

Opinion issued June 28, 2022.



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00469-CR

ESAU MARTINEZ MUNOZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Case No. 1618592**

OPINION

Esau Martinez Munoz appeals from his conviction for driving while intoxicated, third offense. *See* TEX. PENAL CODE §§ 49.04; 49.09(b). Following the denial of his motion to suppress, Munoz pleaded guilty in exchange for the State's punishment recommendation of 10 years' imprisonment suspended for community

supervision for 4 years. The trial court found Munoz guilty and sentenced him according to the agreement.

On appeal, he contends that the trial court erred in denying his motion to suppress. He argues that the deputy who stopped his truck lacked reasonable suspicion to conduct the stop. We affirm.

Background

In January 2019, a patrol deputy from the Harris County Sheriff's Office stopped the truck Munoz was driving. The deputy had observed the truck traveling on Veterans Memorial Drive in Houston shortly after midnight. The stop led to Munoz's arrest and indictment for driving while intoxicated. The charge was enhanced with two prior convictions for driving while intoxicated in 2009 and 2013. Munoz moved to suppress the evidence, arguing that law enforcement did not have reasonable suspicion to stop him.

Deputy R. Stanley was the only witness at the hearing on Munoz's motion to suppress. He testified that he followed Munoz on Veterans Memorial Drive for six to eight minutes before turning on his lights and stopping Munoz. The road had two northbound lanes, two southbound lanes, and a shared center turn lane. There was no curb or median between any of the lanes.

Munoz was driving in the far-right lane, traveling northbound. Traffic was moderate, with several cars on the road. Deputy Stanley first noticed Munoz's

truck because it was weaving within its lane. He testified that the truck was “pretty much staying within the line but bouncing from the centerline to the outside line.” Deputy Stanley found this unusual.

Before activating his lights, Deputy Stanley observed Munoz attempt to make a lane change. Instead of moving from one northbound lane to the other, Munoz straddled the two northbound lanes. Munoz’s driver side tires were in one northbound lane while his passenger side tires were in the other northbound lane. He observed Munoz straddling the lane line for two or three seconds. Deputy Stanley testified that this was a traffic violation.

Instead of immediately pulling Munoz over, Deputy Stanley continued to follow him until he found a safe place to make the traffic stop. Deputy Stanley testified that he could not pass Munoz. He testified that he believed Munoz was driving unsafely and could have veered off the roadway.

A recording from Deputy Stanley’s dashboard camera was admitted into evidence. The video begins thirty seconds before Deputy Stanley activated the lights on his patrol car. The video starts with Munoz’s truck driving in the far-right lane. The vehicle’s left turn signal is on. Though he veers to the left and drives on the center stripe line between the two northbound lanes, Munoz does not change lanes. Next, the truck’s right turn signal turns on, and the truck veers right, toward the outside solid white line. Deputy Stanley testified that this line is known as the

fog line. While the turn signal remains activated, the truck drives straight through a lighted intersection. Munoz drives on the fog line for several seconds with his blinker on. While the right blinker is still on, Munoz veers left, toward the center stripe line between the two northbound lanes. The blinker turns off as Munoz's driver side tires cross the center stripe line and into the other northbound lane. He straddles the two lanes briefly. Deputy Stanley's patrol lights turn on, the truck slows down and turns into a gas station, and Deputy Stanley completes the traffic stop. During the video of Munoz driving, several cars are driving on the same road in the opposite direction.

The trial court denied Munoz's motion to suppress. Shortly thereafter, Munoz pleaded guilty in exchange for confinement for 10 years, suspended for community supervision for four years. The trial court found him guilty and sentenced him according to the plea agreement. This appeal followed.

Standard of Review

The United States and Texas Constitutions protect against unreasonable searches and seizures. U.S. CONST. amend. IV; TEX. CONST. art. I, § 9. No evidence obtained in violation of the United States or Texas Constitutions can be admitted as evidence against the accused at trial. TEX. CODE CRIM. PROC. art. 38.23. A warrantless automobile stop is a Fourth Amendment seizure analogous to a temporary detention, and it must be justified by reasonable suspicion. *Berkemer*

v. McCarty, 468 U.S. 420, 439 (1984); *see Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011). A police officer is justified in stopping a vehicle if the officer has a reasonable suspicion to believe that a traffic violation has occurred. *Lerma v. State*, 543 S.W.3d 184, 190 (Tex. Crim. App. 2018).

To suppress evidence based on a violation of the Fourth Amendment, the defendant bears the initial burden of proof to rebut the presumption of proper police conduct by establishing that the search or seizure occurred without a warrant. *Abney v. State*, 394 S.W.3d 542, 547 (Tex. Crim. App. 2013). The burden then shifts to the State to prove that there was a reasonable suspicion that the person was violating the law. *Id.* If the State has not shown sufficient evidence of reasonable suspicion, then the traffic stop violates the Fourth Amendment. *Brodnex v. State*, 485 S.W.3d 432, 437 (Tex. Crim. App. 2016).

When reviewing a trial court's ruling on a motion to suppress, we give almost total deference to the court's determination of the historical facts that the record supports, especially when those fact-findings are based on an evaluation of the witnesses' credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). At a suppression hearing, the trial court is the sole finder of fact and is free to believe or disbelieve any or all evidence presented. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). When, as here, a trial court makes no explicit findings of fact, the appellate court should view the evidence in the

light most favorable to the trial court's ruling and assume that the trial court made implicit findings of fact. *See Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000).

We accord almost total deference to the trial court's rulings on mixed questions of law and fact if those decisions turn on the credibility and demeanor of the witnesses. *See Guzman*, 955 S.W.2d at 89. We review de novo mixed questions of law and fact that do not turn on witness credibility. *Id.* The "reasonableness" of a specific search or seizure under the Fourth Amendment is subject to de novo review. *Kothe v. State*, 152 S.W.3d 54, 62–63 (Tex. Crim. App. 2004).

Discussion

In his sole issue on appeal, Munoz argues that the district court erred in denying his motion to suppress because Deputy Stanley lacked reasonable suspicion to initiate a traffic stop.

A. Texas Transportation Code 545.060(a)

In this case, the only basis for the traffic stop was section 545.060(a) of the Texas Transportation Code, which provides that "[a]n operator on a roadway divided into two or more clearly marked lanes for traffic: (1) shall drive as nearly as practical entirely within a single lane; and (2) may not move from the lane

unless that movement can be made safely.” TEX. TRANSP. CODE § 545.060(a).¹ The parties do not contest that the stop was conducted without a warrant.

In 2016, the Court of Criminal Appeals interpreted section 545.060 of the Texas Transportation Code in *Leming v. State*, 493 S.W.3d 552, 559 (Tex. Crim. App. 2016). A four-judge plurality concluded:

[I]t is an offense to change marked lanes when it is unsafe to do so; but it is also an independent offense to fail to remain entirely within a marked lane of traffic so long as it remains practical to do so, regardless of whether the deviation from the marked lane is, under the particular circumstances unsafe.

Leming, 493 S.W.3d at 559–60. Since *Leming*, the interpretation of section 545.060 is not yet settled, as is apparent from examining the intermediate courts of appeals cases discussing it. *See Dugar v. State*, 629 S.W.3d 494, 500 n.28 (Tex. App.—Beaumont 2021, pet. ref’d) (listing several appellate courts that have followed the *Leming* plurality and a few courts that have not). Courts that have followed *Leming* hold that it is a violation of section 545.060 to either fail to maintain the lane or to switch lanes unsafely.

Our sister courts, the Third, Thirteenth, and Fourteenth Courts of Appeals have not followed the *Leming* plurality. *See Daniel v. State*, 641 S.W.3d 486, 493

¹ Munoz also argues that law enforcement lacked reasonable suspicion to conduct the traffic stop based on suspicion of driving while intoxicated. The State does not assert that Deputy Stanley had reasonable suspicion to stop Munoz for driving while intoxicated. The State only argues that Deputy Stanley had reasonable suspicion to stop Munoz for violating section 545.060(a).

(Tex. App.—Austin Dec. 23, 2021, pet. filed); *State v. Hardin*, No. 13-18-00244-CR, 2019 WL 3484428, at *3 (Tex. App.—Corpus Christi-Edinburg Aug. 1, 2018, pet. granted); *State v. Bernard*, 503 S.W.3d 685, 690–91 (Tex. App.—Houston [14th Dist.] 2016), *pet. granted, judgment vacated on other grounds*, 512 S.W.3d 351 (Tex. Crim. App. 2017). Each of these courts have held that a violation of section 545.060 requires both a showing that the individual failed to maintain his lane of traffic and a showing that his doing so was unsafe.

Our court has not interpreted section 545.060 since *Leming*. Munoz urges us to follow the Fourteenth Court of Appeals. He relies on *State v. Bernard* to argue that the trial court erred in denying his motion to suppress. 503 S.W.3d at 691. In *Bernard*, the State appealed after the trial court granted the defendant’s motion to suppress. *Id.* at 690. The court noted that the *Leming* plurality opinion was not precedential. *Id.* at 691. Therefore, the Fourteenth Court followed its precedent and held that the trial court did not err in suppressing evidence from the traffic stop because the State failed to present evidence that the appellant’s failure to stay in a single lane was unsafe. *Id.* at 691.

We first address the requirements of section 545.060(a). The plain language of section 545.060(a) compels the conclusion that it creates a single offense. *See Daniel*, 641 S.W.3d at 493. Section 545.060 requires that “[a]n operator on a roadway divided into two or more clearly marked lanes for traffic: (1) shall drive

as nearly as practical entirely within a single lane; *and* (2) may not move from the lane unless that movement can be made safely.” TEX. TRANSP. CODE § 545.060(a) (emphasis added). The two clauses are joined by the conjunctive “and,” which means that to violate the section, a motorist must both fail to drive as nearly as practical within a single lane *and* fail to make that movement safely. *See Daniel*, 641 S.W.3d at 493 (stating if the Legislature had intended a different result, it could have used the disjunctive “or” to separate the clauses).

Having concluded that the State must prove that there was reasonable suspicion that Munoz failed to maintain his lane *and* that he did so unsafely, we turn to evaluation of the record for reasonable suspicion.

B. Reasonable Suspicion

Given the totality of the circumstances and viewed in the light most favorable to the trial court’s ruling, the facts support the trial court’s conclusion that Deputy Stanley had reasonable suspicion to stop Munoz for violating section 545.060(a).

An officer conducts a lawful temporary detention when he has reasonable suspicion to believe that an individual is violating the law. *Balentine v. State*, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002). Reasonable suspicion depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Navarette v. California*, 572 U.S. 393, 402

(2014). Reasonable suspicion is a less demanding standard than probable cause and requires a showing “considerably less than preponderance of the evidence.” *Furr v. State*, 499 S.W.3d 872, 878 (Tex. Crim. App. 2016) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)).

Reasonable suspicion exists when the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). For an officer to have reasonable suspicion, these “specific and articulable” facts must justify the traffic stop from the inception of the stop. *State v. Duran*, 396 S.W.3d 563, 568–69 (Tex. Crim. App. 2013). This is an objective standard that disregards the subjective intent of the officer and only requires some minimal level of justification for the stop. *Brodnex*, 485 S.W.3d at 437. However, the officer must have more than an inarticulable hunch or mere good-faith suspicion that a crime was in progress. *Id.*

In deciding whether an officer had a reasonable suspicion, we examine the facts that were available to the officer at the time of the investigation. *Id.* We disregard any subjective intent of the officer making the stop and look solely to whether an objective basis for the stop exists. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). A reasonable-suspicion determination is made by considering the totality of the circumstances. *Id.* at 492–93. Reasonable suspicion

may exist even where the conduct of the person detained is “as consistent with innocent activity as with criminal activity.” *York v. State*, 342 S.W.3d 528, 536 (Tex. Crim. App. 2011) (internal quotations omitted).

The trial court heard “specific and articulable facts” that combined with reasonable inferences support the conclusion that Munoz failed to maintain his lane and did so unsafely. *Terry*, 392 U.S. at 21.

1. Failure to Maintain Lane

The trial court heard evidence that Munoz failed to maintain his lane. Deputy Stanley testified that he followed Munoz for six to eight minutes. He initially noticed Munoz because he was weaving within his lane. Deputy Stanley observed Munoz straddling the center stripe line between the two northbound lanes of Veterans Memorial Drive. He knew this to be a traffic violation but did not stop Munoz immediately because there was not a safe place to do so.

Deputy Stanley testified that he activated his lights to pull Munoz over after Munoz briefly crossed the center stripe line again. The video supports that Munoz’s driver side tires were briefly in one lane, while his passenger side tires were in another one. The evidence supports the conclusion that Munoz failed to “drive as nearly as practical entirely within a single lane.” TEX. TRANSP. CODE § 545.060(a).

2. Unsafe Driving

The trial court also heard evidence to give rise to an objective justification to stop Munoz's car based on moving from the lane unsafely. Munoz argues that as in *Bernard*, there is no objective evidence that his driving was unsafe. The State responds that *Bernard* is not binding on this court, that reasonable suspicion only requires minimal objective justification, and even assuming that establishing that the driving was unsafe is required by the statute, the trial court heard testimonial facts that combined with reasonable inferences could lead to the conclusion that Munoz's driving was unsafe. The record supports the trial court's conclusion that Munoz moved from the lane unsafely.

The dash camera recording shows Munoz's erratic driving. Munoz signaled that he would be changing lanes, but while he drifted toward one side of his lane, he did not change lanes. He then signaled that he would turn the other direction, but instead, he drove straight through an intersection while the turn signal was still activated.

Deputy Stanley testified that there was moderate traffic that night, and the video shows several cars traveling in the opposite direction of Munoz. Deputy Stanley testified that Munoz's erratic driving prevented him from passing Munoz. He testified that even if Munoz did not hit another car, Munoz's driving was unsafe

because he could have veered off the road. He also stated that Munoz was “doing more than just weaving within the lane.” {RR24}.

Deputy Stanley articulated “something more than an inchoate and unparticularized suspicion or hunch” that gave rise to an objective justification for the stop of Munoz’s truck. *See Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010 (internal quotations omitted)). He listed specific articulable facts, that combined with inferences from those facts support the conclusion that he had a reasonable suspicion to believe that Munoz’s driving was unsafe. *See Martinez v. State*, 29 S.W.3d 609, 611–12 (Tex. App.—Houston [1st Dist.] 2000) (concluding trial court could infer unsafe driving when appellant swerved onto shoulder at night on a busy highway).

* * *

Evaluating the totality of the circumstances and giving deference to the trial court’s implicit fact findings as we must, we conclude that the trial court did not err in concluding that Munoz’s erratic driving gave rise to the minimal level of justification required for an investigatory detention. *See Brodnex*, 485 S.W.3d at 437. A reasonable police officer could have believed that a violation of section 545.060 had occurred. *Balentine*, 71 S.W.3d at 768. The trial court heard evidence that Munoz drove partially in each northbound lane for a few seconds at least twice. The court saw video of one of the instances. In the video, Munoz signals

that he will change lanes but does not do so. Instead, he veers from one side to the other within his lane. He also drives through a lighted intersection with his turn signal on. While he was driving, it was dark and late at night, and traffic was moderate. Several cars pass Munoz in the opposite direction during the video.

The issue before us is whether the officer had reasonable suspicion that the statute had been violated in order to conduct a traffic stop. Reasonable suspicion requires only a minimal level of justification of the stop. *Brodnex*, 485 S.W.3d at 437. The trial court is the sole fact finder, and we give deference to the trial court's determinations that turn on credibility and demeanor. *Wiede*, 214 S.W.3d at 24–25. Additionally, we must accord almost total deference to the trial court's rulings on mixed questions of law and fact if the determination turns on credibility of witnesses. *See Guzman*, 955 S.W.2d at 89. Based on the facts presented and the rational inferences from them, we cannot say that the trial court erred by denying Munoz's motion to suppress.

We overrule Munoz's sole issue on appeal.

Conclusion

We affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.

Justice Landau, dissenting.

Publish. *See* TEX. R. APP. P. 47.2(b).