TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00774-CR

Emanuel Reyna, Appellant

v.

The State of Texas, Appellee

**FROM COUNTY COURT AT LAW NO. 6 OF TRAVIS COUNTY,
NO. C-1-CR-15-208229, HONORABLE BRANDY MUELLER, JUDGE PRESIDING**

M E M O R A N D U M O P I N I O N

Appellant Emanuel Reyna was charged by information with misdemeanor driving while intoxicated. Reyna filed a pre-trial motion to suppress asserting that the traffic stop that led to his arrest was not supported by reasonable suspicion. The trial court denied the motion to suppress. Following that ruling, a jury found Reyna guilty of driving while intoxicated, and the trial court assessed punishment at 26 days in jail and placed Reyna under a 90-day driver's license suspension period. *See* Tex. Penal Code § 49.04. Reyna appeals his conviction and, in a single issue, Reyna contends that the trial court abused its discretion in denying his pre-trial motion to suppress. We will affirm the trial court's judgment of conviction.

BACKGROUND[1]

During the suppression hearing, Officer Marcos Johnson with the Austin Police Department was the only witness to testify. The State also introduced a video recording from Officer Johnson's dashboard camera into evidence. Officer Johnson's testimony described his nearly seven years of experience in law enforcement and explained the training he received on the Penal Code and the Traffic Code. Further, Officer Johnson testified that during the night in question he was on patrol within his specific assigned area, where approximately ninety-five to ninety-nine percent of his time on patrol was spent, and where he had previously conducted multiple traffic stops. Officer Johnson described the area where the stop took place as being close to many shops and having three lanes for traffic in each direction, as well as sidewalks and bike lanes. Officer Johnson also testified that a significant number of traffic fatalities in Austin the previous year involved vehicles striking cyclists or pedestrians.

Officer Johnson testified that around 11:38 p.m. on May 31, 2015, he pulled out onto Slaughter Lane and noticed Reyna's vehicle in front of him driving partially in the bike lane. He did not immediately pull Reyna over, but he continued to follow Reyna's vehicle and observed it cross into the bike lane again. At this point, Officer Johnson turned on his traffic camera and lights and subsequently used his siren intermittently to further alert Reyna to stop. In his testimony, Officer

[1] The facts recited in this opinion are taken from the testimony and other evidence presented at the pre-trial hearing on Reyna's motion to suppress.

Johnson explained that the purpose of the stop was Reyna's commission of a traffic offense, in violation of the Austin City Code of Ordinances section 12-1-21, driving in a bicycle lane.[2]

During cross-examination, Officer Johnson was asked about various boundaries of the bike lane—specifically the "fog line"[3] and the "physical barrier"[4]—and at one point answered that the bike lane and far right lane of vehicular traffic were separated by the physical barrier. Officer Johnson also testified that officers had been told different things regarding physical barriers but ultimately that the Transportation Code prohibits driving on physical barriers.

The dashboard camera video shows Officer Johnson's police car pulling onto Slaughter Lane and getting into the far right lane behind Reyna's vehicle. The video shows a few cars traveling in the opposite direction of Officer Johnson and Reyna but does not show any traffic traveling in the same direction or any cyclists or pedestrians. Moreover, the video shows Reyna's vehicle veering out of its lane, crossing over the fog line and approaching the designated bike lane on at least two occasions. Officer Johnson's testimony also described traffic at that time of night where the stop took place as "just a few cars now and then and pedestrians."

After viewing the video and hearing Officer Johnson's testimony and the arguments of the parties, the trial court denied the motion to suppress.

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[2] Austin City Code of Ordinances section 12-1-21 provides: "a person may not drive a motor-propelled vehicle in, on, or across a bicycle lane . . . ."

[3] A fog line is the solid white line marking the boundary of a lane for vehicular traffic, also known as "the white shoulder line." *See Best v. State*, No. 03-04-00818-CR, 2005 WL 1940018, at *1 (Tex. App.—Austin Aug. 10, 2005, pet. ref'd) (mem. op., not designated for publication).

[4] During cross-examination, Reyna's counsel described the physical barrier as an intermittent painted section between the fog line of the far right lane of vehicular travel and the bike lane, marked by two parallel solid white lines with perpendicular white stripes in the middle.

STANDARD OF REVIEW

A trial court's ruling on a pre-trial motion to suppress is reviewed under an abuse of discretion standard. *Martinez v. State*, 348 S.W.3d 919, 922 (Tex. Crim. App. 2011); *Fernandez-Madrid v. State*, No. 03-15-00796-CR, 2017 WL 875302, at *2 (Tex. App.—Austin Mar. 1, 2017, no pet.) (mem. op., not designated for publication). A trial court abuses its discretion, and the appellate court will reverse the trial court's determination, if the trial court's determination is outside the zone of reasonable disagreement. *Martinez*, 348 S.W.3d at 922. The appellate court applies a bifurcated standard of review, giving almost total deference to the trial court's findings of historical facts as well as to the resolutions of mixed questions of law and fact that rely upon the credibility of a witness. *Id*. at 923. The appellate court conducts a de novo review of the application of the trial court's factual findings to the law, mixed questions of law and fact that do not rely upon the credibility of witnesses, and pure questions of law. *Id.*

The appellate court views all of the evidence in the light most favorable to the trial court's ruling. *State v. Johnston*, 336 S.W.3d 649, 657 (Tex. Crim. App. 2011). The prevailing party is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008). When, as here, the trial court does not make express findings of fact, the appellate court infers the necessary factual findings that are supported by the record. *Id.*; *Black v. State*, No. 03-15-00065-CR, 2016 WL 4429916, at *3 (Tex. App.—Austin Aug. 19, 2016, pet. ref'd) (mem. op., not designated for publication). The trial court's ruling on the motion will be upheld if it is correct under any theory of law applicable to the case regardless of whether the trial court

based its ruling on that theory. *Leming v. State*, 493 S.W.3d 552, 562 (Tex. Crim. App. 2016); *Black*, 2016 WL 4429916, at *3.

DISCUSSION

In his single issue on appeal, Reyna contends that the trial court abused its discretion in denying his pre-trial motion to suppress because the stop initiated by Officer Johnson was not supported by reasonable suspicion. Specifically, Reyna asserts that Officer Johnson did not have reasonable suspicion that Reyna violated Austin City Code of Ordinances section 12-1-21 because Reyna did not drive his vehicle in or near the bike lane.

The Fourth Amendment requires "a warrantless detention that amounts to less than a full-blown custodial arrest" to be justified by reasonable suspicion. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011); *see also Marrero v. State*, No. 03-14-00033-CR, 2016 WL 240908, at *3 (Tex. App.—Austin Jan. 14, 2016, no pet.) (mem. op., not designated for publication) (holding that police officer may lawfully stop automobile when that officer has reasonable suspicion to believe that traffic violation has occurred). A police officer has reasonable suspicion if he has "specific, articulable facts that, combined with rational inferences from those facts, would lead him reasonably to conclude that the person detained is, has been, or soon will be engaged in criminal activity." *Derichsweiler*, 348 S.W.3d at 914. The reasonable suspicion standard is objective and looks to the totality of the circumstances known to the officer at the time he initiated the stop, while disregarding the actual subjective intent of the officer. *Id.*; *Marrero*, 2016 WL 240908, at *3 (stating that standard is not what omniscient officer would have seen, but rather what reasonable officer would have done with what he actually did see).

Reyna suggests that a totality of the circumstances analysis is not applicable or relevant. We disagree. The totality of the circumstances analysis is the touchstone of any reasonable suspicion issue and the standard is not exclusive to instances of intoxication, but applies to an officer's reasonable suspicion of a traffic violation as well as other unusual or criminal activity. *See, e.g.*, *Leming*, 493 S.W.3d at 554-55, 563 (finding that totality of circumstances established reasonable suspicion that defendant was intoxicated because even though circumstances may seem innocent in isolation they may combine to suggest imminence of criminal conduct); *Derichsweiler*, 348 S.W.3d at 917 (noting that it is enough that totality of circumstances suggest realistic possibility of criminal motive about to be acted upon in instance of unusual activity); *Black*, 2016 WL 4429916, at *4 (determining that totality of circumstances established reasonable suspicion that defendant committed traffic violation); *see also Curtis v. State*, 238 S.W.3d 376, 378-80 (Tex. Crim. App. 2007) (conducting totality of circumstances analysis while recognizing "as consistent with innocent activity as with criminal activity" standard as not viable in reasonable suspicion analysis).

Instead, Reyna relies on his contention that the State failed to prove an actual violation of Austin City Ordinance section 12-1-21. *Cf. Black*, 2016 WL 4429916, at *4 (noting that defendant's arguments were premised on idea that State failed to prove actual traffic violation by not presenting evidence establishing each and every element of offense of disregarding barricade). Reyna insists he did not commit a traffic violation because the testimony of Officer Johnson and the corresponding video establish that, at most, Reyna briefly touched the physical barrier separating the vehicular lane of travel from the bike lane. At a suppression hearing, however, the State is not required to establish that a crime or traffic violation occurred prior to the investigatory stop. *Leming*,

493 S.W.3d at 561 (recognizing that proof of actual commission of offense is not required for any investigative stop of any traffic infraction); *see Derichsweiler*, 348 S.W.3d at 916 (holding that detaining officer is not required to pinpoint particular Penal Code infraction to form reasonable suspicion). Rather, it is sufficient for the State to show that the officer reasonably believed that a traffic violation or crime was in progress. *See Leming*, 493 S.W.3d at 561. "A traffic stop will be deemed valid as long as a reasonable officer in the same circumstances as the detaining officer could have stopped the suspected offense." *Marrero*, 2016 WL 240908, at *3. Therefore, the issue is not whether Reyna actually committed a traffic violation—be it the offense of driving in the bike lane or any other traffic offense—but rather, the question is whether Officer Johnson had a reasonable suspicion that Reyna committed a traffic violation when he initiated the stop. *See Trevino v. State*, Nos. 03-14-00009-CR & 03-14-00010-CR, 2016 WL 463658, at *7 (Tex. App.—Austin Feb. 5, 2016, pet. ref'd) (mem. op., not designated for publication).

Because the trial court did not make express factual findings, we view the evidence in the light most favorable to the trial court's ruling and infer the necessary factual findings that are supported by the trial court's ruling. *See Garcia-Cantu*, 253 S.W.3d at 241. Based on the record, we infer the following findings of fact that are relevant to the totality of the circumstances known to Officer Johnson at the time he initiated the stop: Officer Johnson had served approximately four years with the Austin Police Department and three years with the University of Texas Police Department; the portion of Slaughter Lane where Officer Johnson observed Reyna's vehicle was within his assigned area for patrol, where he had previously conducted numerous traffic stops; Reyna's vehicle drove on and crossed over the fog line, approaching the bike lane on at least two

occasions; and a significant number of the traffic fatalities in Austin from the previous year were instances of vehicles striking pedestrians and bicyclists. *See Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007) (acknowledging that training, knowledge, and experience of law enforcement officials are relevant to totality of circumstances). We also infer that the testimony given by Officer Johnson is credible. *See State v. Garrett*, 22 S.W.3d 650, 654 (Tex. App.—Austin 2000, no pet.). Moreover, Officer Johnson's testimony that he observed Reyna approach the bike lane on two separate occasions is supported by the dashboard camera video. *Cf. Trevino*, 2016 WL 463658, at *6-7 (noting that footage from dashboard camera video was difficult to discern).[5]

Taking into account Officer Johnson's knowledge of the significant number of traffic fatalities involving pedestrians and cyclists struck by cars and his experience conducting traffic stops within his designated area of patrol, along with the dashboard camera video corroborating his testimony that Reyna veered out of his lane for vehicular travel and approached the bike lane, we conclude that under the totality of the circumstances the traffic stop initiated by Officer Johnson was supported by reasonable suspicion. Officer Johnson acted on specific observations that, based on his reasonable interpretation of the law, led him to believe that he possessed sufficient information that justified an investigation into whether Reyna had, in fact, violated the law. *Cf. State v. Cortez*,

[5] The Court of Criminal Appeals recently recognized that "there is a difference between what an officer sees during an ongoing event and what [a reviewing court] sees when reviewing a video . . . . [A court] would be much closer to knowing what the officer observed if [the court] were to view the video only one time, from start to finish, without stopping. But even then, [the court] might not focus on what the officer focused on at the time of the stop." *Jaganathan v. State*, 479 S.W.3d 244, 248 (Tex. Crim. App. 2015). Any ambiguity as to whether Reyna drove in, on, or across the bike lane created by repeated viewings of the dashboard camera video does not negate Officer Johnson's conclusion that reasonable suspicion to initiate a traffic stop existed at the time he observed Reyna. *See Trevino v. State*, Nos. 03-14-00009-CR & 03-14-00010-CR, 2016 WL 463658, at *7 (Tex. App.—Austin Feb. 5, 2016, pet. ref'd) (mem. op., not designated for publication).

501 S.W.3d 606, 608-09 (Tex. Crim. App. 2016) (finding officer's belief that defendant committed traffic violation of driving on shoulder to be reasonable when defendant drove on fog line); *Black*, 2016 WL 4429916, at *4 (finding officer's belief that defendant committed traffic violation of disregarding barricade to be reasonable where, even though barricade did not completely extend across lane defendant was driving in, barricade did extend well into that lane).

In light of the preceding, we conclude that the trial court did not abuse its discretion by determining that Officer Johnson had reasonable suspicion to believe that Reyna committed a traffic violation. *See Black*, 2016 WL 4429916, at *4; *see also Bullock v. State*, 426 S.W.3d 226, 229 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (stating that police officer may lawfully stop and detain motorist who commits traffic offense).

For these reasons, we overrule Reyna's sole issue on appeal.

CONCLUSION

Having overruled Reyna's sole issue on appeal, we affirm the trial court's judgment of conviction.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: July 6, 2017

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