In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00135-CR

THE STATE OF TEXAS, APPELLANT

V.

NATHANIEL JAY KAPLAN, APPELLEE

On Appeal from the 69th District Court
Sherman County, Texas
Trial Court No. 973, Honorable Ron Enns, Presiding

January 18, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

The State of Texas appeals[1] from the trial court's order granting Nathaniel Jay Kaplan's motion to suppress evidence. Through two issues, the State contends the trial court's ruling was in error. We will affirm the order.

[1] The State is entitled to appeal a trial court's decision to grant a motion to suppress. TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(5) (West 2015).

Background

Testimony at the hearing on Kaplan's motion to suppress showed that, on an evening in January 2015, officers Coborn and McHugh of the Stratford, Texas police department initiated a traffic stop of Kaplan's vehicle. Coborn was the only witness to testify at the suppression hearing. He told the court the officers were northbound on U.S. Highway 287 in Stratford, met appellant's southbound vehicle, and made a u-turn to follow appellant. They were some distance behind appellant. Appellant's vehicle, in the right southbound lane, approached an intersection. Coborn, on cross examination, described what he saw when his vehicle, in the left southbound lane, approached the same intersection. The officer said:

> After I made my turnaround to turn back south on U.S. Highway 287, I watched as the vehicle approached the 4-way intersection of 287 and Highway 54. The 4-way intersection has got a flashing red stop light. It's got a stop sign, the white line for the stop and then the crosswalk. As I pulled up to the vehicle in the left-hand lane, the vehicle was in the right-hand lane, at that time I was able to observe that the front tires of the vehicle were past the white stop line.
>
> As I approached, the vehicle was -- still pressed on its brakes; the brake lights were showing. As I pulled up to the vehicle, bumper to bumper, my front bumper with his rear bumper, I was able to observe his front tires past the white line for the designated stop line at the stop sign.
>
> Q. So, it's your testimony that his wheels were across the line; is that your testimony?
>
> A. I believe so, yes, ma'am.

The video from Coborn's patrol car also was played at the suppression hearing, and a screenshot from that video was admitted. After the traffic stop, the officers found marijuana and other substances in the vehicle. Kaplan was arrested for possession of

marijuana and was later indicted for the second-degree felony of possession of a controlled substance and the state-jail felony of possession of marijuana.

The trial court granted appellant's motion to suppress the evidence found in his vehicle. Both appellant and the State submitted proposed findings of fact and conclusions of law, and the court signed those appellant submitted. On appeal, after both sides filed briefs, we abated the appeal and remanded the case to the trial court for supplemental findings and conclusions.[2] The findings and conclusions have been filed; the parties have not supplemented their briefing.

Analysis

The State first contends the trial court erred by granting Kaplan's motion to suppress because, it argues, the record showed the officers were justified in stopping Kaplan when they saw his violation of the transportation code.

Applicable Law

A trial court's ruling on a motion to suppress evidence is reviewed for an abuse of discretion and reversed only if the ruling is outside the zone of reasonable disagreement. *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). The appellate court will uphold the ruling of the court if it is correct under any theory of law applicable to the case, even if the trial court did not rely on that theory in making its ruling. *State v. Copeland,* ___ S.W.3d ___, No. PD-1549-15, 2016 Tex. Crim. App.

[2] *State v. Kaplan,* No. 07-16-00135-CR, 2016 Tex. App. LEXIS 11776 (Tex. App.—Amarillo Oct. 31, 2016, no pet.) (mem. op., not designated for publication).

LEXIS 1195, at *4-5 (Tex. Crim. App. 2016) (designated for publication), *citing Calloway v. State*, 743 S.W.2d 645 (Tex. Crim. App. 1988). A "theory of law applicable to the case" is one presented at trial in such a manner that the appellant was fairly called upon to present evidence on the issue. *Id.* (citation omitted).

An officer must have reasonable suspicion that some crime was, or is about to be, committed before he may make a traffic stop. *State v. Duran,* 396 S.W.3d 563, 568 (Tex. Crim. App. 2013). In the reasonable-suspicion analysis, we determine whether the stop was supported by "specific and articulable facts at its very inception." *Id.* at 568-69 (citations omitted). "The almost exclusive inquiry appropriate to determining the lawfulness of a traffic stop is whether the officer had 'a pre-existing sufficient quantum of evidence to justify the stop.'" *Id.* at 569 (citing 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 9.3(a), at 472-73 (5th ed. 2012)). The objective standard a reviewing court applies places the court "in the shoes of the officer at the time of the inception of the stop—considering only the information actually known by or available to the officer at that time." *Id.*

The court in *Duran* went on to note that "[n]ormally, this inquiry "presents no significant problem, for most traffic stops are made based upon the direct observations of unambiguous conduct or circumstances by the stopping officer." *Id.* (citation omitted). "But," the court continued, "sometimes an issue arises as to what the officer actually saw or knew at the time that he made a traffic stop." *Id.*

At a motion to suppress hearing, the trial court is the sole trier of fact and judge of the credibility of witnesses and the weight to be given their testimony. *Thomas v.*

State, No. 10-11-00250-CR, 2013 Tex. App. LEXIS 6943, at *6 (Tex. App.—Waco June 6, 2013, no pet.) (mem. op., not designated for publication). Reviewing its ruling, we afford almost total deference to a trial court's determination of the historical facts that the record supports, particularly when its fact findings are based on an evaluation of credibility and demeanor. *Guzman v. State,* 955 S.W.2d 85, 89 (Tex. Crim. App. 1997) (citation omitted). We afford the same amount of deference to trial courts' rulings on "application of law to fact questions" if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. *Id.* If the trial court makes express findings of fact, we view the evidence, *State v. Kelly,* 204 S.W.3d 808, 818 (Tex. Crim. App. 2006), and the court's factual findings, *State v. Granville,* 423 S.W.3d 399, 404 (Tex. Crim. App. 2014), in the light most favorable to the trial court's ruling on the motion. If necessary, we make efforts to reconcile conflicts in findings of fact. *Thomas,* 2013 Tex. App. LEXIS 6943, at *6, citing *Grossnickle v. Grossnickle*, 935 S.W.2d 830, 841 (Tex. App.—Texarkana 1996, writ denied). And when two possible interpretations exist, the interpretation should be chosen that will harmonize the judgment with the findings of fact and conclusions of law on which it is based. *Id.*

Application

Several issues were considered at the suppression hearing, and are addressed by the court's findings and conclusions. Among them is the issue of whether Coborn could see where appellant "stopped" his vehicle from the officer's location approaching the intersection from behind appellant's vehicle. Several of the trial court's findings touch on the issue. The court found: the stop occurred at approximately 8:45 p.m. on January 11, 2015, and it was "dark outside"; the stop line at the intersection is

"somewhat faded, but can be seen on close observation"; the officers "were still some distance behind the defendant when he approached the intersection . . . to stop his vehicle"; "[t]he defendant stopped at the intersection, while the patrol unit was still behind the defendant, and allowed an eastbound vehicle to proceed through the intersection." After stating those findings, the court further found it "unclear if [the defendant's] vehicle moved forward any additional amount after the initial stop."[3] The court, however, expressed no lack of clarity with regard to the credibility of the officer's testimony that "he observed the defendant's vehicle stopped with the front tires *over* the stop line."[4] The court several times expressed its finding that the officer's testimony on that point was not credible. Its findings state: "[t]he Court did not observe an objective reason to believe that Officer Coborn observed the defendant's vehicle over the line from his position behind the vehicle at night." They also state: "[t]he prosecution failed to establish the defendant had not stopped at the stop line." In its conclusions, the court reiterated: "[t]he Court does not find Officer Coborn's testimony regarding his observations of the defendant's vehicle *over* the line at the time of the stop from his position behind the defendant's vehicle at night with a faded stop line to be credible."[5] It later again said it "does not credit the officer's testimony that the defendant was over the stop line."

[3] The transportation code provides that when a "stop" is required, it means "to completely cease movement." TEX. TRANSP. CODE ANN. § 541.401 (West 2015).

[4] Italics in trial court's finding.

[5] Again, the italics are the trial court's.

The court's findings and conclusions address other theories of law applicable to the case. The court's conclusions pose the issue whether the intersection is governed by transportation code section 544.008(a), as one controlled by a flashing red light,[6] or by section 544.010, as one controlled by a stop sign.[7] In its findings, the court stated the undisputed fact that the intersection has four-way stop signs, stop lines, crosswalk stripes, and an overhead flashing light. The court expressed no conclusion as to which code provision governs the intersection, expressing instead its conclusion that, under its view of the facts and law, the stop was unlawful regardless which code provision governs. And the court expressed its conclusions on the meaning of the language in section 544.008(a) requiring a driver "facing a flashing red signal to stop at a clearly marked stop line."

We find no need to discuss our views of the trial court's conclusions of law on the issue of which code provision governs the intersection or the issue of the meaning of the requirement "to stop at a clearly marked stop line." We must affirm the trial court's ruling on the motion to suppress if it is correct under any theory of law applicable to the case. *Copeland,* 2016 Tex. Crim. App. LEXIS 1195, at *4-5. The court's findings state its credibility determination that, simply put, Coborn could not have seen, and did not see, what he testified he saw, that is, the vehicle stopped with its front tires over the

[6] TEX. TRANSP. CODE ANN. § 544.008(a) (West 2015).

[7] TEX. TRANSP. CODE ANN. § 544.010 (West 2015) (requiring the operator of a vehicle approaching an intersection with a stop sign to stop "before entering the crosswalk" unless otherwise directed).

stop line. Such credibility determinations are the sole province of the trier of fact,[8] and on appeal, the State does not contend that the court's determination lacks support in the record.[9]

Because the court's credibility determination supports its conclusion that the officer had no objective basis justifying the traffic stop, *Duran*, 396 S.W.3d at 569, we overrule the State's first issue.

By its second issue, the State argues the court erred by failing to find officer Coborn made a reasonable mistake of law in his opinion appellant's duty to stop at the intersection was governed by transportation code section 544.008(a). The State contends the officer's decision to detain appellant was reasonable, under the doctrine outlined by the United States Supreme Court in *Heien v. North Carolina.* 2014 U.S. LEXIS 8306, 135 S. Ct. 530, 190 L. Ed. 475 (2014). *Heien* involved a traffic stop initiated by an officer because he saw the vehicle had only one working brake light. He believed North Carolina law required two working brake lights. The trial court denied the driver's motion to suppress the evidence of cocaine later found in the vehicle. A North Carolina appellate court later determined that state's law required only one working brake light. The United States Supreme Court ultimately granted review of the suppression issue, and found it was "objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North

[8] "Reconciliation of the evidence based on who is credible is a matter uniquely reserved for the trial court." *Ervin v. State,* 333 S.W.3d 187, 203 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd), citing *St. George v. State,* 237 S.W.3d 720, 725 (Tex. Crim. App. 2007).

[9] The State does not contend on appeal that any of the court's factual findings lack support in the evidence.

Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop." *Id.* at 540. The Court's holding in *Heien* is based on a clear record showing what the officer saw at the inception of the traffic stop. In this case, the trial court has found the officer's testimony on that point not credible. Because the trial court disbelieved Coborn's description of what he saw when he approached the intersection at the time of the stop, under the standard that governs our review of the court's ruling, *Guzman,* 955 S.W.2d at 89, we have no basis to evaluate whether the officer's actions were reasonable though mistaken on the law.

For the same reason, this case is distinguished from the circumstance we encountered in *State v. Patterson*, 291 S.W.3d 121 (Tex. App.—Amarillo 2009, no pet.). An officer detained Patterson when he saw what he believed to be Patterson's violation of an Amarillo municipal ordinance. *Id*. at 122. The trial court determined that the ordinance was inapplicable to Patterson's location and he therefore did not violate it. We nonetheless held the detention was lawful because the trial court's findings established that Patterson's actions violated a provision of state law. *Id*. at 123. We cited case law holding that an objectively valid detention should be upheld even though the officer subjectively relied on an improper reason. *Id*. Again, however, there was no disagreement in *Patterson* over what the officer saw. The same is not true here.[10]

[10] We do note the trial court stated the finding that appellant's vehicle "was stopped *on* the stop line." (italics in original). Harmonizing all the court's findings, however, we read that finding to state that the screenshot from the patrol car video depicts the vehicle's front tires resting on the stop line. As noted, it is unclear that the screenshot shows the vehicle's initial stopping point. And, given the court's repeated findings concerning Coborn's position behind appellant's vehicle, and its express findings regarding his credibility, we do not read the court's fact-finding as a statement of what the officer observed at the inception of the stop. *See Duran*, 396 S.W.3d at

We overrule the State's second issue.

Conclusion

Having overruled the State's issues, we affirm the order of the trial court.

James T. Campbell
Justice

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571. (appellate court views trial court's factual findings in the light most favorable to its ultimate conclusion).