



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00769-CR

Richard Trent **UNGER**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the County Court at Law No. 2, Guadalupe County, Texas  
Trial Court No. CCL-15-0679  
Honorable Frank Follis, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: November 22, 2017

**AFFIRMED**

After the trial court denied his motion to suppress, appellant Richard Trent Unger pled guilty to the offense of driving while intoxicated. On appeal, Unger contends the trial court erred in denying his motion to suppress, arguing the initial traffic stop was not supported by reasonable suspicion. We affirm the trial court's judgment.

**BACKGROUND**

The record shows Officer Juan Lopez was dispatched to a possible domestic disturbance. When he arrived, Unger's wife told him Unger had consumed several alcoholic beverages before

leaving in his vehicle. She described Unger's vehicle to Officer Lopez, and when he walked outside, he saw a vehicle pass by that matched the description. Officer Lopez testified he began following the vehicle, intending to further investigate the domestic disturbance as well as the wife's statements about Unger's alcohol consumption.

As he ran a license plate check to determine whether Unger owned the vehicle, Officer Lopez saw a light on Unger's vehicle "admitting [sic] white light directly to the rear, facing rearward." Officer Lopez stated the light failed to illuminate Unger's rear license plate. Believing this was a traffic violation, the officer initiated a traffic stop. After the stop, Officer Lopez arrested Unger for driving while intoxicated.

The trial court denied Unger's motion to suppress, but did not make findings of fact and conclusions of law. Unger subsequently pled guilty pursuant to a plea agreement. Unger timely perfected this appeal.

#### **ANALYSIS**

On appeal, Unger raises a single issue in which he contends the trial court erred in denying his motion to suppress because Officer Lopez lacked reasonable suspicion for the initial stop. We disagree and hold the officer had reasonable suspicion to stop Unger.

#### ***Standard of Review***

When reviewing a trial court's denial of a motion to suppress, we apply a bifurcated standard of review. *Ramirez-Tamayo v. State*, No. PD-1300-16, 2017 WL 4159140, at \*9 (Tex. Crim. App. Sep. 20, 2017); *Furr v. State*, 499 S.W.3d 872, 877 (Tex. Crim. App. 2016). We give nearly total deference to the trial court's determination of historical facts but apply a de novo standard to the trial court's application of the law. *State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017). At a hearing on a motion to suppress, the trial court is the sole and exclusive factfinder

and judge of a witness's credibility. *Ex parte Moore*, 395 S.W.3d 152, 158 (Tex. Crim. App. 2013).

When the trial court issues no findings of fact or conclusions of law, as in this case, we assume the implicit facts found by the trial court support its ruling and “view the evidence in the light most favorable to the trial court’s ruling.” *Ramirez-Tamayo*, 2017 WL 4159140, at \*10 (quoting *Harrison v. State*, 205 S.W.3d 549, 552 (Tex. Crim. App. 2006)). A trial court’s ruling on a motion to suppress will be sustained if reasonably supported by any applicable theory of law. *State v. Copeland*, 501 S.W.3d 610, 613 (Tex. Crim. App. 2016) (quoting *Calloway v. State*, 743 S.W.2d 645, 652 (Tex. Crim. App. 1988)).

#### ***Applicable Law***

An officer may conduct a warrantless stop upon reasonable suspicion of a traffic law violation. *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015). Reasonable suspicion exists when an officer has specific and articulable facts that, when combined with rational inferences drawn from those facts, would cause the officer to reasonably conclude an individual has been, is, or soon will be involved in criminal activity. *Ramirez-Tamayo*, 2017 WL 4159140, at \*10–11; *Jaganathan*, 479 S.W.3d at 247; *Pineda v. State*, 444 S.W.3d 136, 141 (Tex. App.—San Antonio 2014, pet. ref’d). Under this standard, we consider the totality of the circumstances, disregard the officer’s actual subjective intent, and contemplate whether a minimum level of objective justification exists for the stop. *Furr*, 499 S.W.3d at 878 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)); *Pineda*, 444 S.W.3d at 141. The burden requires the State to demonstrate the officer had at least reasonable suspicion before making a warrantless stop. *Derichsweiler v. State*, 348 S.W.3d 906, 913–14 (Tex. Crim. App. 2011); *State v. Hneidy*, 510 S.W.3d 458, 462 (Tex. App.—San Antonio 2013, pet. ref’d).

### *Application*

Here, the State bore the burden of showing Officer Lopez's warrantless stop was supported by reasonable suspicion under the totality of the circumstances. *See Derichsweiler*, 348 S.W.3d at 913–14 (holding that State has burden to prove, based on totality of circumstances, warrantless detention was justified by reasonable suspicion); *Hneidy*, 510 S.W.3d at 462–63 (holding that in determining existence of reasonable suspicion, court considers totality of circumstances). At the hearing, Officer Lopez testified he saw a light on Unger's vehicle that emitted light "directly to the rear." Officer Lopez further testified the light attached to Unger's vehicle failed to illuminate the rear license plate. He stated it was his headlights that illuminated Unger's license plate, enabling him to read it. Officer Lopez further stated driving a vehicle without a properly illuminated license plate violates the Texas Transportation Code and this offense was one of the factors that led to his decision to stop Unger. A motor vehicle operator's failure to maintain a tail lamp or separate lamp "constructed and mounted to emit a white light that: (1) illuminates the rear license plate; and (2) makes the plate clearly legible at a distance of 50 feet from the rear" is a violation of the Texas Transportation Code. TEX. TRANSP. CODE ANN. § 547.322(f) (West 2011).

As noted above, an officer may stop a vehicle if he has reasonable suspicion of a traffic law violation. *Jaganathan*, 479 S.W.3d at 247. The record establishes Unger committed a traffic law violation. *See id.* Officer Lopez provided specific, articulable facts, which when combined with rational inferences, demonstrated he had reasonable suspicion to stop Unger based on a traffic violation. *See id.* We therefore conclude the trial court did not err in finding Officer Lopez had reasonable suspicion to stop Unger for committing a traffic offense. *See Jaganathan*, 479 S.W.3d at 247.

Unger contends the officer's dash camera video proves the officer did not witness a traffic violation because it shows a white light properly illuminating Unger's license plate. Unger argues the video contradicts Officer Lopez's testimony, rendering it unreliable. We disagree.

The record contains Officer Lopez's dash camera video recording of the stop, showing a rearward-facing white light attached near the rear license plate of Unger's vehicle. The trial court viewed the video. The video depicts Officer Lopez's headlights illuminating the rear of Unger's vehicle, just as the officer stated, and a white light attached near the rear license plate emitting light to the rear, *away* from Unger's vehicle.

The trial court is free to choose to believe or disbelieve all or any part of a witness's testimony. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010); *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). After reviewing the video and hearing the witness, the trial court accepted Officer Lopez's testimony despite Unger's allegation that it was contradicted by the video. *See Moore*, 395 S.W.3d at 158 (stating trial court determines credibility of witnesses and weight given to testimony). Accordingly, we conclude the trial court did not err in finding Officer Lopez's warrantless stop of Unger was supported by reasonable suspicion, and we overrule Unger's single point of error.

#### CONCLUSION

Based on the foregoing, we hold the trial court did not err in denying Unger's motion to suppress. We therefore affirm the trial court's judgment.

Marialyn Barnard, Justice

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