for the State to establish the reasonableness of a stop." Indeed, the Court of Criminal Appeals did hold in *Ford v. State*, 158 S.W.3d 488, 493 (Tex.Crim.App. 2005) that conclusory statements are insufficient to prove reasonable suspicion: "Mere opinions are ineffective substitutes for specific, articulable facts in a reasonable suspicion analysis." But the Court of Criminal Appeals clarified its *Ford* decision in *Castro* by holding that certain crimes do not require a detailed account of the officer's observations:

> We acknowledge the difference between a conclusory statement and specific, articulable facts. However, in cases involving offenses such as failure to signal a lane change, a court can determine whether an officer's determination that a driver committed a traffic violation was objectively reasonable without being presented with a detailed account of the officer's observations. We agree with *Ford* that opinions are not an effective substitute for specific, articulable facts in a reasonable-suspicion analysis when the nature of the offense requires an officer to make a subjective determination. Following too closely, speeding, and being intoxicated, can be examples of such subjective determination. Failure to signal a lane change is not.

Castro, 227 S.W.3d at 742.

The *Castro* court stated the determination of whether a driver signaled a lane change is a simple one: He either did, or he did not. *See id.* The same is true regarding whether a driver signaled a complete turn. The parties dispute whether the dashcam video shows Fulk activating the Trailblazer's turn signal as he turned left onto Roseway Drive. But Solis testified he pulled the

Trailblazer over because Fulk failed to properly signal his intent to turn. Based on the denial of the motion to suppress, the trial court clearly believed Solis's testimony. The trial court was in the best position to observe his credibility and demeanor. We must defer to the trial judge's factual findings on whether a witness actually saw what was depicted on a videotape. *See Duran*, 396 S.W.3d at 570-71. Consequently, we overrule Appellant's first issue.

Voluntariness of Appellant's Consent to be Searched

Having determined the validity of the traffic stop, we now turn to whether Appellant's consent to the search of his pants pocket was voluntary. Appellant argues it was not because the State did not meet its burden of proving it was voluntary and because he was completely under the power of the police and in an involuntary position when Escajeda asked him to empty his pockets. We disagree.

Under the Fourth and Fourteenth Amendments, a search conducted without a warrant is *per se* unreasonable, subject to only a few specifically established and well-delineated exceptions. *Meekins*, 340 S.W.3d at 458. One such established exception is a search conducted with the suspect's consent. *Id.* Consent can be communicated in various ways, "including by words, action, or circumstantial evidence showing implied consent." *Id.* The consent, however, must be voluntary to be valid. *Reasor v. State*, 12 S.W.3d 813, 817 (Tex.Crim.App. 2000). When analyzing the voluntariness of consent, trial courts "must [assess] the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Id.* at 818, (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). The trial judge must conduct a careful sifting and balancing of each case's unique facts and circumstances in deciding whether a particular consent search was voluntary. *Meekins*, 340 S.W.3d at 459. The ultimate question "is whether the person's 'will ha[s] been overborne and his capacity for self-determination critically

impaired,'" such that the consent to search must have been involuntary. *Id.*, (quoting *United States v. Watson,* 423 U.S. 411, 424 (1976)). The State must prove the voluntariness of consent with clear and convincing evidence. *Reasor*, 12 S.W.3d at 818.

Here, Appellant argues the State did not establish the voluntariness of his consent because the trial court, not the State, performed the direct examination of Escajeda. A trial court can question a witness as long as it maintains an impartial attitude. *See Brewer v. State*, 572 S.W.2d 719, 721 (Tex.Crim.App. 1978). And nothing in the record here shows the trial court did not proceed impartially. It simply questioned Escajeda regarding the nature of his encounter with Appellant.

Of course, the trial court's questioning of Escajeda did not alleviate the State's burden of proving Appellant's consent was voluntary. Based on the trial court's denial of the motion to suppress, it is clear it believed the State met its burden. We must determine whether the evidence supports that finding when viewed in the light most favorable to the trial court's findings and must afford the State "the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence." *Meekins*, 340 S.W.3d at 460. Testimony from both Solis and Escajeda established Appellant pulled the pill bottle out of his pocket in response to Escajeda's asking him if he would "mind emptying out your pockets for me." And the dashcam video supports this version of events. Appellant argues he had no option but to comply with Escajeda's request because he was "[c]ompletely under the power of the police" at the time. The fact that a person is in police custody when they give consent, however, does not in and of itself "prevent a free and voluntary consent from being given." *Meeks v. State*, 692 S.W.2d 504, 509 (Tex.Crim.App. 1985); *Johnson v. State*, 68 S.W.3d 644, 653 (Tex.Crim.App. 2002)("Nor is consent rendered involuntary merely because the accused is under arrest."). And the record does not contain any evidence Solis

or Escajeda threatened, coerced, or used any type of force to secure his consent. On the contrary, the dashcam video shows Appellant, Fulk, Solis, and Escajeda to all be calm and mutually respectful. This evidence supports the trial court's finding the State proved by clear and convincing evidence that Appellant's consent to search his person was free and voluntary. As a result, we overrule Appellant's second issue.

CONCLUSION

We affirm the trial court's denial of Appellant's motion to suppress for these reasons.

May 6, 2022

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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