

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00710-CR

The State of Texas, Appellant

v.

Patrick W. Colby, Appellee

**FROM COUNTY COURT AT LAW NO. 6 OF TRAVIS COUNTY
NO. C-1-CR-17-214244, THE HONORABLE BRANDY MUELLER, JUDGE PRESIDING**

OPINION

The State of Texas appeals the trial court's order granting the motion to suppress filed by appellee Patrick W. Colby, who was charged, following a traffic stop, with the misdemeanor offense of driving while intoxicated. In a single issue on appeal, the State argues that the trial court abused its discretion in granting the motion to suppress. We will affirm the trial court's order.

BACKGROUND

At the hearing on the motion to suppress, Officer Jeremy Garza of the Lakeway Police Department testified that on the night of September 22, 2017, he was on patrol when he approached the intersection of Blue Clearing Way and Highlands Boulevard. Garza explained that Highlands Boulevard is a four-lane roadway, with two northbound and two southbound lanes separated by a median. Blue Clearing Way is a two-lane roadway, with one eastbound and

one westbound lane. Officer Garza was driving east on Blue Clearing Way, which had a stop sign at the intersection. Garza acknowledged that he did not come to a complete stop until he was beyond the stop sign, although he disagreed with defense counsel's claim that he was "pretty far out" in the intersection when he stopped. He explained that he stopped beyond the sign to get a better view of cross traffic:

So due to the area, there is a lot of landscape, foliage. Some areas have brick walls. So it's very hard to see—when you stop at the stop sign to see if the actual intersection is actually clear to enter. So you do have to proceed forward without breaking the plane of the intersection to ensure it is safe to turn and make sure you are not going to be involved in a collision, essentially, for failing to yield right-of-way.

While Garza was stopped, he observed a vehicle approaching the intersection from Highlands Boulevard, which did not have a stop sign. Despite the lack of a traffic signal, the vehicle came to a complete stop in the intersection. Garza explained:

I was stopped at the stop sign waiting to turn onto Highlands Boulevard. As I was stopped there for a few seconds, I observed a vehicle coming northbound on Highlands Boulevard. The vehicle pretty much stopped almost at a "T" in front of me. It came to a complete stop in the roadway, stopped, reversed, reversed back, and then began flashing his high beams at me. I just kind of found it odd because they had the right-of-way.

The vehicle then proceeded through the intersection, continuing north on Highlands Boulevard. Garza turned left onto Highlands Boulevard and immediately initiated a traffic stop of the vehicle, whose driver and sole occupant Garza identified as Colby. The basis for the stop was

Section 545.302 of the Texas Transportation Code, which prohibits a driver from stopping his vehicle in an intersection.¹ *See* Tex. Transp. Code § 545.302(a)(3).

A video recording of the stop, taken from Garza's patrol-car dash camera, was admitted into evidence. The video shows Officer Garza's patrol vehicle approach the intersection on Blue Clearing Way and come to a stop beyond the stop sign, in the intersection. The video then shows Colby's vehicle approach the intersection from Highlands Boulevard, come to a stop in the intersection, back up slowly, stop again, flash its lights, and then proceed through the intersection. Finally, the video shows Garza turn left onto Highlands Boulevard behind Colby's vehicle and initiate a traffic stop.

At the conclusion of the hearing, the trial court granted Colby's motion to suppress and later made the following findings of fact:

1. On-duty Lakeway Police Officer J. Garza was working patrol in a clearly marked vehicle in a residential area of Western Lakeway, when he stopped the Defendant for violation of Tex. Transp. Code Sections 545.302 and 545.501. . . .
2. The location of Defendant's driving at issue occurred at the intersection of Blue Clearing Way and Highlands Blvd. At this intersection, the traffic on Highlands Blvd. does not have a stop sign, but those traveling on Blue Clearing Way do.
3. The testimony and video evidence indicated that Officer J. Garza was at this stop sign on Blue Clearing Way, waiting to turn, when he pulled out into the intersection in an effort to get a better view due to foliage, landscaping and or residential brick wall. Neither side disputes that the Officer's vehicle is in the intersection.

¹ In his offense report, Garza also listed as a basis for the stop Section 545.051, which requires a driver to drive on the right half of the roadway. *See* Tex. Transp. Code § 545.051(a). However, the State concedes on appeal that Garza did not have reasonable suspicion to believe that Colby had violated this provision.

4. The Defendant was on Highlands Blvd., wherein he had the right of way and no stop sign. The Defendant begins to drive through the intersection at a slow speed, when it becomes apparent that there is a patrol car nosed out inside the intersection. The Defendant slows to a stop and then reverses his car giving the marked patrol car clearance to continue on. The Defendant flashes his brights to signal the Officer that he can safely go ahead.
5. Officer Garza responds by signaling back to the Defendant, at which point, the Defendant proceeds through the intersection adhering to Officer Garza's directive.
6. Officer Garza then initiates a traffic stop, based on this action alone and pulls the driver over without any additional bases.
7. It should be noted that there are no other cars in the vicinity.
8. A DWI investigation and arrest of the Defendant ensued.
9. Officer J. Garza provided credible testimony.

The trial court also made the following conclusions of law:

The State argues that the Transportation Code Sections upon which it bases its detention apply and form the sole basis for the stop. The Court disagrees with the application of the Code to these facts, concluding that for all practical purposes and even technically, the Transportation Code violations fail to fit in this case. The Court further, respectfully concludes that the Defendant's actions were reasonable under the circumstances. As the evidence was both clear and uncontested, Officer Garza's marked patrol vehicle was *stopped inside the intersection*, despite a stop sign, when Mr. Colby backed out of it, in an effort to yield to this marked police vehicle. The Defendant then adheres to Officer Garza's directive by continuing on through the intersection in a reasonable fashion.

Had this been a case where the State argued or offered even some evidence indicating the totality of the circumstances warranted the stop, the Court's ruling would have been different. But there was neither argument nor evidence of that.

Based on an objective standard, the facts available to Officer Garza at the time, would not warrant a man of reasonable caution to detain the defendant on this action alone.

(Emphasis in original). This appeal by the State followed.

STANDARD OF REVIEW

“We review a ruling on a motion to suppress using a bifurcated standard of review.” *Sims v. State*, 569 S.W.3d 634, 640 (Tex. Crim. App. 2019) (citing *Guzman v. State*, 955 S.W.2d 85, 87-91 (Tex. Crim. App. 1997)). “A trial court’s findings of historical fact and determinations of mixed questions of law and fact that turn on credibility and demeanor are afforded almost total deference if they are reasonably supported by the record.” *Id.* “That same deferential standard of review ‘applies to a trial court’s determination of historical facts [even] when that determination is based on a videotape recording admitted into evidence at a suppression hearing.’” *State v. Duran*, 396 S.W.3d 563, 570 (Tex. Crim. App. 2013) (quoting *Montanez v. State*, 195 S.W.3d 101, 109 (Tex. Crim. App. 2006)). “We review a trial court’s determination of legal questions and its application of the law to facts that do not turn upon a determination of witness credibility and demeanor de novo.” *Id.*

We view the evidence in the light most favorable to the trial court’s ruling, *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014), and that ruling will be sustained if it is correct on any applicable theory of law and the record reasonably supports it, *State v. Ruiz*, 581 S.W.3d 782, 785 (Tex. Crim. App. 2019). “As the prevailing party at the trial level, appellee gains the benefit of deference on factual findings made in [his] favor.” *State v. Ford*, 537 S.W.3d 19, 23 (Tex. Crim. App. 2017) (citing *State v. Krizan-Wilson*, 354 S.W.3d 808, 815-16 (Tex. Crim. App. 2011)); see *Duran*, 396 S.W.3d at 571 (“The winning side is afforded the ‘strongest

legitimate view of the evidence’ as well as all reasonable inferences that can be derived from it.” (quoting *State v. Weaver*, 349 S.W.3d 521, 525 (Tex. Crim. App. 2011))). However, whether the facts, as determined by the trial court, add up to reasonable suspicion or probable cause to support a search or seizure under the Fourth Amendment is a legal question to be reviewed de novo. See *Ford*, 537 S.W.3d at 23; *Byram v. State*, 510 S.W.3d 918, 923 (Tex. Crim. App. 2017); *Duran*, 396 S.W.3d at 571; *Weaver*, 349 S.W.3d at 525; *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010).

Moreover, “deference is due only if the trial court’s rulings are supported by the record.” *Miller v. State*, 393 S.W.3d 255, 263 (Tex. Crim. App. 2012). Thus, “[w]hen there are factual disputes regarding testimony or the contents of a videotape, the trial court’s findings of historical fact are afforded almost total deference.” *Id.* (quoting *Tucker v. State*, 369 S.W.3d 179, 187 (Tex. Crim. App. 2012) (Alcala, J., concurring)). “But when evidence is conclusive, such as a written and signed agreed stipulation of evidence or ‘indisputable visual evidence,’ then any trial-court findings inconsistent with that conclusive evidence may be disregarded as unsupported by the record, even when that record is viewed in a light most favorable to the trial court’s ruling.” *Id.*

ANALYSIS

In its sole issue on appeal, the State argues that the trial court abused its discretion in granting the motion to suppress because Officer Garza had reasonable suspicion to believe that Colby had committed a traffic violation. According to the State, “An officer’s suspicion is not unreasonable just because facts surrounding a suspected offense might ultimately excuse the conduct.” In other words, even if Colby might have been justified in stopping in the intersection,

that fact alone would not negate the officer's reasonable suspicion to believe that Colby had committed a traffic offense.²

“When a police officer stops a defendant without a warrant, the State has the burden of proving the reasonableness of the stop at a suppression hearing.” *State v. Cortez*, 543 S.W.3d 198, 204 (Tex. Crim. App. 2018). “An officer may make a warrantless traffic stop if the ‘reasonable suspicion’ standard is satisfied.” *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2015) (citing *Guerra v. State*, 432 S.W.3d 905, 911 (Tex. Crim. App. 2014)). “Reasonable suspicion exists if the officer has ‘specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaging in criminal activity.’” *Id.* (quoting *Abney v. State*, 394 S.W.3d 542, 548 (Tex. Crim. App. 2013)). “The standard requires only ‘some minimal level of objective justification’ for the stop.” *Hamal v. State*, 390 S.W.3d 302, 306 (Tex. Crim. App. 2012) (quoting *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010)). “We review a reasonable suspicion determination by considering the totality of the circumstances.” *Cortez*, 543 S.W.3d at 204. “Whether the facts known to the officer amount to

² Colby asserts that the State made a different argument at the suppression hearing, specifically that Colby “had no reason to stop in the middle of that intersection and back up,” and that the State is limited to that argument on appeal. *See State v. Mercado*, 972 S.W.2d 75, 78 (Tex. Crim. App. 1998) (holding that trial court’s suppression ruling cannot be reversed on legal theory not presented to trial court). We disagree. Although one of the State’s arguments at the suppression hearing was that Colby had no reason to stop in the intersection, the State also argued that Officer Garza had reasonable suspicion to believe that Colby had committed a traffic violation by stopping illegally in the intersection. On appeal, the State maintains that Garza had reasonable suspicion to believe that Colby had stopped illegally in the intersection. Thus, this is not a case in which the State has presented a different legal theory for the first time on appeal. *Cf. id.* (State argued at suppression hearing that police action was proper inventory search and trial court disagreed, suppressing evidence; on appeal, State argued different legal theory that police action was permissible as search incident to arrest and court of appeals agreed, reversing suppression; Court of Criminal Appeals held that reversal of suppression ruling on legal theory not presented to trial court was improper).

reasonable suspicion is a mixed question of law and fact subject to de novo review.” *Hamal*, 390 S.W.3d at 306 (citing *State v. Mendoza*, 365 S.W.3d 666, 669–70 (Tex. Crim. App. 2012)).

An operator of a motor vehicle commits an offense if he stops his vehicle in an intersection. Tex. Transp. Code § 545.302(a)(3). Officer Garza testified that he observed Colby’s vehicle come to a “complete stop” in the intersection, and the video recording taken from Garza’s patrol-car dash camera confirms Garza’s testimony. Nevertheless, the trial court found that Colby’s action was “reasonable under the circumstances” because Garza’s patrol car was stopped in the intersection and Colby was attempting to “yield to this marked police vehicle.”

The State asserts that the trial court’s findings improperly view the situation from the perspective of the defendant rather than the officer. However, the Transportation Code permits drivers to stop in an intersection under certain circumstances, including when necessary to avoid “conflict with other traffic.” Tex. Transp. Code § 545.302(f). We agree with Colby that because “the statute provides for circumstances in which it is not against the law to stop in an intersection, an officer should consider whether these circumstances apply when evaluating whether there is reasonable suspicion to believe” that the driver violated the statute. *See, e.g., Cortez*, 543 S.W.3d at 207-08 (concluding that officer did not have reasonable suspicion to initiate traffic stop in part because defendant was “statutorily permitted” to drive on improved shoulder under circumstances). Although “[t]he mere possibility that an act is justified will not negate reasonable suspicion,” the justification should be considered “if the facts establishing it [are] so obvious that an objective officer viewing the situation would be unreasonable in failing to realize that the person’s conduct was allowed by law.” *Jaganathan*, 479 S.W.3d at 248.

“Each case involving an officer’s stop must be evaluated objectively, under the totality of the circumstances, to determine whether the officer acted reasonably.” *Cortez*, 543 S.W.3d at 204.

In this case, the totality of the circumstances, as reflected in Officer Garza’s testimony and the dashcam video, include the following: (1) Officer Garza’s patrol vehicle failed to stop at the stop sign on Blue Clearing Way and did not come to a complete stop until it was inside the intersection; (2) the patrol vehicle was already inside the intersection when Colby’s vehicle arrived at the intersection; (3) Colby’s vehicle approached the intersection from Highlands Boulevard, stopped momentarily inside the intersection in front of the patrol vehicle, backed up slowly until it was no longer inside the intersection, and stopped again; (4) Colby’s vehicle flashed its lights, waited momentarily, and then proceeded through the intersection; (5) there were no other vehicles in the vicinity at the time; and (6) Officer Garza observed no other possible traffic infractions by Colby before initiating the traffic stop. Viewing these circumstances in their totality, and affording Colby the “strongest legitimate view of the evidence” as well as all reasonable inferences that can be derived from it, *see Duran*, 396 S.W.3d at 571, we conclude that the record supports the trial court’s finding that Colby’s stopping inside the intersection was an attempt to yield to Officer Garza’s patrol vehicle, which Officer Garza should have realized was permitted under the Transportation Code to avoid “conflict with other traffic,” *see Tex. Transp. Code § 545.302(f)*. Because this was the State’s only basis for the traffic stop, the trial court did not err in concluding that the State failed to satisfy its burden that Officer Garza had reasonable suspicion to initiate the traffic stop on Colby’s vehicle, and thus the trial court did not abuse its discretion in granting the motion to suppress. *See Cortez*, 543 S.W.3d at 209.

We overrule the State’s sole issue on appeal.

CONCLUSION

We affirm the trial court's order granting Colby's motion to suppress.

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

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