TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00013-CR

The State of Texas, Appellant

v.

Matthew Wilson, Appellee

FROM COUNTY COURT AT LAW NO. 6 OF TRAVIS COUNTY
NO. C-1-CR-16-206829, HONORABLE BRANDY MUELLER, JUDGE PRESIDING

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

Matthew Wilson was charged with driving a motor vehicle while intoxicated. *See* Tex. Penal Code § 49.04(a) (setting out elements of offense). Subsequent to his arrest, Wilson filed a motion to suppress regarding evidence seized during the investigation of the case, statements made by Wilson in connection with the case, and testimony from law-enforcement officers concerning actions taken by Wilson during his detention. After convening a hearing to address the motion, the trial court granted the motion to suppress. Following the trial court's ruling, the State appealed the granting of the motion to suppress. *See* Tex. Code Crim. Proc. art. 44.01(a)(5) (authorizing State to appeal trial court's ruling on motion to suppress). We will reverse the trial court's order granting the motion to suppress and remand for further proceedings.

BACKGROUND

The facts forming the basis for this appeal are not in dispute, and both parties agree that Officer Anthony Martin turned left at a red light before ultimately initiating a traffic stop

of Wilson late one night. In the hearing on the motion to suppress, Officer Martin testified that there was no emergency when he made the turn, that he was not pursuing anyone when he made the left turn, that he had not observed Wilson commit any traffic violation before making the turn, and that although he had previously arrested Wilson for driving while intoxicated, he did not recognize Wilson or Wilson's truck before he made the turn. In his testimony, Officer Martin explained that after he made the turn, he observed Wilson drift within his lane and switch lanes without "signal[ing] intent to do so," and Officer Martin recalled that he decided to initiate a traffic stop after observing the failure-to-signal traffic violation. *See* Tex. Transp. Code § 545.104(a) (requiring driver to use signal "to indicate an intention to . . . change lanes"). During the traffic stop, Officer Martin asked Wilson to perform various field-sobriety tests and eventually arrested Wilson for driving while intoxicated.

After Officer Martin finished testifying during the suppression hearing, Wilson argued in his closing that the evidence and statements obtained during Officer Martin's investigation should be suppressed under the Texas exclusionary rule. *See* Tex. Code Crim. Proc. art. 38.23(a). Once the parties finished presenting their arguments, the trial court granted the motion to suppress. When discussing the ruling, the trial court explained that it "found Officer Martin to be credible" and that it did not believe that Officer Martin recognized Wilson's vehicle before making the turn but also stated that Officer Martin "ran the red light to do the very thing that the State argued he did and that was not to pursue any one individual in particular, but in an attempt to be in a position to more quickly make investigations of" individuals in general. Further, the court reasoned that its "ruling on this issue would be different if Officer Martin had any small reason even to stop a particular

person. In other words, if he ran the red light in an effort to follow up on an investigation based on something that looked askew to him, something that raised his attention, I think my ruling would be different."

Following the trial court's ruling, the State appealed the trial court's order granting the motion to suppress.

STANDARD OF REVIEW

Appellate courts review a trial court's ruling on a motion to suppress for an abuse of discretion. *Arguellez v. State*, 409 S.W.3d 657, 662 (Tex. Crim. App. 2013). Under that standard, the record is "viewed in the light most favorable to the trial court's determination, and the judgment will be reversed only if it is arbitrary, unreasonable, or 'outside the zone of reasonable disagreement.'" *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014) (quoting *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)). Moreover, appellate courts apply "a bifurcated standard, giving almost total deference to the historical facts found by the trial court and analyzing *de novo* the trial court's application of the law." *State v. Cuong Phu Le*, 463 S.W.3d 872, 876 (Tex. Crim. App. 2015); *see Arguellez*, 409 S.W.3d at 662 (explaining that appellate courts afford "almost complete deference . . . to [a trial court's] determination of historical facts, especially if those are based on an assessment of credibility and demeanor"). "When the trial court does not file findings of fact concerning its ruling on a motion to suppress, we assume that the court made implicit findings that support its ruling, provided that those implied findings are supported by the record." *Ex parte Moore*, 395 S.W.3d 152, 158 (Tex. Crim. App. 2013).

DISCUSSION

In its sole issue on appeal, the State contends that the district court abused its discretion by "suppressing the fruits of the detention because they were not 'obtained in violation of the law'" as prohibited by the Texas exclusionary rule found in article 38.23 of the Code of Criminal Procedure. In his appellee's brief, Wilson urges that "the State waived its right to complain about the trial court's ruling on appeal" because the State did not contest his "argument regarding the applicability of the Texas exclusionary rule at the pretrial hearing." Alternatively, Wilson asserts that "the Texas exclusionary rule applies to this case" "[b]ecause a but-for connection exists between Officer Martin's illegal conduct and his observation of [Wilson]'s traffic infraction."

Waiver

In his appellee's brief, Wilson contends that he argued to the trial court that evidence pertaining to the traffic violation should be suppressed under the exclusionary rule because Officer Martin was only able to observe the traffic violation after making an illegal left turn. *See* Tex. Code Crim. Proc. art. 38.23(a). Further, Wilson asserts that the State "completely failed to address" his argument regarding the exclusionary rule and did not attack the applicability "of traffic statutes to the exclusionary rule." On the contrary, Wilson urges that the State effectively conceded the applicability of the exclusionary rule and "failed to present the trial court with any . . . possible legal bases to defeat" his exclusionary-rule argument, including lack of a causal connection or "attenuation of taint." Accordingly, Wilson contends that the State has waived its sole issue on appeal. *See Martinez v. State*, 91 S.W.3d 331, 335-37 (Tex. Crim. App. 2002) (noting that "the party complaining on appeal (whether it be the State or the defendant) about a trial court's . . .

suppression of evidence 'must, at the earliest opportunity, have done everything necessary to bring to the judge's attention the evidence rule [or statute] in question and its precise and proper application to the evidence in question,'" that appellate courts "usually may not *reverse* a trial court's ruling on any theory or basis that might have been applicable to the case[] but was not raised," that "forfeiture rule applies equally to . . . State and defendant," and that "[t]he State forthrightly acknowledges that it never brought the inapplicability of" statute "to the trial court's attention" and concluding that State "may not argue for first time on appeal that" statute "did not apply" (quoting 1 Stephen Goode, et al., Texas Practice: Guide to the Texas Rules of Evidence: Civil and Criminal, § 103.2, at 14 (2d ed.1993)); *see also* Tex. R. App. P. 33.1 (stating that to preserve error for appeal, record must show that complaint was made to trial court and that trial court ruled on request or refused to rule and that "complaining party objected to the refusal").

As an initial matter, we note that Wilson did not present his arguments regarding the exclusionary rule in either of his two suppression motions. In the first, Wilson generally requested the trial court "to suppress all oral statements obtained from the defendant, in violation of his rights as secured by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, Section 10 of the Texas Constitution, and Articles 38.22 and 38.23 of the Texas Code of Criminal Procedure," but he did not explain how or why the exclusionary rule applied in this case. In the second motion, Wilson requested the trial court to suppress "tangible evidence seized by law enforcement officers," "written and oral statements made by [Wilson] to any law enforcement officers," and "[t]estimony of law enforcement officers" regarding statements that he made or evidence that was seized. Further, Wilson alleged that his arrest and detention violated various

constitutional and statutory provisions, that "[a]ny tangible evidence" seized and [a]ny statements . . . of [Wilson] were obtained in violation" of several constitutional and statutory provisions, and that [a]ny testimony concerning the actions of Wilson while under arrest or detention" would similarly violate several constitutional and statutory provisions, but Wilson never specifically referred to or cited the exclusionary rule. Moreover, no mention of the exclusionary rule was made until closing arguments at the suppression hearing.

Prior to making his closing arguments, Wilson asked Officer Martin about whether he made the left turn at issue, about whether police officers are required to obey traffic laws, about whether there was an emergency at the time Officer Martin made the turn, and about whether Officer Martin had seen Wilson commit a traffic violation before Officer Martin made the turn, and Officer Martin admitted that there was no emergency, that he had not seen any traffic violation before turning left, and that police officers are required to obey traffic laws. But the focus of Wilson's questioning was on the alleged traffic violation that Officer Martin observed Wilson perform, on Wilson's field-sobriety testing, on when Officer Martin gave Wilson his *Miranda* warnings, on whether Officer Martin had recognized Wilson or Wilson's truck from a previous traffic stop before initiating the stop at issue in this case, and on the circumstances of that prior stop. *Cf. State v. Copeland*, 501 S.W.3d 610, 613, 614 (Tex. Crim. App. 2016) (explaining that "argument is forfeited" only "[i]f the appellant fails to argue a 'theory of law' applicable to the case on appeal," that "the appellant has no obligation to preserve that argument for appeal" "if a legal argument was not a theory of law applicable to the case," and that "[a] 'theory of law' is applicable to the case if the theory was presented at trial in such a manner that the appellant was fairly called upon to present

evidence on the issue"; determining that unreasonable-detention theory was law applicable to case, in part, because defendant argued theory "in her motion to suppress"; and concluding that State "procedurally defaulted its length-of-detention argument" by failing "to advance that argument").

In any event, with those circumstances in mind, we cannot agree with Wilson's assertion that the State failed to preserve the applicability challenge it presents on appeal. In his closing arguments, Wilson asserted that the evidence and statements obtained during Officer Martin's investigation should be suppressed under the Texas exclusionary rule because Officer Martin "broke the law to get in a position to follow" Wilson, because Officer Martin "violated the law without an emergency," because "there's a causal connection between the violation of the law" and Wilson's arrest, because Officer Martin elected to break the law and turn left after recognizing Wilson's truck from a previous encounter where Officer Martin arrested Wilson for driving while intoxicated, and because Officer Martin's observation of the alleged traffic violation occurred shortly after Officer Martin completed the left turn.

During its closing arguments, the State primarily focused on the propriety of the stop and the bases supporting Wilson's arrest for driving while intoxicated; however, the State also discussed how Officer Martin ran the red light but urged that Wilson's "Constitutional Rights" were not violated, that Officer Martin's actions "didn't make [Wilson] violate a law," and that Officer Martin's actions were not analogous to a situation in which suppression would be warranted because an officer illegally "jump[ed] a fence" in order to go into a defendant's "backyard" to obtain evidence of wrongdoing. As will be more thoroughly discussed in the next issue, these arguments

resemble the State's arguments on appeal that the exclusionary rule does not apply to statutory violations that are unrelated to the purpose of the exclusionary rule.

For all of these reasons, we disagree with Wilson's assertion that the State has waived its issue on appeal.

Exclusionary Rule

As set out above, the State contends that the exclusionary rule did not apply to this case. *See* Tex. Code Crim. Proc. art. 38.23. In responding to the State's arguments, Wilson asserts that the exclusionary rule applied in this case because "there exists [a] causal connection between the illegal conduct and the acquisition of evidence." *See Wehrenberg v. State*, 416 S.W.3d 458, 468 (Tex. Crim. App. 2013) (explaining that "evidence is 'obtained' in violation of the law only if there is some causal connection between the illegal conduct and the acquisition of evidence" and that "[t]he existence of a but-for causal connection between the illegality and the obtainment of evidence is thus a prerequisite to application of the statutory exclusionary rule"). Specifically, Wilson argues that Officer Martin observed Wilson make the alleged traffic violation a short time after Officer Martin made the improper left turn and that by running the red light, Officer Martin placed "himself in a better position to observe the vehicles that had passed through the intersection seconds earlier" in order to look for potential signs of driving while intoxicated. Moreover, Wilson contends that a ruling removing from the scope of the exclusionary rule evidence obtained by police officers as a result of violating traffic laws would "incentivize[] police officers to violate numerous laws when they acquire evidence."

Article 38.23 provides, in relevant part, as follows: "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." Tex. Code Crim. Proc. art. 38.23(a). "The underlying purpose" of article 38.23 is "to protect a suspect's privacy, property, and liberty rights against overzealous law enforcement." *Wilson v. State*, 311 S.W.3d 452, 458-59 (Tex. Crim. App. 2010). In other words, "[t]he primary purpose of article 38.23(a) is to deter unlawful actions which violate the rights of criminal suspects in the acquisition of evidence for prosecution." *Id.* at 459. Accordingly, even though "the plain language of article 38.23(a) would suggest that evidence obtained in violation of *any* law must be suppressed," the provision "may not be invoked for statutory violations unrelated to the purpose of the exclusionary rule or to the prevention of the illegal procurement of evidence of crime." *Id.*

As set out above, there does not appear to be any dispute that the officer's decision to turn left at the red light violated the Transportation Code. Specifically, section 544.007 of the Transportation Code states that "[a]n operator of a vehicle facing only a steady red signal shall stop" and may turn left only "if the intersecting streets are both one-way streets and a left turn is permissible."[1] Tex. Transp. Code § 544.007(d). The apparent purpose of the provision is to ensure the safety of Texas drivers by explicitly setting out what actions are permissible under the particular colors of a traffic-control signal. *See id.* § 544.007. "This is a purpose wholly unrelated to the

[1] A video from Officer Martin's dashboard camera was admitted as an exhibit and played for the trial court. The video shows that the road Officer Martin was driving on before making the turn was a two-lane road and also shows Officer Martin turn left at the red light.

purpose of the exclusionary rule," and the Transportation Code provision "does not appear to have been intended to confer rights or benefits on persons who are the subject of criminal investigations or on the public at large." *See State v. Molegraaf*, 86 S.W.3d 311, 313 (Tex. App.—Austin 2002, no pet.); *see also Jackson v. State*, 968 S.W.2d 495, 499 (Tex. App.—Texarkana 1998, pet. ref'd) (noting that laws that invoke exclusionary rule are "those that protect rights and interests of citizens from infringement by the State"); *Lane v. State*, 951 S.W.2d 242, 243 (Tex. App.—Austin 1997, no pet.) (explaining that "[a]rticle 38.23(a) may not be invoked for statutory violations unrelated to the purpose of the exclusionary rule").[2]

For these reasons, we must conclude that the trial court abused its discretion when it determined that Officer Martin's violation of section 544.007 required the suppression of evidence and statements pertaining to the driving-while-intoxicated investigation. *See Molegraaf*, 86 S.W.3d

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[2] In his appellee's brief, Wilson contends that *State v. Molegraaf*, 86 S.W.3d 311 (Tex. App.—Austin 2002, no pet.), and *Lane v. State*, 951 S.W.2d 242 (Tex. App.—Austin 1997, no pet.), do not contradict the trial court's ruling because in those cases "there was no causal connection between the alleged illegality and the acquisition of evidence." In *Lane*, the defendant argued that the results of his breath test should have been suppressed because the police officer failed to "fully comply with the requirements of Transportation Code section 724.015" by failing to give the defendant a copy of the required statutory warnings before asking the defendant to submit a breath sample. 951 S.W.2d at 243. When affirming the trial court's ruling, this Court did state that "there was no evidence that the officer's failure to timely" provide the defendant with a copy of the statutory warnings "had any impact whatsoever on [his] decision to take the breath test." *Id.* at 244. However, the opinion from *Molegraaf* does not contain any similar language. In *Molegraaf*, the allegedly illegal action by police officers was their decision to place "temporary barriers . . . to prevent . . . drivers . . . from turning right." 86 S.W.3d at 312. After the police observed the defendant drive "around the barriers," the officers initiated a traffic stop and "observed conduct that gave them probable cause to arrest Molegraaf for driving while intoxicated." *Id.* Accordingly, there was a causal connection between the allegedly illegal police conduct and the evidence seized. In any event, we believe that the portions of the analyses from both cases explaining that the exclusionary rule may not be invoked for statutory violations that have no bearing on the purpose of the exclusionary rule still compel our ultimate conclusion in this case.

at 312, 313 (concluding that decision by law-enforcement officers to initiate traffic stop after observing Molegraaf drive around traffic barriers that had been placed on street by police in manner that allegedly violated provision of Transportation Code "did not require suppression of the evidence of Molegraaf's intoxication"); *Lane*, 951 S.W.2d at 244 (determining that alleged statutory violation of failing to hand defendant "DIC-24 warning form" "was unrelated to the purpose of the exclusionary rule" where defendant "orally received the information . . . before being asked to give the breath sample," where "[t]here was no evidence that appellant did not understand this information," and where "there was no evidence that the officer's failure to timely hand him the printed DIC-24 warning form had any impact whatsoever on appellant's decision to take the breath test"); *cf. Miles v. State*, 241 S.W.3d 28, 48 (Tex. Crim. App. 2007) (Price, J., concurring) (discussing whether traffic violations committed by individual while pursuing suspect would make evidence subject to exclusion under article 38.23 and concluding that article 38.23 did not apply because traffic violations "did not impinge upon any of the appellant's personal privacy or property rights"). Accordingly, we sustain the State's issue on appeal.

CONCLUSION

Having sustained the State's sole issue on appeal, we reverse the trial court's order granting Wilson's motion to suppress and remand for further proceedings.

David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Reversed and Remanded

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