

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO ARRIOLA,

Defendant and Appellant.

C070032

(Super. Ct. No. 11F04165)

Defendant Francisco Arriola was charged with felony driving under the influence with three prior convictions; he moved to suppress the evidence obtained from the traffic stop on the ground that the stop was unlawful. The magistrate disagreed, concluding the arresting officer had sufficient cause to stop defendant after he made an unsafe pass.

On appeal following a plea of no contest, defendant contends the magistrate erred in denying his suppression motion. He argues there was not substantial evidence to support a legal traffic stop because "the magistrate did not credit the officer's testimony regarding speed and distance, but improperly

denied the motion based on the officer's *subjective* belief of an unsafe pass, without any objective criteria to support such a legal finding." We disagree and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2011, Sacramento Police Officers Marcel Loriaux and Andy Hall were driving northbound in their patrol car on a two-lane road. Officer Loriaux saw a Honda driving southbound making a right turn into a complex. Defendant, driving behind the Honda, "went into the northbound lane[] of traffic at a high rate of speed and then cut back into the southbound lane." There were four or five cars in front of the officers at this time, and defendant was in the oncoming traffic lane for about four or five seconds.

Though traffic was "moderate," Officer Loriaux concluded the maneuver was "not safe"; it "seemed dangerous to [him]" because of defendant's "high rate of speed coupled with being in the opposite lane[] of traffic." After pulling defendant over, Officer Loriaux contacted defendant and noticed he had "bloodshot, watery eyes" and a "strong odor of an alcoholic beverage coming from his person." Officer Loriaux conducted a field sobriety test and a preliminary alcohol screening test, concluding that defendant's blood-alcohol content was about .26 percent, which was later confirmed by a criminalist.

Defendant was charged with two counts of felony driving under the influence with three prior convictions and one count of misdemeanor driving with a suspended or revoked license. At the preliminary examination, Officer Loriaux testified that at

approximately 45 miles per hour, defendant travelled about 12 to 15 feet in the opposite lane for four to five seconds. The magistrate interjected that a car travelling at that speed would travel 12 to 15 feet in about one second. Later, defense counsel argued speeding was not an issue both because the officer did not know the speed limit on the road and his distance estimates were not consistent, which the magistrate confirmed. In response, the magistrate said that "speed, in and of itself, I don't think is the big issue." The magistrate continued, however, that "[t]he gist of [the officer's] testimony was that he felt the defendant made an unsafe pass . . . under the conditions of the road with the oncoming traffic."

Defendant moved to suppress all "evidence obtained in the present case . . . since it was obtained as a result of a warrantless search." Defendant argued the officer's testimony was unreliable because Officer Loriaux was travelling toward defendant, contending Loriaux was unable to accurately gauge defendant's speed. Additionally, defendant argued the officer's estimations of defendant's speed, the time defendant spent in the northbound lane, and the distance he travelled in that lane were inconsistent. The magistrate concluded, however, that Officer Loriaux "in good faith, honestly did believe that [defendant] made an unsafe pass" "notwithstanding any internal inconsistency or discrepancy in his testimony regarding distances." Accordingly, the magistrate denied the suppression motion.

Defendant renewed the suppression issue in the superior court with a motion to dismiss under Penal Code section 995, but the trial court denied that motion. Defendant then pled no contest to driving with a blood-alcohol content of .08 percent or higher and was sentenced to two years in prison.

DISCUSSION

On appeal, defendant contends there was not substantial evidence to support a legal traffic stop because "the magistrate did not credit the officer's testimony regarding speed and distance, but improperly denied the motion based on the officer's *subjective* belief of an unsafe pass, without any objective criteria to support such a legal finding." He argues there were no specific and articulable facts presented to support a reasonable suspicion defendant violated any Vehicle Code¹ provision, making the traffic stop unlawful. In particular, defendant points to the magistrate's statement that "speed, in and of itself, I don't think is the big issue." He argues that, "given [this] finding," the magistrate could not have found a violation of section 22350 or any other "speed law."

The denial of the suppression motion was proper because the magistrate relied on substantial evidence in finding the officer had a reasonable belief that defendant made an unsafe pass in

¹ All section references are to the Vehicle Code.

violation of section 22350,² which provides that "[n]o person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

Defendant's argument that the magistrate could not have found a violation of section 22350 relies on a misreading of the magistrate's findings. Defendant was not stopped for exceeding a posted speed limit; rather, he was stopped because of an "unsafe pass" into the oncoming traffic lane at a "high rate of speed." The People adequately established, and the magistrate agreed, that Officer Loriaux had an objectively reasonable suspicion that defendant's speed was unreasonable, given the totality of the conditions on the road, making defendant's pass "not safe."

I

Standard Of Review

"The standard of appellate review of a trial court's ruling on a motion to suppress evidence is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under

² The parties discuss multiple possible Vehicle Code violations, but because there is evidence supporting a reasonable suspicion defendant violated section 22350, we need not address additional violations.

the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) On appeal, all presumptions will favor the express or implied factual inferences a magistrate could have found, where supported by substantial evidence. (*People v. Manning* (1973) 33 Cal.App.3d 586, 599.) We give deference to the magistrate’s factual findings where the record is not clear, and we assume he drew all inferences that support his conclusion. We then decide whether the magistrate’s factual findings, express or implied, are supported by substantial evidence. (*People v. Weaver* (2001) 26 Cal.4th 876, 924.) It is then the reviewing court’s responsibility to independently measure such findings against the constitutional standard of reasonableness. (*Glaser*, at p. 362.)

II

The Magistrate Relied On Substantial Evidence Supporting A Lawful Traffic Stop In Denying Defendant’s Suppression Motion

A detention must be justified by an objectively reasonable suspicion of criminal activity. (*In Re Tony C.* (1978) 21 Cal.3d 888, 893.) When the detention is for a traffic violation, it “must be supported by articulable facts giving rise to a reasonable suspicion that the driver or a passenger has violated the Vehicle Code or some other law.” (*People v. Durazo* (2004) 124 Cal.App.4th 728, 731.)

Defendant contends the magistrate implicitly found defendant was not speeding. He contends the magistrate found Officer Loriaux’s testimony regarding speed was not credible

because of "internal inconsistenc[ies] or discrep[anc]ies." Relying on the magistrate's statement that "speed, in and of itself, I don't think is the big issue," defendant contends the magistrate made a factual finding that the officer's testimony regarding speed was not credible and therefore concludes there could not have been substantial evidence of a "speed law" violation. We disagree.

A

The Magistrate's Findings Do Not Preclude A Speed Law Violation

Officer Loriaux estimated defendant was traveling 45 miles per hour and drove approximately 12 to 15 feet in the oncoming lane for four to five seconds; the magistrate then interjected by saying a car travelling at that speed would go 12 to 15 feet in about one second. Defendant would have us infer that the magistrate was implying "[defendant]'s speed was much less than 45 mph, because [defendant] would have traveled a much further distance around the stopped Honda if he was in the oncoming lane for 4 to 5 seconds." He argues "the magistrate found the officer's testimony credible regarding an alleged *unsafe pass*, [but] was unwilling to extend that credibility to the officer's testimony regarding *speed*." This argument is without merit.

We agree Officer Loriaux's estimations were not completely consonant. We disagree, however, that this precluded the magistrate from finding Officer Loriaux had sufficient reason to believe defendant may have violated a "speed law." Misinterpreting the magistrate's interjection, defendant argues that the "implied inference from such a finding by the

magistrate is that [defendant]'s speed was *much less* than 45 mph." (Italics added.) Not so. The magistrate could have believed defendant was in fact driving 45 miles per hour, but traveled a further distance than 12 to 15 feet in the oncoming lane. That this is the inference the magistrate actually drew is supported by the magistrate's conclusion that there was "internal inconsistency or discrepancy in [the officer's] testimony regarding *distances*." (Italics added.)

Defendant also interprets the magistrate's statement that "speed, in and of itself, [is not] the big issue" in his favor by ignoring the context surrounding that statement. When he said speed was not the big issue, the magistrate was responding to defense counsel's contention that Officer Loriaux was unsure of the posted speed limit on the road. The magistrate then continued to explain that defendant entered the oncoming lane of traffic. "The gist of [Officer Loriaux's] testimony was that he felt the defendant made an unsafe pass . . . under the conditions of the road with the oncoming traffic. [¶] The officer perceived that [defendant] was impatient, that under those circumstances he should have waited for the white Honda to leave the roadway Instead, *he went out into the oncoming lane and passed, taking about four to five seconds to do so with traffic headed right at him.* [Officer Loriaux] felt, in his judgment, that that was an unsafe traffic move."

(Italics added.) The magistrate then "ma[d]e a finding of fact that [Officer Loriaux] . . . in good faith, honestly did believe that [defendant] made an unsafe pass and that under the

circumstance the officer was in a position to make that observation."

Reading the magistrate's findings in total, the magistrate said that "speed, in and of itself, [was not] the big issue" because defendant was not stopped for violating the speed limit on the road. In the officer's words, defendant's pass was "not safe" because of his "high rate of speed coupled with being in the opposite lanes[] of traffic" "It seemed dangerous to [him]."

B

There Was Substantial Evidence To Support The Officer's Reasonable Suspicion Defendant Violated Section 22350

Defendant contends since the magistrate specifically found speed was not the issue, there necessarily could not have been substantial evidence supporting Officer Loriaux's suspicion defendant was in violation of section 22350. Defendant then argues section 22350 "is inapplicable as a basis upon which to reasonably detain [defendant]." We disagree.

As explained above, the magistrate did not find defendant could not have violated any speed law, but rather that defendant's *actual* speed was not "the big issue." Section 22350 prohibits a person from "driv[ing] a vehicle upon a highway at a speed greater than is *reasonable or prudent* having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of other persons or property." (Italics added.) Section 22350 requires driving at a speed that is

"reasonable or prudent" given the conditions on the road, but makes no mention of numerical speed limits. Given Officer Loriaux's testimony, the magistrate found "the [officer], notwithstanding some internal inconsistency or discrepancy in his testimony regarding distances . . . in good faith, honestly did believe that [defendant] made an unsafe pass and that under the circumstance the officer was in a position to make that observation."

Provided the considerable deference given the magistrate, and the totality of evidence presented through Officer Loriaux's testimony, there was substantial evidence supporting the magistrate's finding the officer had an objectively reasonable suspicion of a section 22350 violation. Officer Loriaux saw defendant go around the car in front of him and make a pass he considered "not safe" because it was at a "high rate of speed," lasted "four to five seconds," and "could have [caused] a collision if [defendant] would have stayed in that lane or not got [sic] back over. It seemed dangerous to [him]." Defendant was on a road with only two lanes -- one in each direction -- at the time, and there were only "four or five cars" between defendant and the officer. There was moderate traffic on the road and cars were coming directly at defendant when he was in the opposite lane.

Though he could not measure defendant's speed precisely, Officer Loriaux essentially believed it was not "reasonable or prudent having due regard for the . . . visibility, the traffic on, and the . . . width of, the highway." (§ 22350.) Because

he felt defendant's pass at a "high rate of speed" was "not safe," it is more than reasonable to infer the officer believed the pass was "at a speed which endanger[ed] the safety of other persons or property." (§ 22350.) Presented with these facts, the magistrate found the officer's suspicion of a Vehicle Code violation objectively reasonable; we agree and uphold the magistrate's findings.

DISPOSITION

The judgment is affirmed.

_____ ROBIE _____, Acting P. J.

We concur:

_____ MAURO _____, J.

_____ DUARTE _____, J.