In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00272-CR

HERCULES DARNELL LAWTON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 181st District Court
Potter County, Texas
Trial Court No. 70,327-B; Honorable John Board, Presiding

August 16, 2017

MEMORANDUM OPINION

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

Following an open plea of guilty, Appellant, Hercules Darnell Lawton, was convicted of possession of marihuana in an amount of four ounces or more but less than five pounds, a state jail felony.[1] Punishment was assessed at two years confinement, suspended in favor of five years community supervision, and a $5,000

[1] TEX. HEALTH & SAFETY CODE ANN. § 481.121(b)(3) (West 2017).

fine, not suspended. By a single issue, he contends the trial court abused its discretion in denying his motion to suppress because the video of the traffic stop shows that no offense occurred, the stop was unreasonable, and the marihuana seized should have been suppressed. We affirm.

BACKGROUND

On February 12, 2015, while traveling on Interstate 40, Texas Department of Public Safety Trooper Francis observed Appellant in his vehicle following a large commercial vehicle while traveling approximately seventy-three miles per hour in a seventy-five mile-per-hour zone. Appellant signaled, moved to the left lane, and passed the larger vehicle. Trooper Francis activated his in-car camera and initiated a traffic stop for following too closely, a violation of section 545.062(a) of the Texas Transportation Code. TEX. TRANSP. CODE ANN. § 545.062(a) (West 2011). As a matter of department policy, whenever an in-car camera is activated, it automatically "loads" the previous two minutes in order to "get the PC [probably cause] on video."

While Trooper Francis was preparing a traffic citation, he discovered that Appellant had a history of drug charges which Appellant denied. He asked for and was granted consent to search the vehicle. Before the trooper began the search, Appellant confessed to having marihuana in the front console of the vehicle. The search revealed more marihuana in the trunk of the car. Appellant was arrested for possession of marihuana.

STANDARD OF REVIEW

The trial court's ruling on a motion to suppress is reviewed under a bifurcated standard. *Cole v. State*, 490 S.W.3d 918, 922 (Tex. Crim. App. 2016). First, we afford almost total deference to the trial court's determination of historical facts. *Id.* The trial court is the sole trier of fact of a witnesses' credibility and the weight to be given their testimony. *Id.* When, as here, findings of fact are not entered, we view the evidence in the light most favorable to the trial court's ruling and assume the judge made implicit findings of fact that support the ruling as the record supports those findings. *Id.* Second, we review the trial court's application of the law to the facts *de novo*. *Id.* We will uphold the trial court's ruling if the record reasonably supports that ruling and is correct on any theory of law applicable to the case. *Id.*

APPLICABLE LAW

When a police officer conducts a warrantless search and seizure, the burden is on the State to show that the officer had reasonable suspicion to believe that an individual was violating the law. *Delafuente v. State*, 414 S.W.3d 173, 176 (Tex. Crim. App. 2013). Reasonable suspicion exists when, based on the totality of the circumstances, 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 is, has been, or soon will be engaged in criminal activity. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 1997). This is an objective standard that disregards any subjective intent of the officer making the stop and looks solely to whether an objective basis for the stop exists. *Id.*

Section 545.062(a) of the Texas Transportation Code makes it illegal for an operator of a vehicle to follow another vehicle too closely. TEX. TRANSP. CODE ANN. § 545.062(a) (West 2011). There is no bright-line test for determining "too closely." However, the statute does list factors for an officer to consider in determining whether an offense has occurred. The statute provides that an operator shall "maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway." *Id.*

In *Ford*, the Court held that the trial court erred in denying Ford's motion to suppress evidence based on the officer's conclusory statement that he observed the operator of a vehicle violate section 545.062(a) of the Transportation Code. *Ford*, 158 S.W.3d at 493. The officer did not provide any articulable facts regarding the approximate distance between vehicles, the speed at which they were traveling, the conditions of the road, traffic conditions, or whether the operator would have been able to safely stop if necessary. *Id.* The Court noted to have accepted the officer's mere opinion would have "eviscerate[d]" the reasonable suspicion protection of *Terry v. Ohio*, 392 U.S. 1, 18, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). *Id.*

ANALYSIS

The facts of this case are not in dispute. Rather, the disagreement is whether Appellant committed the traffic offense of following another vehicle too closely. By his sole issue, Appellant argues the trial court abused its discretion in denying his motion to suppress because the evidence, including the video from Trooper Francis's vehicle,

shows that no traffic violation occurred, making the stop unreasonable and the seizure of marihuana unlawful. We disagree.

Appellant filed a written motion to suppress contesting the stop. At the hearing on the motion, Trooper Francis testified to his reasons for believing that Appellant committed the traffic offense of following another vehicle too closely. He testified that at the speed of seventy-three miles per hour, Appellant would need roughly 160 feet or "five or six" car lengths as a reasonable distance between his vehicle and the larger vehicle in front of him. He added that perception reaction distance is three-quarters of a second to perceive a threat and three-quarters of a second to react to the threat. Appellant was within a half second. Based on these conclusions, in the trooper's opinion, Appellant would not have been able to safely avoid a collision if the vehicle in front of him had suddenly stopped.

The defense's strategy was that Appellant did not violate section 545.062(a) of the Transportation Code because he had sufficient time to turn on his blinker, move to the left lane, and overtake the larger vehicle in front of him without having to "veer." Appellant misreads the statute. Whether the operator of a motor vehicle is following too closely is determined by whether he "can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person . . . ." The elements of the offense are disjunctive, not conjunctive.

During cross-examination, the trooper acknowledged that section 545.062 of the Transportation Code does not "state a distance." However, he elaborated on the factors listed in the statute that enabled him to determine whether Appellant had committed the

traffic offense of following another vehicle too closely. He recognized that Appellant activated his left blinker and passed the vehicle in front of him without colliding. The weather was clear and road conditions were dry. The trooper testified he determined the distance between vehicles as follows:

> I watch the center stripe. When it comes to the back tire, I'll count it -- once it hits the front - - to the front of the vehicle. I count one thousand one, one thousand one, one thousand one. That's usually when I make a traffic stop.

The trooper concluded Appellant did not have sufficient distance between his vehicle and the larger vehicle in front of him to *safely* stop if the lead vehicle made a sudden stop.[2] After the State rested, Appellant did not present any witnesses. The trial court found the trooper's testimony to be credible and with the video as demonstrative evidence, he found that Trooper Francis had reasonable suspicion to stop Appellant. Appellant's motion to suppress was denied.

Unlike the conclusory statement offered by the officer in *Ford*, we find that under the totality of the circumstances, Trooper Francis offered specific, articulable facts that when combined with rational inferences from those facts confirmed reasonable suspicion to stop Appellant for violating section 545.062(a) of the Transportation Code. Deferring to the trial court's determination of the credibility of the witness and the weight to be given to his testimony and based on the law applicable in this case, we find the record reasonably supports a finding of probable cause to detain Appellant. Accordingly, his sole issue is overruled.

[2] According to the trooper, while he was preparing a citation and explaining the violation to Appellant, Appellant commented that "he didn't get within more than 3 feet of the vehicle." The trooper confirmed that distance was too close.

CONCLUSION

The trial court's judgment is affirmed.

Patrick A. Pirtle
Justice

Do not publish.