



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00566-CR

Joshua Paul **BRISENO**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2014CR2328
Honorable Raymond Angelini, Judge Presiding¹

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 8, 2016

AFFIRMED

After the trial court denied his motion to suppress, appellant Joshua Paul Briseno pled guilty to possession of marijuana, five to fifty pounds. The trial court deferred a finding of guilt and placed Briseno on two years' community supervision. In four points of error, Briseno asserts the trial court erred in denying his motion to suppress because: (1) the initial traffic stop was not

¹ The Honorable Mary Roman is the presiding judge of the 175th District Court, Bexar County, Texas. The Honorable Raymond Angelini, retired, was sitting by assignment and signed the order placing appellant on deferred adjudication.

supported by reasonable suspicion; and (2) and the subsequent search was not supported by probable cause. We affirm the trial court's order of deferred adjudication.

BACKGROUND

Briseno was charged with possession of marijuana, five to fifty pounds. Prior to trial, Briseno filed a motion to suppress, seeking to suppress the marijuana discovered as a result of his arrest and subsequent search of his vehicle. At the suppression hearing, the trial court heard testimony from two San Antonio Police Department officers — Detective Christopher Muniz and Officer Ezra Bailey.

Officer Bailey testified he was on patrol one evening when Detective Muniz contacted him to assist him with a narcotics investigation. Officer Bailey stated he was instructed by Detective Muniz to report to a particular location and execute a stop on a vehicle the detective had been following. According to Officer Bailey, Detective Muniz stated that as he was following the vehicle, the driver ran through a stop sign in a subdivision. Officer Bailey testified that when he arrived at the location, he saw the vehicle turn right out of a subdivision without stopping at the stop sign. According to Officer Bailey, “[The driver] went right through. He just turned right and didn't stop.” Officer Bailey testified he activated his emergency lights and pulled the vehicle over for failing to stop at the stop sign.

Officer Bailey stated that after completing the stop, he approached the vehicle and asked the driver, who was subsequently identified as Briseno, for his driver's license. Briseno, however, produced only a school identification card, admitting to the officer his driver's license had been suspended. Officer Bailey stated Briseno appeared “a little nervous.” According to Officer Bailey, he returned to his vehicle to verify the suspension. After Officer Bailey verified Briseno was driving without a license, he arrested him.

The officer also testified he saw a large black duffle bag and an orange backpack in the back seat of Briseno's car. When asked whether he smelled any odors emanating from the vehicle, Officer Bailey testified he could smell a strong odor of marijuana, but admitted he failed to include this information in his report. The officer explained that he chose not to include this information because by the time he smelled the marijuana, he had already placed Briseno under arrest for driving with a suspended driver's license.

Officer Bailey testified the time that elapsed from the initial stop to arrest was approximately five to ten minutes. He also testified that "somewhere around 30 minutes or so" after pulling Briseno over, the K-9 unit arrived and alerted on Briseno's vehicle.

Detective Muniz testified he was conducting surveillance on Briseno that evening when he saw Briseno fail to stop at two different stop signs — the first sign was located within a subdivision and the second was located at the entrance/exit of the subdivision. Detective Muniz testified that after he saw Briseno fail to stop at the first stop sign, he contacted Officer Bailey and told Officer Bailey to stop Briseno. Detective Muniz testified that while he was on the other side of the highway, he saw Briseno run through the second stop sign — this was the traffic violation seen by Officer Bailey. At that point, Officer Bailey executed the traffic stop. According to the detective, he approached approximately twenty to thirty minutes after Officer Bailey stopped Briseno. By the time he arrived, Officer Bailey had arrested Briseno and the K-9 unit had arrived. Detective Muniz could not recall whether he or another officer called for the K-9 unit, but stated he would have called for a K-9 unit to search the vehicle nonetheless. Once at the scene, Detective Muniz stated the dog alerted on the vehicle, and "based on the [dog's] alert," he opened the rear passenger door and smelled the odor of marijuana. At that point, the detective searched the vehicle and found marijuana.

The trial court denied Briseno's motion to suppress, but did not enter findings of fact and conclusions of law. Shortly thereafter, Briseno pled guilty pursuant to a plea bargain agreement, and the trial court followed the agreement, sentencing Briseno to two years' deferred adjudication community supervision and assessing a \$1,500.00 fine. This appeal followed.

ANALYSIS

In four points of error, Briseno argues the trial court erred in denying his motion to suppress. In his first two points of error, Briseno challenges the validity of the traffic stop, arguing the traffic stop was not supported by reasonable suspicion and the length of his detention was unreasonable. In his last two points of error, Briseno challenges the validity of the subsequent search of his vehicle, arguing the officers did not have probable cause to conduct a warrantless search.

Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013); *Martinez v. State*, 348 S.W.3d 919, 922–23 (Tex. Crim. App. 2011). We afford almost total deference to a trial court's determination of historical facts and mixed questions of law and fact, particularly those determinations that turn on witness credibility and demeanor. *Gonzalez v. State*, 369 S.W.3d 851, 854 (Tex. Crim. App. 2012); *Martinez*, 348 S.W.3d at 922–23; *Pineda v. State*, 444 S.W.3d 136, 141 (Tex. App.—San Antonio 2014, pet. ref'd). We review de novo a trial court's determination of pure questions of law and mixed questions of law and fact that do not depend on credibility determinations. *Gonzalez*, 369 S.W.3d at 854; *Martinez*, 348 S.W.3d at 922–23; *Pineda*, 444 S.W.3d at 141. At a suppression hearing, the trial court is the sole and exclusive trier of fact and judge of the witnesses' credibility, and it may choose to believe or disbelieve all or any part of the

witnesses' testimony. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002); *Pineda*, 444 S.W.3d at 141.

When, as here, the record is silent on the reasons for the court's ruling, or when there are no explicit fact findings, we imply the necessary fact findings that would support the court's ruling if the evidence, viewed in the light most favorable to the ruling, supports those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see also Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). We must uphold the trial court's ruling if it is supported by the record and correct under any applicable theory of law. *State v. Iduarte*, 268 S.W.3d 544, 548 (Tex. Crim. App. 2008).

Reasonable Suspicion — Traffic Stop

As indicated above, Briseno first contends the trial court erred in denying his motion to suppress because the traffic stop was not supported by reasonable suspicion. Briseno asserts the testimony of Officer Bailey and Detective Muniz regarding his commission of a traffic offense was insufficient to establish reasonable suspicion because it was not credible. According to Briseno, the officers provided the trial court with inconsistent information, ultimately calling into the question whether either officer witnessed a traffic violation.

The State contends, however, the traffic stop was supported, at minimum, by reasonable suspicion because both officers testified they saw Briseno commit a traffic violation. The State points out both officers testified Briseno failed to stop at a stop sign, a violation under section 544.010 of the Texas Transportation Code, and Briseno's complaint regarding the officers' credibility was a matter for the trial court to resolve. *See* TEX. TRANSP. CODE ANN. § 544.010(a) (West 2011) (stating that unless directed to proceed by police officer or traffic-control signal, vehicle operator approaching intersection with stop sign shall stop).

A police officer may make a warrantless stop on reasonable suspicion of a traffic violation. *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2016). A police officer has reasonable suspicion if he has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to believe that the person detained is, has been, or soon will be engaged in criminal activity. *Jaganathan*, 479 S.W.3d at 247; *Wade*, 422 S.W.3d 661, 668 (Tex. Crim. App. 2013); *Pineda*, 444 S.W.3d at 141. The reasonable suspicion standard requires only “some minimal level of objective justification” for the stop and disregards an officer’s actual subjective intent. *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)); *Pineda*, 444 S.W.3d at 141. When determining whether reasonable suspicion existed for a stop, we will take into account the totality of the circumstances. *Wade*, 422 S.W.3d at 668; *Pineda*, 444 S.W.3d at 141. The State bears the burden of showing an officer had at least a reasonable suspicion the defendant either had committed an offense, or was about to do so, before it made the warrantless stop. *Derichsweiler*, 348 S.W.3d 906, 913–14 (Tex. Crim. App. 2011).

Here, Officer Bailey stopped Briseno without a warrant; therefore, the State bore the burden at the suppression hearing of demonstrating the traffic stop was, at minimum, reasonable under the totality of the circumstances. *See Derichsweiler*, 348 S.W.3d at 913–14. At the suppression hearing, Officer Bailey testified Detective Muniz asked him to stop Briseno after the detective witnessed Briseno fail to stop at a stop sign. Officer Bailey also testified he saw Briseno pull out of a subdivision and drive “right through” a stop sign. Officer Bailey stated, “He just turned right and didn’t stop.” It is undisputed that failing to stop at an intersection with a stop sign is a traffic violation. TEX. TRANSP. CODE ANN. § 544.010. Accordingly, we conclude Officer Bailey had reasonable suspicion to stop Briseno after witnessing Briseno commit a traffic violation. *See Jaganathan*, 479 S.W.3d at 247.

Briseno contends the testimony of Officer Bailey and Detective Muniz are in conflict with regard to why Officer Bailey stopped Briseno, the amount of time Officer Bailey detained Briseno before arresting him, and when Detective Muniz and the K-9 unit arrived. Briseno contends these conflicts render the testimony not credible, calling into question the circumstances surrounding the stop. We disagree. A review of the record reveals both Officer Bailey and Detective Muniz testified they each witnessed Briseno fail to stop at a stop sign and that was the reason Officer Bailey stopped Briseno. In fact, during cross examination, Detective Muniz specifically stated he told Officer Bailey to stop Briseno “[f]or the traffic violation.” Officer Bailey also testified he told Briseno he stopped him because he failed to stop at the stop sign located outside the subdivision. Thus, both officers articulated specific facts and circumstances, which taken together with rational inferences, to establish reasonable suspicion that Briseno committed a traffic violation. We conclude such testimony is not inconsistent as Briseno suggests, and whether the trial court choose to believe or disbelieve the officers’ testimony is a matter of credibility for the trial court to resolve. *Maxwell*, 73 S.W.3d at 281. Here, the trial court choose to believe the officers despite any alleged discrepancies in their testimony. *See id.* Accordingly, we overrule Briseno’s first point of error.

Duration of “Continued Detention”

Briseno next argues the trial court erred in denying his motion to suppress because the duration of his detention was unreasonable. Specifically, Briseno challenges the duration of his detention — which he describes as a “continued detention” — from the time of his arrest to the time the K-9 unit arrived, arguing there was no need to continue to detain him at the scene after he was arrested, waiting for the K-9 unit to arrive.

A routine traffic stop is an investigative detention for purposes of the Fourth Amendment. *See* U.S. Const. amend. IV; *Kothe v. State*, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004). As such, it must be reasonable in that it must be temporary and last no longer than necessary to effectuate

the purpose of the stop. *Koethe*, 152 S.W.3d at 63 (highlighting that police officer’s actions during stop must be limited in length and scope to those necessary to fulfill purpose of stop). During a routine traffic stop, a police officer may request certain information from a driver, such as a driver’s license, car registration, and proof of insurance; may conduct a computer check on that information, check for outstanding warrants, and verify the vehicle is not stolen; and inquire about the purpose of the trip and intended destination. *Id.* Only after the officer confirms the driver has a valid driver’s license, no outstanding warrants, and the car is not stolen is the traffic stop fully resolved — it is at that time it must end. *See id.* at 63–64.

Although no rigid time limitation exists with regard to the duration of a stop, when the reason for the stop has been satisfied, the stop may not be used as a “fishing expedition” for unrelated criminal activity. *Koethe*, 152 S.W.3d at 63–65; *Davis*, 947 S.W.3d at 243; *Parker v. State*, 297 S.W.3d 803, 810 (Tex. App.—Eastland 2009, pet. ref’d). “An investigative stop that is reasonable at its inception may violate the Fourth Amendment because of excessive intensity or scope.” *Young v. State*, 420 S.W.3d 139, 142 (Tex. App.—Texarkana 2012, no pet.) (citing *Davis v. State*, 947 S.W.3d 240, 245 (Tex. Crim. App. 1997)). If, however, during the investigation, an officer develops a reasonable suspicion that *another* violation has occurred, then the scope of the initial investigation expands to include the new offense. *Koethe*, 152 S.W.3d at 64 n. 36; *St. George v. State*, 197 S.W.3d 806, 817–18 (Tex. App.—Fort Worth 2006), *aff’d*, 237 S.W.3d 720 (Tex. Crim. App. 2007).

In challenging the duration of his “continued detention,” Briseno ignores a crucial factor — that he had been lawfully arrested. As discussed above, Briseno was initially pulled over because he failed to stop at a stop sign. *See* TEX. TRANSP. CODE ANN. § 544.010. Shortly after initiating the stop, Officer Bailey discovered Briseno had been driving with a suspended driver’s license, another violation of the Texas Transportation Code. *See id.* § 521.025 (mandating that

individuals driving in Texas have in their possession current driver's licenses and display them when asked to by police officer and stating that failure to comply is criminal offense); *Kothe*, 152 S.W.3d at 63. When a traffic violation is committed in an officer's presence, an officer has probable cause to arrest the violator. TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (West 2011); TEX. TRANSP. CODE ANN. § 543.001. Accordingly, we conclude the scope of Officer Bailey's initial investigation expanded after he discovered another traffic violation had occurred, and he had probable cause to arrest Briseno and further detain him. See TEX. CODE CRIM. PROC. ANN. art. 14.01(b); TEX. TRANSP. CODE ANN. § 543.001; *Kothe*, 152 S.W.3d at 64 n. 36; see also *Hart v. State*, 235 S.W.3d 858, 862 (Tex. App.—Eastland 2007, pet. dismissed) (holding police officer had right to arrest defendant once he determined defendant was driving with expired driver's license); *Dew v. State*, 214 S.W.3d 459, 462 (Tex. App.—Eastland 2005, no pet.) (holding officer had probable cause to arrest defendant who was driving without driver's license).

Briseno relies on *Rodriguez v. United States*, 135 S.Ct. 1609, 1614–15 (2015) for the proposition that his “continued detention” after his arrest, which involved waiting for the K-9 unit to arrive, was unreasonable. According to Briseno, the “continued detention” was unlawful because it went beyond the time reasonably required to issue a ticket and essentially involved a non-routine traffic stop measure — the K-9 search. We do not agree that *Rodriguez* supports Briseno's position.

In *Rodriguez*, after the defendant received a traffic warning, he was instructed to exit his vehicle and wait until another police officer arrived with a dog to perform a canine sniff of the defendant's vehicle. *Id.* at 1613. In determining whether the duration of the detention was unreasonable, the United States Supreme Court reiterated that an officer “may conduct certain unrelated checks during an otherwise lawful stop[.]” but “he may not do so in a way that prolongs the stop.” *Id.* at 1614–15. Such unrelated checks include — as we stated above — checking for a

driver's license, outstanding warrants, and the vehicle's registration and insurance. *Id.* The Court then held a dog sniff, however, "is not fairly characterized as part of the officer's traffic mission" and as a result, the defendant's detainment was unreasonable. *Id.* at 1615. However, unlike the defendant in *Rodriguez* who was issued a traffic warning and then further detained, Briseno was lawfully *arrested* for driving with a suspended license before the K-9 unit arrived. *See* TEX. CODE CRIM. PROC. Art. 14.01(b); TEX. TRANSP. CODE ANN. § 543.001. Thus, we conclude there was nothing unreasonable about the duration of time Briseno was held because he was lawfully under arrest. *See Hart*, 235 S.W.3d at 862 (holding defendant's detention not unduly prolonged to allow for K-9 sniff because officer was in process of writing citation and defendant not unlawfully detained); *see also Ivie v. State*, 407 S.W.3d 305, 310 (Tex. App.—Eastland 2013, pet. ref'd) (stating no additional justification necessary for K-9 sniff that occurs during lawful traffic stop). Accordingly, we overrule Briseno's second point of error.

Illegal Search

In his final two points of error, Briseno challenges the validity of the warrantless search of his vehicle. Briseno first argues the warrantless search of his vehicle constituted an unreasonable search because it was predicated on an unlawful detainment and therefore, did not qualify as an inventory search or search incident to arrest. Within this argument, Briseno also argues the search of his vehicle could not qualify as a search incident to arrest because the officers were not in danger and had no reason to believe the vehicle contained evidence relevant to his arrest. Briseno further argues the smell of marijuana alone did not give the officers probable cause to search his vehicle. Because Briseno's last argument is dispositive of his challenge to the warrantless search, we need not consider his remaining complaints on this issue.

When a K-9 alerts to the presence of drugs, police may then conduct a warrantless search. *Matthews v. State*, 431 S.W.3d 596, 603–04 (Tex. Crim. App. 2014). Here, both officers testified

the dog alerted to the rear passenger seat of the vehicle, giving them probable cause to search it without a warrant. *See id.*; *Ivie*, 407 S.W.3d at 310. Moreover, as indicated above, there was nothing unreasonable about the duration of time Briseno was held to account for the K-9 sniff because it occurred during a lawful arrest. *See Ivie*, 407 S.W.3d at 310. Accordingly, we hold the warrantless search of Briseno's vehicle was not unreasonable, and we overrule Briseno's last points of error.

CONCLUSION

Based on the foregoing, we hold the trial court did not abuse its discretion in denying Briseno's motion to suppress. We therefore affirm the trial court's order of deferred adjudication.

Marialyn Barnard, Justice

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