

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-08-00432-CR

THE STATE OF TEXAS, Appellant

V.

JASON RYAN JONES, Appellee

**On Appeal from the County Court at Law No. 4
Montgomery County, Texas
Trial Cause No. 08-238575**

MEMORANDUM OPINION

In this case, the trial court granted the defendant’s motion to suppress evidence obtained as a result of a traffic stop. In a single appellate issue, the State contends the trial court erred in granting the suppression motion because the court’s findings of fact have no support in the record and “are demonstrably false” in view of the evidence contained in a video recording of the stop. We affirm.

Background

Trooper Troy Phipps, an officer with the Texas Department of Public Safety, stopped Jason Ryan Jones for an alleged failure to properly signal a turn for the last 100 feet of movement as required by section 545.104 of the Texas Transportation Code.¹ At the motion-to-suppress hearing, the State's evidence consisted of Trooper Phipps's testimony and a videotaped recording of the traffic stop. On direct examination, the trooper testified that he started his video camera some distance from the intersection. When he pulled up to the intersection, Trooper Phipps stopped directly behind Jones who was behind one other vehicle, and was about twenty to thirty feet away from the intersection. Jones did not have his turn signal on. The trooper testified that after the traffic light became green, Jones activated his turn signal and made a right turn. The trooper further testified that Jones's signal was on for less than thirty feet before he turned. The videotape supports this portion of Trooper Phipps's testimony. On direct examination, Trooper Phipps also testified that before starting the video camera, he observed Jones's vehicle in the distance and did not see Jones signal a turn.

¹Section 545.104 provides, in pertinent part, that a driver "intending to turn a vehicle right or left shall signal continuously for not less than the last 100 feet of movement of the vehicle before the turn." TEX. TRANSP. CODE ANN. § 545.104(b) (Vernon 1999).

On cross-examination and redirect, however, Trooper Phipps's testimony differed from his earlier testimony. On cross-examination, he conceded that at the beginning of the video, he could not tell if Jones's vehicle was moving. In addition, Trooper Phipps agreed that before he started the video he would have been even farther from Jones's car and he could not have determined whether it was moving. But, during his direct examination, Trooper Phipps had also testified that he saw Jones's vehicle move before the video recording began.

In its argument to the trial court, the State contended that Jones did not have his turn signal on while he drove to the intersection, which was prior to the time the trooper started the video camera. The State asserted:

You can make a reasonable deduction that they got to that point. And if the blinker is not on, well then, they got to that point with it not on. And the trooper here, you see it, not on, and then you see it come on. So they obviously moved to that point without a blinker.

Defense counsel objected that there was no evidence that Jones moved to the intersection without a proper signal. The State responded:

There is testimony, Your Honor, that the trooper saw him moving, and there's the video that shows the vehicle at that point. And the trooper said he saw him moving prior to the video coming on. So, Your Honor, . . . he got to that point. He was moving. It's obvious he's moving. Doesn't get there for no reason.

At the conclusion of argument, the trial court granted Jones's motion to suppress. The court later issued findings of fact and conclusions of law.

Standard of Review

Like any other evidentiary ruling, we review the trial court's ruling on a motion to suppress for abuse of discretion. *See Amador v. State*, 275 S.W.3d 872, 878-79 (Tex. Crim. App. 2009) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)). At a suppression hearing, the trial court is the sole factfinder, "and it may believe or disbelieve all or any part of a witness's testimony." *Id.* at 878 (citing *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000)). When, as here, the trial court makes explicit findings of fact, "we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those findings." *State v. Iduarte*, 268 S.W.3d 544, 548 (Tex. Crim. App. 2008). Further, we apply the *Guzman* deferential standard of review to a trial court's historical-fact determination that is based on a videotaped recording admitted into evidence at a suppression hearing. *See Montanez v. State*, 195 S.W.3d 101, 109 (Tex. Crim. App. 2006).² We uphold the trial court's ruling "if it is reasonably supported by the record and is correct under any theory of law applicable to the case." *Amador*, 275 S.W.3d at 878-79 (quoting *Ramos v. State*, 245 S.W.3d 410, 417-18 (Tex. Crim. App. 2008)).

²In *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997), the Texas Court of Criminal Appeals held that appellate courts generally "should afford almost total deference to a trial court's determination of the historical facts that the record supports especially when the trial court's fact findings are based on an evaluation of credibility and demeanor."

Findings of Fact

In its appellate issue, the State first asserts generally that the trial court's findings of fact have no support in the record. We disagree. At trial, the State argued that Jones did not have his turn signal on while driving to the intersection, which was prior to the time the trooper started the video camera and that Jones therefore violated the requirement that a driver signal continuously for not less than the last 100 feet of the vehicle's movement before turning. *See* TEX. TRANSP. CODE ANN. § 545.104(b).

The trial court made certain findings pertinent to this argument. The trial court concluded that at the point immediately before he turned on the video camera, Trooper Phipps was too far from Jones's vehicle to accurately observe whether the vehicle's turn signal was on. This finding of fact is supported by Trooper Phipps's testimony on cross-examination. The court further determined that Trooper Phipps was not a credible and reliable witness with respect to whether Jones's vehicle had been moving without a blinker before stopping at the intersection and that Trooper Phipps had not actually observed Jones's vehicle during the last 100 feet of movement before Jones turned. As discussed above, Trooper Phipps provided inconsistent testimony regarding whether he saw or could have seen Jones's vehicle moving prior to the starting of the video. This inconsistency supports the trial court's express finding concerning the credibility of the evidence. *See Amador*, 275 S.W.3d at 878-79 (finding that the trial court, as sole factfinder may believe or disbelieve

all or any part of a witness's testimony). Additionally, Trooper Phipps during his direct examination did not state that he had personally observed the vehicle after its initial stop when it then moved forward several feet without having its blinker on, although this is captured on the videotape. Thus, the trial court was entitled to determine that the trooper had not personally observed Jones's vehicle during its last 100 feet of travel before Jones turned at the intersection. *See id.*

We conclude the evidence, viewed in the light most favorable to the trial court's ruling, supports the trial court's findings that address the State's suppression-hearing argument. *See Iduarte*, 268 S.W.3d at 548.

Videotape

The State further argues that the videotaped recording of the stop incontrovertibly proves Jones violated a traffic law. The State contends that the video recording plainly shows that Jones drove forward at the intersection without using a turn signal and that he did not activate his signal until the traffic light became green. This, however, was not the argument the State made to the trial court.

Generally, appellate courts "may uphold a trial court's ruling on any legal theory or basis applicable to the case, but 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." *Martinez v. State*, 91 S.W.3d 331, 336 (Tex. Crim. App. 2002). Under Texas Rule of Appellate Procedure

33.1, “the issue is not whether the appealing party is the State or the defendant or whether the trial court’s ruling is legally “correct” in every sense, but whether the complaining party on appeal brought to the trial court’s attention the very complaint that party is now making on appeal.” *Id.* (citing *State v. Mercado*, 972 S.W.2d 75, 78 (Tex. Crim. App. 1998) (“[T]he basic principle of appellate jurisprudence that points not argued at trial are deemed to be waived applies equally to the State and the defense.”). “Whichever party complains on appeal about the trial judge’s action must, at the earliest opportunity, have done everything necessary to bring to the judge’s attention the evidence rule in question and its precise and proper application to the evidence in question.” *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005).

In this case, the State’s appellate argument relies on the movement of Jones’s vehicle after the trooper pulled behind Jones at the intersection. The State, however, did not present this same argument to the trial court. Instead, at the suppression hearing, the State argued that the trial court could make a reasonable deduction that because Jones’s blinker was not on when the trooper pulled up behind Jones at the intersection, Jones must have arrived at the intersection without having signaled his turn. The State also argued that the trooper saw Jones moving prior to the video’s being started. The State did not argue that the movement of Jones’s car immediately before the turn (and after the trooper arrived at the intersection) constituted a traffic violation—the argument it now makes on appeal. We conclude that the

State waived its argument that Jones violated the statute by stopping and then starting forward several feet without signaling because it did not present that argument to the trial court. We decline to find the trial court abused its discretion. *See Mercado*, 972 S.W.2d at 78 (“Thus the trial court cannot be held to have abused its discretion in ruling on the only theory of law presented to it.”). We overrule the State’s issue. Accordingly, the trial court’s judgment is affirmed.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on April 9, 2009
Opinion Delivered July 15, 2009
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Before McKeithen, C.J., Kreger and Horton, JJ.