



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00017-CR

The **STATE** of Texas,
Appellant

v.

Joseph **LOSOYA**,
Appellee

From the County Court, Atascosa County, Texas
Trial Court No. 29941
Honorable Lynn Ellison, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice
Dissenting Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: December 30, 2015

REVERSED AND REMANDED

The State appeals the trial court's order granting Losoya's motion to suppress evidence. The State argues the trial court erred by granting Losoya's motion because the arresting officer had reasonable suspicion to stop Losoya for failing to signal his intent to turn "one hundred feet of travel prior to turning," in violation of the Transportation Code. We reverse and remand.¹

¹ The State argues the arresting officer also had reasonable suspicion to stop Losoya for driving while intoxicated. Because we hold the arresting officer had reasonable suspicion based on a traffic violation, we need not address the State's other issue. *See* TEX. R. APP. P. 47.1.

BACKGROUND

After he was charged with driving while intoxicated, Losoya filed a motion to suppress. The motion was set for a hearing at which the arresting officer, Jose Guzman, testified for the State. Losoya argued only that there was no reasonable suspicion or probable cause to stop his car.

Guzman testified that on August 17, 2013, around 4:00 a.m., while he was standing outside of the police department, he saw a car traveling down the road with its hazards and high beams on. He stated, "There was nobody around, no traffic, [and] no personnel. There was nothing around there." Guzman testified he lost sight of the car, but then received a phone call from his girlfriend, Maria Ramirez, who informed him that she "was almost struck" while she was out "jogging or walking." Guzman stated he entered his patrol car and started following the car.

Guzman further testified he was driving behind Losoya, who came "to a complete stop at the stop sign -- the stoplight and I'm just behind him. And about a little over 20 seconds is when he activates his turn signal and makes a right." Guzman stated he then turned right and activated his emergency lights. Guzman testified that one reason he stopped Losoya was for "fail[ing] to use his turn signal 100 feet from the turn" because Losoya used his turn signal "zero to one" foot before turning. The trial court admitted a video recording of the stop into evidence. The parties stipulated that Guzman did not obtain an arrest warrant.

The trial court signed findings of fact and conclusions of law in which it concluded that Officer Guzman's stop was not justified on the basis that Losoya violated section 545.104(b) of the Transportation Code:

Defendant signaled his intent for a sufficient distance to comply with the traffic laws of this state. There was no cross-traffic at the intersection and the turn was made in a safe and prudent manner. . . .

Section 545.104 of the Texas Transportation Code requires an operator to signal his intent to turn for a distance of 100 feet prior to turning. I reviewed the movement of Defendant's vehicle as shown in State's Exhibit No. 1 and, although it is

impossible to determine the exact distance that Defendant signaled his intent to turn, it is my conclusion that it was for a distance sufficient to comply with the requirements of Section 545.104, done in a safe and prudent manner and that there was no violation of the statute that would authorize Officer Guzman to stop Defendant.

(citations omitted). The trial court granted Losoya's motion to suppress, ruling that the evidence obtained as a result of the stop was inadmissible. The State filed a notice of appeal.

STANDARD OF REVIEW & APPLICABLE LAW

When we review a trial court's ruling on a motion to suppress, we accord the court's factual findings "almost total deference," provided its determinations are supported by the record. *State v. Woodard*, 341 S.W.3d 404, 410 (Tex. Crim. App. 2011). We view the evidence in the light most favorable to the trial court's ruling and afford its ruling "the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence." *Id.* (quoting *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008)). "And when reviewing mixed questions of law and fact, courts afford great deference to the trial judge's rulings, provided that those rulings depend upon evaluations of credibility and demeanor." *Id.* "But when credibility and demeanor [are] irrelevant, courts conduct a de novo review." *Id.*

To justify the officer's warrantless stop of Losoya's car, the State was required to prove Guzman had reasonable suspicion that Losoya violated the law. *See Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). An officer has reasonable suspicion if he 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. *Wade v. State*, 422 S.W.3d 661, 668 (Tex. Crim. App. 2013). This standard is an objective one, and the court will take into account the totality of the circumstances in order to determine whether a reasonable suspicion existed for the stop. *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011).

“It is well settled that a traffic violation committed in an officer’s presence authorizes an initial stop.” *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. [Panel Op.] 1982). The State “is not required to show a traffic offense was actually committed, but only that the officer reasonably believed a violation was in progress.” *Fernandez v. State*, 306 S.W.3d 354, 357 (Tex. App.—Fort Worth 2010, no pet.). “To conduct a traffic stop in compliance with the Fourth Amendment, an officer must have ‘reasonable suspicion.’” *Hamal v. State*, 390 S.W.3d 302, 306 (Tex. Crim. App. 2012). “The reasonable suspicion standard is wholly objective; the subjective intent of the officer conducting the investigation is irrelevant.” *Id.* “The standard requires only ‘some minimal level of objective justification’ for the stop.” *Id.* (quoting *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010)). “A police officer’s reasonable mistake about the facts may yet legitimately justify his own conclusions that there is . . . reasonable suspicion to detain.” *Robinson v. State*, 377 S.W.3d 712, 720 (Tex. Crim. App. 2012).

DISCUSSION

Officer Guzman testified that one of the two reasons he stopped Losoya was that Losoya turned his car without signaling his intent 100 feet before making the right turn. Under the Texas Transportation Code, it is a criminal offense if an operator of a motor vehicle who intends to turn a car right or left fails to “signal continuously for not less than the last 100 feet of movement of the vehicle before the turn.” TEX. TRANSP. CODE ANN. §§ 542.301, 545.104(b) (West 2011). Section 545.104(b) requires a driver to “signal continuously” for at least the last 100 feet “of movement” before turning; it is not limited to cars that are “continuously moving” for at least 100 feet immediately before making a turn. *See id.* § 545.104(b); *State v. Elias*, 339 S.W.3d 667, 671, 675 (Tex. Crim. App. 2011) (stating officer who saw vehicle stopped within 100 feet of an intersection with no turn signal activated would have reasonable suspicion to stop driver for violating section 545.104(b) when driver shortly thereafter turned his car, even if officer could not

see whether driver activated signal before turning); *Peterson v. State*, No. 01-14-00228-CR, 2015 WL 4549195, at *4 (Tex. App.—Houston [1st Dist.] July 28, 2015, no pet.) (mem. op., not designated for publication) (citing numerous cases in which courts have declined requests to read a “continuously moving” limitation into section 545.104(b)). Section 545.104(b) also does not excuse an operator’s failure to signal if the operator can safely and prudently turn without signaling. *See id.* § 545.104(b).

The State argues the trial court’s findings and conclusions materially conflict with the uncontested video evidence. Having reviewed the video recording from Officer Guzman’s patrol car, we agree. The video shows that Losoya’s car approached an intersection and then stopped. Losoya then activated the car’s right turn signal, moved the car a few feet forward, and then made a right turn. Because the video indisputably shows the last 100 feet of movement before Losoya made a right turn included the distance his car moved before stopping, and that Losoya did not activate the car’s right turn signal until after he stopped, the video indisputably shows that Losoya failed to “signal continuously for not less than the last 100 feet of movement of the car before the turn.” *See* § 545.104(b). The record indisputably shows Losoya committed a traffic violation in Officer Guzman’s presence. *See id.*; *Elias*, 339 S.W.3d at 671, 675; *Peterson*, 2015 WL 4549195, at *4. Therefore, Officer Guzman had reasonable suspicion to stop Losoya. *See Armitage*, 637 S.W.2d at 939.

CONCLUSION

We reverse the trial court’s order and remand the case for further proceedings.

Luz Elena D. Chapa, Justice

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