Affirmed and Opinion filed February 22, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-00509-CR

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JOSEPH LAJUAN WRIGHT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 813,068

O P I N I O N

The State charged Joseph Lajuan Wright (appellant) with possession of cocaine with the intent to deliver. After the trial court ruled against appellant's motion to suppress, he pled guilty to the charge pursuant to an agreed recommendation on punishment. The trial court assessed punishment at thirty-five years confinement in the Institutional Division of the Texas Department of Criminal Justice, and fined him $10,000.

Appellant appeals his conviction on three points of error, contending his traffic stop was not based on reasonable suspicion, and his arrest and the search of his vehicle lacked

probable cause because the arresting officer did not see the drug offense until after the arrest. We affirm.

FACTUAL BACKGROUND

At approximately 6:45 p.m. on May 14, 1999, Houston Police Officer, Gregory Ford, and his partner, Officer Merrill, were stopped at a traffic light at the intersection of the 610 Loop and Telephone Road. Ford was watching the traffic light on Telephone Road to see if anyone ran the light when it turned red. The officer observed a 1998 Chevy Lumina run the red light. Subsequently, Ford activated his emergency lights and pulled out behind the vehicle.

The car continued several hundred feet down Telephone Road before it finally stopped. While the vehicle was traveling down Telephone Road, Ford observed the driver reach over to the passenger seat of the vehicle, causing the vehicle to swerve into oncoming traffic. The driver pulled back into his lane and once again swerved into the left lane of traffic. Eventually, the car pulled into a parking lot on Telephone Road.

Officer Ford approached the driver's side of the vehicle, while Officer Merrill approached the passenger's side. Ford asked appellant for his driver's license and proof of insurance. Officer Merrill, however, saw what he believed to be marijuana in appellant's vehicle and told Ford to put appellant into the back set of the patrol car because they were arresting appellant.

After placing appellant in the back of the patrol car, Officer Merrill told Ford that he observed some marijuana in the vehicle. When Ford approached the vehicle, he observed marijuana lying in plain view on the passenger's seat. During the inventory search of appellant's vehicle, the officers found a marijuana cigar butt in the ashtray, three more baggies of marijuana in the center console, and a grocery bag containing a kilogram brick of cocaine under the front seat.

D I S C U S S I O N

In his three points of error, Wright contends the trial court erred in denying his motion to suppress the contraband seized and used as evidence because it was seized during a warrantless search of his vehicle in violation of the Texas and Federal Constitutions.

In reviewing a trial court's decision on a motion to suppress, we give almost total deference to the trial court's determination of historical facts and mixed questions of law and fact which turn on an evaluation of credibility and demeanor, but we review its application of law, such as questions involving reasonable suspicion and probable cause, *de novo*. *See Ornelas v. United States*, 517 U.S. 690, 697-99 (1996); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). Where, as here, a trial court makes no explicit findings of historical fact, we presume it made findings necessary to support its ruling as long as those implied findings are supported by the record. *Carmouche*, 10 S.W.3d at 327-28.

A. Traffic Stop

As a basis for ruling on a motion to suppress evidence, a trial court may choose to believe or disbelieve any or all of the witnesses testimony. *Taylor v. State*, 604 S.W.2d 175, 177 (Tex. Crim. App. 1980). Further, an appellate court is not at liberty to disturb any finding which is supported by the record. *Green v. State*, 615 S.W.2d 700, 707 (Tex. Crim. App. 1980); *see e.g., Johnson v. State*, 803 S.W.2d 272, 287 (Tex. Crim. App. 1990); *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990).

When Officer Ford saw the appellant's vehicle run a red light, that constituted a violation of Section 544.007(d) of the Transportation Code. TEX. TRANS. CODE ANN. § 544.007(d) (Vernon 1999). In addition, when Officer Ford and Officer Merrill saw the car swerving from one traffic lane to another, that conduct violated TEX. TRANS. CODE ANN. § 545.060(a) (Vernon 1999). It is well settled that a traffic violation committed in an officer's presence authorizes at least an initial stop. TEX. CODE CRIM. PROC. ANN. art.

14.01(b) (Vernon 1995)[1]; *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982); *McCallum v. State*, 608 S.W.2d 222, 225 (Tex. Crim. App. 1980).

At the hearing on appellant's motion to suppress, Officer Ford testified that when the officers operated their emergency equipment in order to stop the car, the vehicle continued to travel for several hundred feet, swerving from one lane to another, before actually pulling over. Ford testified that both officers got out of the patrol car. Ford testified that he approached the driver's side of the vehicle and asked appellant for his drivers license and proof of insurance. Further, Ford stated that Officer Merrill approached the passenger's side of the car at that time, and told Ford to put the passenger in the patrol car because he saw something and that the officers were arresting appellant. Ford maintains that he placed appellant in the patrol car and approached the vehicle where he observed, in plain view, a baggie of marijuana in the front passenger seat.

In the instant case, the trial court did not make explicit findings of historical fact. We therefore, review the evidence in the light most favorable to the trial court's ruling. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999); *State v. Munoz*, 991 S.W.2d 818, 821 (Tex. Crim. App. 1999). In other words, we will assume that the trial court made implicit findings of fact supported in the record that buttress its conclusion. *Carmouche*, 10 S.W.3d at 328. Here, the trial court was able to weigh the credibility of Officer Ford, testifying to his ability to see the red light at the time of the offense, against appellant's photographs, appearing to depict conditions prohibiting crossing traffic from viewing the light signals for through traffic. Thus, the trial court is entitled to believe the officer's version of the events. *Taylor*, 604 S.W.2d at 177.

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[1] Article 14.01 of the Code of Criminal Procedure states:

> (a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.
>
> (b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

We also reject appellant's suggestion that his traffic stop was illegal because his inability to maintain a single lane while driving was not an inherently illegal act or a violation of § 545.060 of the Texas Transportation Code.[2] The issue in this case is not whether appellant believes he actually committed the offense. Rather, the issue is whether a police officer who observes a vehicle weaving between lanes of traffic has reasonable suspicion to make a traffic stop even where there were no other cars around, thus rendering any lane change "safe" and in compliance with Section 545.060. *See Gajewski v. State*, 944 S.W.2d 450, 452 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (holding traffic laws are designed to protect not only the safety of persons in other vehicles, but also the safety of the driver in question). We decline to interpret Section 545.060 as permitting a driver to weave throughout all lanes of traffic so long as no other vehicles are in the immediate vicinity. *See id.* at 453. Therefore, Officers Ford and Merrill lawfully stopped and detained appellant for a traffic violation. *McVickers v. State*, 874 S.W.2d 662, 664 (Tex. Crim. App. 1993); *Gajewski*, 944 S.W.2d at 453.

B. Probable Cause for Arrest

A peace officer, after a bona fide stop for a traffic offense, may then make an additional arrest for any other offense discovered during the investigation. *Taylor v. State*, 421 S.W.2d 403, (Tex. Crim. App. 1967); *Cunningham v. State*, 11 S.W.3d 436, 440 (Tex. App.—Houston [14th Dist.] 2000, no pet). Moreover, the officer may conduct a search incident to such arrest. *Christopher v. State*, 639 S.W.2d 932, 935 (Tex. Crim. App.

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[2] Section 545.060 states :

> (a) An operator on a roadway divided into two or more clearly marked lanes for traffic:
>
> > (1) shall drive as nearly as practical entirely within a single lane; and
> >
> > (2) may not move from the lane unless that movement can be made safely.

1982).

Appellant argues that his arrest was illegal because it occurred prior to the development of probable cause. We disagree. In order for police officers to make a warrantless arrest, the State must show the existence of probable cause at the time of the arrest and the existence of circumstances which made the procuring of a warrant impracticable. *Shipman v. State*, 935 S.W.2d 880, 883 (Tex. App.—San Antonio 1996, pet ref'd). The test for the existence of probable cause is whether at that moment the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrested person had committed or was committing an offense. *Rance v. State*, 815 S.W.2d 633,635 (Tex. Crim. App. 1991). In applying this standard, we are to look at the totality of the circumstances to determine if the officers had a substantial basis for concluding that probable caused existed at the time of the questioned action. *Shipman*, 935 S.W.2d at 884.

Moreover, the operative circumstances are not only those known to the officer making the stop or arrest. They include those collectively known by the officers or agents cooperating together at the time of the detention. *See Fearance v. State*, 771 S.W.2d 486, 509 (Tex. Crim. App. 1988) (acknowledging that an officer may rely upon information relayed to him by other officers and the sum of information known to those cooperating with him). This effectively rebutts appellant's suggestion that Ford, the arresting officer, must have personally known there was marijuana lying on the passenger seat, which ultimately resulted in his arrest. Officer Ford did not need to have any knowledge of circumstances which created the initial or probable cause because Officer Merrill, his partner who requested the arrest, observed the marijuana in plain view. In other words, the State made a showing that Officer Ford who made the arrest did so upon the request of his partner, who had probable cause to arrest appellant when he saw the marijuana in plain view on the front seat of the vehicle in which appellant was the sole occupant. *See Rance*, 815 S.W.2d at 635 n.2. In assessing whether Officer Ford had sufficient knowledge, we are not

restricted to consider only his personal knowledge because it is well settled that an officer who does not himself possess probable cause for making a warrantless arrest, may act upon the basis of information relayed to him by another officer requesting that an arrest be made. *Pyles v. State*, 755 S.W.2d 98, 109 (Tex. Crim. App. 1988). Probable cause exists where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a particular person has committed or is committing an offense. *Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991). Therefore, when Officer Ford arrested appellant, he was doing so at the request of a person who had probable cause to authorize a warrantless arrest and subsequent search. We hold appellant's arrest was lawful under article 14.01.

Accordingly, we overrule appellant's three points of error, and affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed February 22, 2001.
Panel consists of Justices Anderson, Fowler, and Edelman.
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