

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00286-CR

The State of Texas, Appellant

v.

Lindsey Egbert, Appellee

**FROM COUNTY COURT AT LAW NO. 6 OF TRAVIS COUNTY
NO. C-1-CR-15-204869, HONORABLE BRANDY MUELLER, JUDGE PRESIDING**

MEMORANDUM OPINION

The State appeals the trial court’s order granting appellee Lindsey Egbert’s motion to suppress evidence obtained in connection with her traffic stop, detention, and arrest for driving while intoxicated (DWI). The State contends that the trial court abused its discretion in suppressing the evidence because specific, articulable facts support the arresting officer’s initial stop of appellee for reasonable suspicion of criminal activity. We abated this appeal and remanded the cause to the trial court for supplemental fact findings, *State v. Egbert*, No. 03-16–00286-CR, 2016 WL 6833097 (Tex. App.—Austin Nov. 17, 2016) (order & mem. op.), which the trial court made and have now been filed with this Court. Given these new findings, we conclude that the trial court did not err in granting Egbert’s motion to suppress and, accordingly, affirm the trial court’s order.

BACKGROUND

At the hearing on appellee's motion to suppress, the State called Deputy Ralph Cisneroz to testify and played for the court a video from the deputy's dashboard camera. After the close of evidence, the State argued that appellee's motion should be denied because the evidence supported the deputy's stop of appellee based on his reasonable suspicion that she (1) committed two traffic violations, *see* Tex. Transp. Code §§ 545.062(a) ("An operator shall, if following another vehicle, 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."), .152 ("To turn left at an intersection or into an alley or private road or driveway, an operator shall yield the right-of-way to a vehicle that is approaching from the opposite direction and that is in the intersection or in such proximity to the intersection as to be an immediate hazard."), and (2) was driving while intoxicated.

Pursuant to our abatement and remand order, the trial court made modified fact findings, including the following:

- Deputy Cisneroz and the Defendant were travelling at approximately 27 miles per hour.
- The speed limit was 35 miles per hour.
- The road was dry and well-lit by streetlights.
- Traffic was light. It was late at night and many of the businesses were closed.
- Deputy Cisneroz's testimony, that the Defendant's following of the vehicle in front of her was dangerous, or otherwise hazardous, was not credible. His

testimony was contradicted by the video evidence and the known conditions of the roadway.

- Immediately prior to being stopped, the Defendant followed the vehicle in front of her into the center turn lane of South Lamar. Both vehicles prepared to turn left into a gas station on the other side of the street.
- Another vehicle approached from the opposite direction. When the Defendant began her left turn into the gas station, she did so at a time when the approaching vehicle was a safe distance away from her.
- Deputy Cisneroz's written affidavit contained a claim that he heard tires screeching, but there was no sound of tires screeching on the video. His descriptions of the events of the night were exaggerated when compared with the video evidence. The Officer's beliefs and feelings as testified to were not objectively reasonable.
- The Deputy's testimony that the Defendant hesitated as she turned causing the approaching car to aggressively take evasive action was likewise not credible. The Deputy's [sic] vehicle was not in fact following a vehicle aggressively or less than half a car length away from the Defendant's [sic] vehicle. The Deputy's testimony that the Defendant was following the other car "extremely closely" and that it was "extremely dangerous" was not credible.
- Deputy Cisneroz's testimony regarding his experience that cars which appear to be following one another gives rise to a reasonable suspicion that one or both of the drivers may be intoxicated was vague, unsubstantiated, and not credible.

The trial court made the following modified conclusions of law:

1. Deputy Cisneroz did not have reasonable suspicion to stop the Defendant for a violation of [Tex. Transp. Code] § 545.062 Following Distance. An operator must maintain a distance from the car in front of her sufficient that, considering the speed involved, the operator would be able to safely stop without causing a collision. The credible evidence showed that the Defendant's following distance from the car in front of her was not hazardous.

2. Deputy Cisneroz did not have reasonable suspicion to stop the Defendant for a violation of [Tex. Transp. Code] § 545.151 Vehicle Approaching or Entering Intersection, or § 545.152 Vehicle Turning Left. An operator turning left at an intersection must yield right of way to a vehicle approaching the intersection from the opposite direction only if the vehicle is in such proximity to the intersection to pose an immediate hazard. The credible evidence showed that the Defendant's turn did not pose an immediate hazard.
3. Deputy Cisneroz did not have reasonable suspicion to stop the Defendant for Driving While Intoxicated. A peace officer must possess more than an "inchoate and unparticularized suspicion or hunch" to make a stop for suspicion of DWI. The Deputy's vague testimony about vehicles which appeared to be following one another, and the Defendant's presence on a road at night on a thoroughfare to get from north Austin to south Austin, did not give rise to reasonable suspicion of DWI. The totality of the circumstances or whole picture, did not give rise to reasonable suspicion of driving while intoxicated.

On appeal, the State contends that the trial court abused its discretion in concluding that the deputy lacked reasonable suspicion to justify stopping appellee for possible traffic violations or DWI.

DISCUSSION

The trial court's modified findings of fact are adequate for this Court to review the trial court's application of the law to the totality of the circumstances surrounding the deputy's stop of appellee. *See State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006) (defining "essential findings" as those adequate to provide appellate court with basis upon which to review trial court's application of law to facts); *see also State v. Mendoza*, 365 S.W.3d 666, 669–70 (Tex. Crim. App. 2012) (noting that at suppression hearing court examines "totality of the circumstances" to determine whether State has shown sufficient historical facts that, viewed from standpoint of objectively

reasonable police officer, amount to reasonable suspicion that particular person was engaged in criminal activity and that investigatory stop was justified).

When reviewing a trial court's ruling on a motion to suppress, we review its factual findings for abuse of discretion and its legal rulings about the existence of reasonable suspicion de novo. *Mendoza*, 365 S.W.3d at 669. The reviewing court gives "almost total deference" to the trial court's findings of historical facts that are supported by the record, especially those findings that are based on an evaluation of credibility and demeanor. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). With respect to mixed questions of law and fact (i.e., "application of law to fact questions"), if the resolution of them turns on an evaluation of credibility or demeanor, we apply the same "almost total deference," but for mixed questions that do not depend upon credibility and demeanor, we apply a de novo standard of review. *Id.* When the trial court makes a finding of fact that is derived from video evidence admitted at a suppression hearing, that finding is also generally entitled to "almost total deference" if supported by the record, due to the trial court's primary "fact-finding function." *See Carter v. State*, 309 S.W.3d 31, 40 & n.47 (Tex. Crim. App. 2010); *Montanez v. State*, 195 S.W.3d 101, 108–09 (Tex. Crim. App. 2006); *cf. Carmouche v. State*, 10 S.W.3d 323, 332 (Tex. Crim. App. 2000) (declining to give "almost total deference" to trial court's implicit findings about defendant's consent to search under "unique circumstances" of case where videotape presented "indisputable visual evidence contradicting essential portions" of fact findings).

The trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony; accordingly, the judge may believe or disbelieve all or any part of a witness's testimony, even if that testimony is not controverted. *State v. Ross*, 32 S.W.3d 853,

855 (Tex. Crim. App. 2000). The trial court observes first hand the demeanor and appearance of a witness, as opposed to an appellate court, which can only read an impersonal record. *Id.* Here, the trial court found Deputy Cisneroz to be not credible with respect to the specific, articulable facts on which the State asserts that the deputy had reasonable suspicion for the traffic stop: appellee’s alleged following of the vehicle in front of her “dangerously” or “extremely closely,” in light of the roadway and traffic conditions; appellee’s alleged “hesitation” when turning left and causing the oncoming car to take “evasive action” and “screech” its brakes; and the reasonableness of the deputy’s inferring from his “experience” with other vehicles appearing to follow each other that appellee might be intoxicated. We must accept the trial court’s credibility findings with respect to these salient facts, despite the absence of controverting testimony, *see id.*, 32 S.W.3d at 855, and we accordingly conclude that the trial court did not abuse its discretion in making these findings, *Amador*, 221 S.W.3d at 673. Furthermore, we defer to the trial court’s factual findings with respect to the events depicted on the videotape because they are supported by the record, *see Carter*, 309 S.W.3d at 40, as are the court’s findings constituting the “totality of the circumstances,” including the conditions of the roadway, vehicles’ speeds, location, and traffic.

In the absence of any testimony found credible by the trial court that supported suspected traffic violations by appellee, in conjunction with the court’s findings about the videotaped events and the surrounding circumstances, we hold that the trial court did not err in applying the law of reasonable suspicion to the facts as it found them. *See Mendoza*, 365 S.W.3d at 669–70; *see also Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005) (noting that reasonable suspicion exists if officer has specific, articulable facts that, when combined with rational inferences from those facts,

would lead officer to reasonably conclude that particular person actually is, has been, or soon will be engaged in criminal activity). Accordingly, we overrule the State's sole issue on appeal.

CONCLUSION

The trial court did not abuse its discretion in granting appellee's motion to suppress and, accordingly, we affirm the suppression order.

David Puryear, Justice

Before Justices Puryear, Pemberton, and Field

Affirmed

Filed: March 2, 2017

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