In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00423-CR

DONALD WAYNE BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 08-11-10600-CR

MEMORANDUM OPINION

Donald Wayne Brown appeals his conviction for felony driving while intoxicated, enhanced by six prior felony convictions. *See* Tex. Penal Code Ann. § 49.04 (West 2003), § 49.09(b)(2) (West Supp. 2010). Prior to trial, Brown moved to suppress evidence arising from the trooper's stop of his vehicle. The trial court denied the suppression motion. Pursuant to a plea bargain, Brown then pleaded guilty to the charged offense and was sentenced to thirty years in prison. He appeals the trial court's denial of the motion to suppress. He argues the trooper lacked reasonable suspicion for the traffic stop.

BACKGROUND

Sergeant Terry Barnhill testified that, while on patrol around 3 a.m., he observed a vehicle weaving. He considered the possibility that the driver Brown was intoxicated. At an approaching intersection, Brown took the right-turn-only lane, and then, without signaling, crossed the solid white line between the lanes and moved back into the left lane. Sergeant Barnhill testified he stopped Brown because of the traffic violations. *See* Tex. Transp. Code Ann. §§ 544.004, 545.104 (West 1999); *see also id.* § 541.304(1) (West 1999).

STANDARD OF REVIEW

The standard of review for a suppression ruling is bifurcated. *Wilson v. State*, 311 S.W.3d 452, 457-58 (Tex. Crim. App. 2010) (citing *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000)). We give almost total deference to the trial court's determination of historical facts, but conduct a *de novo* review of the trial court's application of law to those facts. *Carmouche*, 10 S.W.3d at 327 (citing *Guzman v. State*, 955 S.W.2d 85, 88-89 (Tex. Crim. App. 1997)). During a suppression hearing, the trial judge is the sole trier of fact and may believe or disbelieve all or any part of a witness's testimony. *Wilson*, 311 S.W.3d at 458. We examine the evidence in the light most favorable to the trial court's ruling. *Id.* at 458.

ANALYSIS

The historical facts are not in dispute. The issue is one of law and the application of the law to the facts. Section 545.104(a) of the Transportation Code states that "[a]n operator shall use the signal authorized by Section 545.106 to indicate an intention to turn, change lanes, or start from a parked position." Tex. Transp. Code Ann. § 545.104(a). Brown argues no signal was required when he moved from the right-turn-only lane back to the left lane on his side of the road.

Brown relies on *Mahaffey v. State*, 316 S.W.3d 633 (Tex. Crim. App. 2010) and *Trahan v. State*, 16 S.W.3d 146 (Tex. App.—Beaumont 2000, no pet.). These cases are distinguishable from this case. In *Trahan*, the driver failed to signal his exit from the freeway. *Trahan*, 16 S.W.3d at 147. This Court concluded there was no evidence that Trahan '"turned"' or changed lanes in order to exit the freeway, and there was no basis for the traffic stop. *Id.* In *Mahaffey*, two lanes on Mahaffey's side of the road merged into a single lane. *Mahaffey*, 316 S.W.3d at 635. A sign on the road said '"Lane Ends-Merge Left[.]"' *Id*. at 634. The officer stopped Mahaffey for failing to signal when he merged into the single lane. *Id*. The Court found there was no "turn" and Mahaffey was "simply following the 'direct course' of the road and of the traffic on that winding road." *Id*. at 639.

Here, the alleged violation does not involve the merging of two lanes into one or exiting a freeway. As Brown approached an intersection, he moved into a right-turn-only

lane. Without a signal, Brown then crossed the solid white line between the two lanes and made a lane change from the right-turn-only lane back into the left lane.

Committing a traffic violation in an officer's presence provides probable cause to stop the vehicle and justifies a detention. *See* Tex. Transp. Code Ann. § 545.104(a); *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992) (running a stop sign); *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982) (driving with a defective taillight). Sergeant Barnhill observed Brown commit a traffic violation. *See Castro v. State*, 227 S.W.3d 737, 742 (Tex. Crim. App. 2007); *Coleman v. State*, 188 S.W.3d 708, 716-717 (Tex. App.—Tyler 2005, pet. ref'd); *Hargrove v. State*, 40 S.W.3d 556, 557, 559 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd). Barnhill was authorized to make the traffic stop.

The trial court did not err in its application of the law to the facts and in denying Brown's motion to suppress. We overrule Brown's issue and affirm the trial court's judgment.

We affirm the trial court's conviction.

AFFIRM.

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DAVID GAULTNEY
Justice

Submitted on March 9, 2011
Opinion Delivered March 16, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.