In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-15-00169-CR

JEREMY EMANUWALE GUILLORY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 163rd District Court
Orange County, Texas
Trial Cause No. B140437R

MEMORANDUM OPINION

After the trial court denied his motion to suppress evidence, appellant Jeremy Emanuwale Guillory (Guillory) pleaded guilty to felony possession of a controlled substance, namely cocaine, in an amount of at least four grams but less than 200 grams.[1] Guillory pleaded "true" to an enhancement paragraph of the

[1] The appellate briefs do not discuss the search that led to the discovery of the drugs and the facts leading to the charge of possession of a controlled substance. Rather, the parties focus only on the initial traffic stop. However, according to the reporter's record from the sentencing hearing, after Guillory

indictment alleging a prior felony conviction. The trial court found the evidence supported a finding of guilt and assessed punishment at twenty-two years' confinement. In one appellate issue, Guillory challenges the trial court's denial of Guillory's motion to suppress. We affirm the trial court's judgment.

FACTUAL BACKGROUND

Guillory was indicted for felony possession of a controlled substance, namely cocaine, in an amount of at least four grams or more but less than 200 grams. *See* Tex. Health & Safety Code Ann. § 481.115 (West 2010). The indictment included an enhancement for a prior conviction. *See* Tex. Penal Code Ann. § 12.42 (West Supp. 2015). Guillory filed a motion to suppress alleging that he was arrested without lawful warrant, probable cause or other lawful authority in violation of his rights pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 9, 10, and 19 of the Texas Constitution, and that the actions of the Orange Police Department violated his constitutional and statutory rights under Article 38.23 of the Texas Code of Criminal Procedure.[2] In the motion, Guillory sought suppression of "[a]ny

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entered his guilty plea Guillory testified that he possessed thirty-three grams of cocaine in his pants at the time of the traffic stop, and that he had recently purchased the drugs and made a decision to try to sell the drugs.

[2] Guillory filed an earlier motion to suppress, wherein he made similar arguments. After the filing of the earlier motion to suppress and prior to a hearing

and all tangible evidence seized by law enforcement officers or others in connection with" Guillory's detention and arrest, and "any testimony by the [Orange] County Police Department or any other law enforcement officers or others concerning such evidence." Guillory also requested that the trial court suppress "[t]he arrest of . . . Guillory at the time and place in question and any and all evidence which relates to the arrest, and any testimony by the Orange County Police Department or any other law enforcement officers or others concerning any action of . . . Guillory while in detention or under arrest in connection with this case."

The trial court conducted a hearing on the motion and the State presented the testimony of Officer Caleb Davis. Caleb Davis, a Texas certified police officer, testified that he was working patrol for the Orange Police Department on the evening of May 2, 2014. Officer Davis stated that at approximately 7:30 p.m., while still daylight, he observed a white Ford truck traveling north on Second Street "pull[] too far into the intersection [of Second and South Farragut], impeding traffic . . . at the stop sign." Officer Davis testified that he had a clear view of the intersection and that his attention was drawn to how far the white truck was into the intersection when Officer Davis observed another vehicle travelling

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or ruling on the motion, the trial court granted Guillory's motion to substitute counsel. Guillory's new counsel then filed another motion to suppress.

south on Second Street "appl[y] the brakes [and] slow[] down drastically" as the vehicle approached the white truck, even though the vehicle did not have a stop sign. According to Officer Davis, there was not a clearly marked line on the road indicating where a driver should stop nor was there a clearly designated crosswalk in the area. Officer Davis testified that there was no reason for a driver to have to enter the intersection before stopping in order to proceed safely and that a driver would not have to continue past the stop sign at that particular intersection to view approaching traffic.

Officer Davis explained that the white truck passed Officer Davis's vehicle, and Officer Davis recognized Guillory, the driver, as a person with whom another police officer wanted to talk. According to Officer Davis, as a result of Guillory's traffic violation for disregarding the stop sign and "entering into the intersection . . . going too far past the stop sign[,]" Officer Davis turned his vehicle around and initiated a traffic stop. Officer Davis testified that as he approached the vehicle and made contact with Guillory, Officer Davis noticed two additional traffic violations: the tire tread on the vehicle's tires appeared bare, and Guillory had three unrestrained juveniles in the front seat of the vehicle.

Officer Davis testified he gave Guillory verbal warnings regarding the tires and unrestrained children and that he could have ticketed or taken Guillory to jail

for either of these violations. Officer Davis testified that video equipment in his patrol car recorded the traffic violation and resulting traffic stop, and the recording was played for the trial court. Photographs of the intersection were admitted into evidence. According to Officer Davis, after the children in Guillory's vehicle were released to a relative, the police searched the vehicle and nothing was located as a result of the search of the vehicle. Officer Davis explained at the hearing that he arrested Guillory for "the stop sign violation."

The defense did not call any witnesses at the suppression hearing. The trial court denied the motion. Guillory pleaded guilty to the charge of possession of a controlled substance and pleaded "true" to an enhancement paragraph of the indictment alleging a prior felony conviction.

The trial court found the evidence supported a finding of guilt and assessed punishment at twenty-two years' confinement. Guillory timely filed a notice of appeal.

ISSUE ON APPEAL

In one appellate issue, Guillory argues the trial court erred in denying his motion to suppress. Specifically, Guillory contends "Officer Davis delayed the end of Appellant's traffic stop in order to conduct further investigation[,]" it was only after Guillory passed Officer Davis and Davis recognized him as a person of

interest to another officer that Officer Davis decided to initiate the traffic stop, and Officer Davis made the decision to arrest Appellant "for allegedly violating Texas Transportation Code Section 544.010[]" after Davis searched the vehicle. According to Guillory, although Guillory could have stopped sooner than he did to get a clear view of the intersection, Guillory argues he was not legally required to stop at the stop sign itself. Guillory relies on *State v. Police*, 377 S.W.3d 33 (Tex. App.—Waco 2012, no pet.), in arguing that Officer Davis's "honest, but mistaken belief" that Guillory had violated section 544.010 of the Transportation Code did not justify the stop. After we notified the parties the case would be submitted on the briefs without oral argument, and after the case was submitted on the briefs without oral argument, Appellant filed a Motion for Leave to File a Post-Submission Brief and attached Appellant's Reply Brief. We granted the Motion for Leave and filed the Reply Brief. *See* Tex. R. App. P. 38.6(c), (d).

STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). We review the trial court's factual findings for an abuse of discretion, but review the trial court's application of the law to the facts de novo. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). At a suppression hearing, the

trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony, and a trial court may choose to believe or to disbelieve all or any part of a witness's testimony. *Valtierra*, 310 S.W.3d at 447; *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007) (quoting *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999)); *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000).

In reviewing a trial court's ruling, the appellate court does not engage in its own factual review. *St. George v. State*, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007). We give almost total deference to the trial court's determination of historical facts, "especially if those are based on an assessment of credibility and demeanor." *Crain v. State*, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010). We give the same deference to the trial court's conclusions with respect to mixed questions of law and fact that turn on credibility or demeanor. *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). We review purely legal questions de novo as well as mixed questions of law and fact that do not turn on credibility and demeanor. *State v. Woodward*, 341 S.W.3d 304, 410 (Tex. Crim. App. 2011); *Crain*, 315 S.W.3d at 48. We also review de novo "whether the totality of [the] circumstances is sufficient to support an officer's reasonable suspicion of criminal activity." *Crain*, 315 S.W.3d at 48-49.

In the absence of any findings of fact, either because none were requested or none were spontaneously made by the trial court, an appellate court must presume that the trial court implicitly resolved all issues of historical fact and witness credibility in the light most favorable to its ultimate ruling. *State v. Elias*, 339 S.W.3d 667, 674 (Tex. Crim. App. 2011) (citing *Ross*, 32 S.W.3d at 857); *see also Aguirre v. State*, 402 S.W.3d 664, 667 (Tex. Crim. App. 2013) (Cochran, J. concurring) ("in the absence of specific findings, an appellate court's hands are tied, giving it little choice but to '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 that support its ruling as long as those findings are supported by the record'"). We will uphold the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014); *Arguellez v. State*, 409 S.W.3d 657, 662-63 (Tex. Crim. App. 2013).

DISCUSSION

As to Guillory's argument that the length of his detention provided a reason to grant the motion to suppress, he did not make this argument in his written motion to suppress or at the suppression hearing. Instead, he argued in his motion to suppress that he was "arrested without lawful warrant, probable cause or other

lawful authority[.]" Because he failed to raise the alleged prolonged detention of the stop, he has waived this complaint. *See Pabst v. State*, 466 S.W.3d 902, 907-08 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citing *Hailey v. State*, 87 S.W.3d 118, 122 (Tex. Crim. App. 2002)). We next address Guillory's argument that probable cause did not exist to support the traffic stop.

"An officer may make a warrantless traffic stop if the 'reasonable suspicion' standard is satisfied." *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015). "[A]n officer is generally justified in briefly detaining an individual on less than probable cause for the purposes of investigating possibly-criminal behavior where the officer can 'point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.'" *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). "Reasonable suspicion exists if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity." *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). This is an objective standard that disregards the subjective intent of the officer and requires only some minimal level of justification for the stop. *Terry*, 392 U.S. at 21-22; *Wade v. State*, 422 S.W.3d 661,

668 (Tex. Crim. App. 2013); *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010). However, the officer must have more than an inarticulable hunch that a crime was in progress. *Crain*, 315 S.W.3d at 52 (quoting *Williams v. State*, 621 S.W.2d 609, 612 (Tex. Crim. App. 1981)). In deciding whether an officer had reasonable suspicion, we examine the facts that were available to the officer at the time of the investigative detention. *Terry*, 392 U.S. at 21-22; *Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997). This determination is made by considering the totality of the circumstances, giving the factfinder almost total deference to the determination of historical facts, and reviewing de novo the trial court's application of law to facts not turning on credibility. *Ford*, 158 S.W.3d at 492-93.

Section 544.010 of the Texas Transportation Code provides the following:

> (a) Unless directed to proceed by a police officer or traffic-control signal, the operator of a vehicle or streetcar approaching an intersection with a stop sign shall stop as provided by Subsection (c).
> (b) If safety requires, the operator of a vehicle approaching a yield sign shall stop as provided by Subsection (c).
> (c) An operator required to stop by this section shall stop before entering the crosswalk on the near side of the intersection. In the absence of a crosswalk, the operator shall stop at a clearly marked stop line. In the absence of a stop line, the operator shall stop at the place nearest the intersecting roadway where the operator has a view of approaching traffic on the intersecting roadway.

Tex. Transp. Code Ann. § 544.010 (West 2011). The Transportation Code explicitly authorizes any peace officer to arrest, without a warrant, a person found committing a traffic violation. *See id*. § 543.001 (West 2011); *see also Atwater v. Lago Vista*, 532 U.S. 318, 323 (2001) (noting that section 543.001 of the Texas Transportation Code authorizes any peace officer to arrest without warrant a person found committing a violation of seatbelt laws, although Texas law allows police to issue citations in lieu of arrest). On appeal, and in reliance on *State v. Police*, Guillory argues Officer Davis's "honest, but mistaken belief" that Guillory had violated section 544.010 of the Transportation Code did not justify the stop. We disagree.

In *State v. Police*, an officer observed a vehicle he did not recognize driving through his patrol area around midnight. 377 S.W.3d at 37. He followed the vehicle, which was driven by Police, and the officer ran a license check. *Id.* Police turned into a neighborhood known for criminal activity. *Id.* The officer waited for Police to exit the neighborhood, which Police did in less than a minute and a half. *Id.* Police approached the intersection, which had a stop sign, but no crosswalk or stop line. *Id.* Police's vehicle came to a complete stop at a point past the stop sign but did not enter the intersection. *Id.* The officer believed that Police had committed a traffic violation by stopping at a point past the stop sign, citing section

544.010 of the Texas Transportation Code. *Id*. Based on this belief, the officer initiated a traffic stop that ultimately resulted in the discovery of a weapon, marijuana, another controlled substance, and Police was arrested for those offenses. *Id*.

The Waco Court of Appeals held that the trial court's finding of fact that the defendant stopped his vehicle at the place nearest the roadway where he had a view of approaching traffic was supported by evidence and held there was no traffic violation. *Id.*at 38. According to the Waco Court of Appeals, the officer's mistaken belief that the defendant stopped at a point past the stop sign but not entering into the intersection was a traffic violation did not justify the stop. *Id.* at 38.

In the present case, Officer Davis explained that, at the intersection in question, there was no clearly marked line on the road indicating where a driver should stop, nor was there a clearly designated crosswalk. Officer Davis testified he observed Guillory "pull[] too far into the intersection [of Second and South Farragut], impeding traffic . . . at the stop sign." According to Officer Davis, he had a clear view of the intersection and his attention was drawn to how far the vehicle Guillory was driving was into the intersection when Officer Davis observed another vehicle travelling south on Second Street "appl[y] the brakes [and] slow[] down drastically" as the vehicle approached Guillory's vehicle, even

though the other vehicle did not have a stop sign. Officer Davis testified that, at that particular intersection, there was no reason for a driver to have to enter the intersection before stopping in order to proceed safely, and that a driver would not have to continue past the stop sign at that particular intersection to view approaching traffic. Unlike the facts in *State v. Police*, Officer Davis testified that he observed Guillory proceed into the intersection before coming to a stop, Guillory proceeded past the point at which he would need to have had a clear view of oncoming traffic, and that he observed another oncoming car apply its brakes because the vehicle Guillory was driving "was that far in the intersection."

The trial court heard Officer Davis's testimony and viewed the photographs of the intersection and the video recording of the alleged violation and traffic stop. Based on the totality of the circumstances, we conclude on the record before us, that the hearing contains sufficient "specific articulable facts," when combined with rational inferences from those facts, from which the trial court could have reasonably concluded that Officer Davis's initial detention of Guillory was objectively reasonable, that Officer Davis had a good-faith suspicion that Guillory had engaged in a traffic violation, and that probable cause existed to support the traffic stop. *See Crain*, 315 S.W.3d at 52. We therefore conclude that the trial court did not err in overruling the motion to suppress.

We overrule Guillory's issue on appeal. We affirm the trial court's judgment.

AFFIRMED.

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LEANNE JOHNSON
Justice

Submitted on June 3, 2016
Opinion Delivered July 27, 2016
Do Not Publish

Before McKeithen, C.J., Kreger and Johnson, JJ.