COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00443-CR

ELIZABETH MARIE SHROUT — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM COUNTY COURT AT LAW OF HOOD COUNTY
TRIAL COURT NO. 48739

MEMORANDUM OPINION[1]

By information, the State charged the appellant, Elizabeth Marie Shrout, with driving while intoxicated. Shrout filed a pretrial motion to suppress the State's evidence stemming from the traffic stop. The trial court denied Shrout's motion. In a letter to counsel, the trial court explained that Shrout was weaving within her lane and that the officer stopped her as part of a DWI investigation.

[1]*See* Tex. R. App. P. 47.4.

Shrout then waived her right to a jury and pleaded nolo contendere pursuant to a plea bargain with the State. At trial, the court accepted Shrout's plea, convicted her for driving while intoxicated, sentenced her to six months in jail, and assessed an $800 fine. The court then suspended her confinement and placed her on community supervision for twelve months. Shrout appeals her conviction and argues that the court erred in denying her motion to suppress. *See* Tex. R. App. P. 25.2(a)(2)(A).[2] We affirm.

Pretrial Suppression Hearing

Shrout filed a motion to suppress the State's evidence in which she argued that the warrantless stop was illegal because it was made without reasonable suspicion, thus violating the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 9 of the Texas constitution. U.S. Const. amends. IV, XIV; Tex. Const. art. I, § 9. The State introduced video evidence at the hearing on the motion. Shrout was driving when a Granbury police officer stopped her shortly after midnight on January 15, 2016. She had been weaving in her lane and crowding the center-line markers. The officer stopped her because he saw her weaving. After he stopped her, the officer smelled alcohol on Shrout's breath. He conducted a field sobriety test; Shrout failed. The officer then arrested her. The trial court found that Shrout was weaving, that based on *Leming v. State*, "weaving, even within one's own lane, can give rise to

[2]Although a plea bargain, Shrout may appeal a written and ruled-upon pretrial motion to suppress. *See id.*

reasonable suspicion for a traffic stop," and that the officer initiated the stop as part of a DWI investigation. *See* 493 S.W.3d 552, 564-65 (Tex. Crim. App. 2016). The trial court denied Shrout's motion.

Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002).

When reviewing the trial court's ruling on a motion to suppress, we must view the evidence in the light most favorable to the trial court's ruling. *Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007); *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). When the trial court makes explicit fact findings, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those fact findings. *Kelly*, 204 S.W.3d at 818–19. We then review the trial court's legal ruling de novo unless its explicit fact findings that are supported by the record are also dispositive of the legal ruling. *Id.* at 818. We must uphold the trial court's ruling if it is supported by the record and correct

under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 974 (2004).

Issue on Appeal

Shrout raises one issue: whether the trial court erred in denying her motion to suppress by determining that the officer had reasonable suspicion that she had violated section 545.060 of the Texas Transportation Code for failure to safely maintain a single lane. *See* Tex. Transp. Code Ann. § 545.060 (West 2011).

Discussion

To suppress evidence because of an alleged Fourth Amendment violation, the defendant bears the initial burden of producing evidence that rebuts the presumption of proper police conduct. *Amador*, 221 S.W.3d at 672; *see Young v. State*, 283 S.W.3d 854, 872 (Tex. Crim. App.), *cert. denied*, 558 U.S. 1093 (2009). A defendant can satisfy this burden by establishing that a search or seizure occurred without a warrant. *Amador*, 221 S.W.3d at 672. Here, the seizure was indisputably a warrantless traffic stop. Because this stop was without a warrant, Shrout met her burden of proof. *See id.*

The burden thus shifts to the State, which then must establish that the seizure was reasonable. *Id.* at 672–73; *Torres v. State*, 182 S.W.3d 899, 902 (Tex. Crim. App. 2005); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App.

2005). An objective standard is used when determining if the officer had a reasonable suspicion. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App.), *cert. denied*, 565 U.S. 840 (2011). This standard is whether the officer has "specific, articulable facts that, combined with rational inferences from those facts, would lead him to conclude that the person detained is, has been, or soon will be engaged in criminal activity." *Id.* This test also includes the totality of the circumstances. *Id.*

The State presented video evidence in which the arresting officer told Shrout that "the reason you're being pulled over is because you're kind of all over the road." The officer also stated that he had observed her "weaving back and forth," and the police dash-cam video showed Shrout driving onto, if not slightly over, the center white line.

In *Leming*, a factually similar case, the court of criminal appeals ruled that a police officer was justified in stopping a driver after observing that the vehicle was "drifting in its lane back to the left, to the center stripe . . . [and its] tires were on the stripes" before drifting back to the right. 493 S.W.3d at 554. Reviewing the application of law to the facts, the court observed that the driver (1) had been traveling below the speed limit; (2) was incrementally reducing speed; (3) had been weaving in his lane, and (4) had been driving erratically within obvious view of the officer following him. *Id.* at 564–65. The court stated that even if the defendant's "erratic" driving could be contributed to a cause other than

drunkenness, the officer had an "objectively reasonable basis" to stop and investigate the driver. *Id.*[3]

Here, the officer was trailing behind Shrout's vehicle when she began weaving in her lane. Similar to Leming, Shrout, while weaving in her lane, had driven far enough to the left to put her driver-side tires deep into (if not over) the lane's outside stripe multiple times. *See id.*, at 563 n.16. The officer here thus had specific, articulable facts for stopping Shrout. She was "weaving" "all over the road" shortly after midnight. The officer could rationally infer from the totality of the circumstances that the driver could be under the influence. "[T]he accumulated experience of thousands of officers suggests that these sorts of erratic behaviors are strongly correlated with drunk driving." *Navarette v. California*, 134 S. Ct. 1683, 1691 (2014); *see also Sanchez v. State*, No. 02-15-00302-CR, 2016 WL 6123641, at *5 (Tex. App.—Fort Worth Oct. 20, 2016, pet. ref'd) (mem. op., not designated for publication) (citing *Foster v. State*, 326 S.W.3d 609, 613 n.10 (Tex. Crim. App. 2010)) (providing that time and location are also relevant factors). Viewing the evidence in the light most favorable to the trial court's ruling, we hold that the officer's decision to stop and investigate Shrout was objectively reasonable. *See Wiede*, 214 S.W.3d at 24. The officer

[3]Shrout argues that *Leming* is not binding law because it is a plurality opinion. While *Leming*'s second section ("Failure to Maintain a Single Lane") is a plurality opinion, its third section ("Driving While Intoxicated") represents the court's majority opinion and is the section we rely on. *See id.* at 553, 561–65.

thus had the reasonable suspicion necessary to stop Shrout without a warrant. *See Amador*, 221 S.W.3d at 672-73.

Shrout nevertheless argues that to prove reasonable suspicion, the State must show that the officer saw an actual violation of section 545.060 of the transportation code—that she failed to safely maintain her vehicle in a single lane. *See* Tex. Transp. Code Ann. § 545.060. We disagree. The standard for whether an officer can detain someone for investigation is whether the officer has "specific, articulable facts that, combined with rational inferences from those facts, would lead him to conclude that the person detained is, has been, or soon will be engaged in criminal activity." *Derichsweiler,* 348 S.W.3d at 914*.* Here, Shrout crossed, or at least came close to crossing, the markings at the left edge of her lane. The State's video exhibit portrays the officer's viewing angle while watching Shrout weave near, on, or slightly over the lane line several times. As recorded in the video, her weaving provided the officer with reasonable suspicion that she was driving while intoxicated. *See Leming*, 493 S.W.3d at 561–65. Regardless of whether she crossed the center line, she was driving erratically. The trial court thus did not have to decide—and we need not decide—whether Shrout failed to safely maintain her vehicle within a single lane of traffic. *See Stevens*, 235 S.W.3d at 740 (stating that appellate court must uphold trial court's ruling if it is supported by the record and correct under any theory of the law applicable to the case); *Armendariz*, 123 S.W.3d at 404 (same).

Because we hold that the trial court did not abuse its discretion by finding that the officer had reasonable suspicion to stop Shrout, we overrule her issue.

Conclusion

Having overruled Shrout's sole issue, we affirm the trial court's judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: SUDDERTH, KERR, and PITTMAN, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: July 6, 2017