STATE V. DELGARITO

STATE OF NEW MEXICO
Plaintiff-Appellee,
v.
CHRISTOPHER DELGARITO
Defendant-Appellant.

No. 34,237

COURT OF APPEALS OF NEW MEXICO

December 16, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Karen L. Townsend, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Matthew O'Gorman, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, LINDA M. VANZI, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Defendant appeals the district court's denial of his motion to suppress, and the consequent remand to the magistrate court for enforcement of that court's sentence. We issued a notice of proposed disposition in which we proposed to affirm, and

Defendant has responded with a memorandum in opposition. Having carefully reviewed the contents of Defendant's submission, we remain convinced that affirmance is the correct result in this case. Therefore, for the reasons stated below and in our notice, we affirm the district court's decision.

{2} The question in this case is whether the officer who stopped Defendant had reasonable suspicion to believe Defendant was violating the law. The district court specifically found there was reasonable suspicion supporting a stop for violation of NMSA 1978, Section 66-7-317 (1978), the lane-change statute. In support of that determination the district court made three specific findings of fact concerning the arresting officer's observations: (1) the officer saw Defendant weaving in and out of the left-hand lane in which he was driving, on a four-lane highway that had two northbound lanes; (2) the officer then saw Defendant swerve into the right-hand lane and force another vehicle off onto the shoulder; and (3) the officer saw Defendant slow down suddenly and stop in the left-hand lane and then perform a U-turn to travel in the opposite direction. On the strength of those findings as well as the officer's testimony appearing to support the findings, we proposed to affirm the district court's conclusion that reasonable suspicion for the stop was present in this case.

{3} In the memorandum in opposition Defendant attacks these findings, claiming there was insufficient evidence to support each one. Defendant maintains that the video evidence of the events leading up to the stop contradicts the officer's testimony and vitiates the district court's credibility determination concerning the officer's testimony. Defendant begins his attack by focusing on the district court's second finding, concerning the allegation that Defendant swerved into the right-hand lane and forced another vehicle onto the shoulder. Defendant contends that although the officer initially testified that this incident would have occurred before his patrol car's video equipment was activated, he later admitted that the video would have been recording at the relevant time. The officer then testified that the video was of such poor quality that the incident could not be seen. Defendant, however, while acknowledging that the video is not high-quality, maintains that "upon close examination" it is possible to see that there was no vehicle next to or behind Defendant during the time in question, and that Defendant subsequently passed a vehicle traveling in the right-hand lane without incident. Defendant relies on this assertion to argue that the video directly contradicts the officer's testimony as well as the district court's finding concerning the forcing-a-vehicle-onto-the-shoulder claim. Defendant points out that where a review of video evidence is involved, this Court is in the same position as the district court and need not give the district court's findings the usual deference afforded to a lower court's factual determinations. *See State v. Martinez*, 2015-NMCA-051, ¶ 15, 348 P.3d 1022.

{4} While we agree with the general proposition that where video evidence is available and clear, this Court may view the evidence independently of the district court's conclusions, *see Martinez*, that proposition is more difficult to apply in a case such as this one. All parties agree the video is of poor quality, and Defendant indicates that only a "close examination" of the video supports his view of the evidence. It is possible that discerning anything on the video, even with a "close examination," is so

hard that reasonable people could differ as to just what the video shows, in which case supplanting the district court's views about the content of the video with our own could be problematic. Nevertheless, for purposes of this opinion we accept Defendant's argument that the video evidence directly contradicts the officer's testimony, and that the district court should not have relied on the forced-a-vehicle-off-the-road testimony. *Cf. Martinez*. We next proceed to analyze the other two findings offered by the district court in support of its reasonable-suspicion determination. *Cf. State v. Vandenberg*, 2003-NMSC-030, ¶ 48, 134 N.M. 566, 81 P.3d 19 (after rejecting one fact contained in BOLO as irrelevant to reasonableness determination, considering remaining facts in analyzing whether reasonable suspicion of defendant's dangerousness was present).

{5} Defendant takes issue with the district court's determination that the arresting officer saw Defendant weaving in and out of his lane prior to the stop. He points out that the video does not show any such weaving. However, as Defendant acknowledges, the officer testified that at the time he observed the weaving the video equipment had not yet been activated. Assuming the officer's testimony is true, as the district court found, the video evidence therefore does not conflict with the officer's testimony. In order to avoid that result, Defendant engages in an intricate attack on the district court's credibility determination. While admitting that in most cases a trial court's credibility determination is sacrosanct and not subject to meaningful challenge on appeal, *see, e.g., State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964, Defendant maintains this is one of the rare cases in which this principle does not apply. His argument proceeds as follows: (a) the district court found the officer's testimony to be credible but also found the testimony of Defendant's witness, his common law wife ("Nelson"), to be credible; (b) the district court decided that to resolve the dispute between Nelson's testimony and the officer's, the court would have to turn to other evidence, specifically the video; and (c) because the video clearly contradicts the officer's testimony and supports Nelson's version, and also contradicts the district court's findings, the court's credibility determination is undermined to such an extent that it should be disregarded. While this is a creative argument, we find it ultimately unpersuasive.

{6} Notwithstanding Defendant's argument to the contrary, we do not believe Defendant has established that the video is so clearly contrary to the district court's determination that we can take the highly unusual step of disregarding that court's credibility determination. We have already discussed the fact that as to the forcing-off-the-road finding, the quality of the video is so poor that only a "close examination" of it can be said to contradict the finding. In addition, given Defendant's and the district court's description of the portion of the video that shows Defendant's U-turn, we do not agree that the video strongly supports Nelson's version of events as opposed to the district court's version. Although Nelson testified that she was able to stop safely behind Defendant as he performed the U-turn, according to Defendant the video shows that Defendant did not use his turn signal until he was almost completely stopped, and that vehicles both behind Defendant and next to him, traveling in the same direction, had to brake as he slowed to come to a stop without signaling. The officer's testimony appears to support this description of Defendant's failure to signal his intentions, at least

according to the tape log. Furthermore, the district court orally stated that Defendant's brake lights came on "pretty quickly" before his U-turn, indicating that his slow-down was not gradual but was instead fairly sudden, a description also apparently supported by the officer's testimony that Defendant came to an "abrupt stop." We note that Defendant's description of the video does not contradict the court's view that Defendant braked "pretty quickly" rather than performing a gradual slow-down; Defendant states only that he slowed to a stop, without indicating how quickly that occurred. In sum, the description of the video does not cause us to doubt the district court's judgment in this case to such an extent that we will disregard the credibility determination, and we therefore will not reject the district court's finding that the officer saw Defendant weaving in and out of his lane before the video equipment was activated. We note also that it is logical for this to be the case; there is no evidence indicating the video equipment was operating on a continuous basis, so there appears to have been no reason for the officer to activate the video equipment until he saw something indicating that a traffic stop might become necessary.

{7} Defendant's final attack on the district court's findings addresses the U-turn issue. Defendant contends that "[t]he only factual finding not clearly refuted" by the video is a finding that Defendant slowed to a stop, signaled, and then made a U-turn. Defendant also contends that this finding is legally insufficient to support reasonable suspicion of a violation of Section 66-7-317. As we have discussed above, however, we do not agree with Defendant's characterization of the video. The district court viewed the video and stated that Defendant did not simply gradually slow to a stop but did so "pretty quickly"; the officer apparently testified that Defendant came to an abrupt stop; Defendant indicated that vehicles behind him and even to his side hit their brakes when he began to brake; and it is undisputed that Defendant did not use his turn signal until he had almost come to a dead stop. We note also that on a four-lane highway, where drivers are not expecting traffic to be impeded by a stopped vehicle, a U-turn should be performed with even more care than usual. It must be remembered that the test here is not whether a violation of Section 66-7-317 was actually committed, but whether the arresting officer could reasonably believe that such a violation had occurred. *See State v. Dopslaf*, 2015-NMCA-098, ¶ 8, 356 P.3d 559. A reasonable officer seeing Defendant's maneuver could believe that Defendant did not safely perform the action of leaving his lane in order to perform the U-turn, and that his unsafe U-turn affected other traffic, despite the fact that Nelson was able to stop a car-length behind Defendant. Therefore, a reasonable officer could also believe Defendant's actions violated Section 66-7-317. *See, e.g., State v. Salas*, 2014-NMCA-043, ¶¶ 13–14, 321 P.3d 965 (observing that an officer driving behind a defendant who crossed the lane lines was affected by the movements of the defendant's vehicle, such that Section 66–7–317(A) applied); *see also State v. Gonzales*, No. 34,329, mem. op. (N.M. Ct. App. June 30, 2015) (non-precedential) (citing *Salas* for same proposition, that an officer's vehicle traveling behind the defendant can be traffic impacted by the defendant's unsafe movements out of his lane).

{8} In sum, we decline to accept Defendant's argument that we must reject the district court's version of the facts as well as that court's credibility determination. We

therefore affirm the district court's decision for the reasons stated here and in our notice of proposed disposition.

{9} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

LINDA M. VANZI, Judge