

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

APPELLATE CASE NO: 2013-AP-35-A-O
Lower Case No. 2013-CT-8335-A-O

Appellant,

vs.

EMMA LEE DOLBEAR,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Steve Jewett, County Court Judge

Jeffrey L. Ashton, State Attorney
and Cherish R. Adams, Assistant State Attorney
for Appellant

Robert Wesley, Public Defender
and Michael Bryan Sanchez, Assistant Public Defender
for Appellee

Before HIGBEE, WOOTEN and H. RODRIGUEZ

PER CURIAM.

FINAL ORDER REMANDING TO TRIAL COURT

Following a traffic stop, Emma Lee Dolbear (“Appellee”) was arrested for driving under the influence. The trial court granted her motion to suppress all testimony and evidence obtained after the traffic stop. The State (“Appellant”) appeals. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). We remand.

Facts and Procedural History

On September 20, 2013, Appellee filed a motion to suppress the traffic stop and all subsequent evidence. On October 31, 2013, the trial court held a hearing on the motion to suppress. Florida Highway Patrol Trooper Mark Castleberry testified as follows:

On August 29, 2013, Appellee was driving on the 408 Expressway when Trooper Castleberry noticed that she was dangerously close to another vehicle in his opinion. He estimated that she was less than a car length away from the car in front of her, and he generally believed that two to three car lengths is a safe distance. Trooper Castleberry visually estimated that Appellee was traveling 61 to 62 mph, while the posted speed limit was 55 mph in that area of the 408. He stated that he is certified in radar and laser estimation, which required that his visual estimations were plus or minus 5 mph of the actual speed. He also noticed that her car was drifting for a brief period. He saw part of her car drift briefly onto and over the right white-striped line. He then conducted a traffic stop for following a vehicle too closely. When he approached Appellee, he detected the odor of alcohol from her breath, her eyes were glassy, and her face flushed. Appellee provided her driver's license, registration, and her insurance through an iPhone app. She told him that she had two drinks, two hours prior. Trooper Castleberry then proceeded forward with a DUI investigation believing that he had reasonable suspicion that she was impaired. After the conclusion of Trooper Castleberry's testimony, both parties agreed to the trial court reviewing the body-worn camera and in-car camera video recordings.

At the conclusion of the suppression hearing, the trial court orally found that the traffic stop was legal, but that there was no reasonable suspicion to request field sobriety exercises, and suppressed the field sobriety exercises and anything subsequent to the stop and detention. The State announced its intention to appeal. The trial court entered a written order January 9, 2014,

granting Appellee’s motion to suppress and suppressing all “evidence and testimony obtained after the stop.”

Standard of Review

A trial court’s ruling on a motion to suppress is subject to a mixed standard of review. The standard of review for findings of fact is whether competent, substantial evidence supports those findings; however the application of law to the facts is reviewed *de novo*. *State v. Quinn*, 41 So. 3d 1011, 1013 (Fla. 5th DCA 2010).

Analysis

At the suppression hearing, the trial court found “that the stop was appropriate, maybe marginally so, but appropriate;” however the written order stated that the “State has failed to present any credible evidence of a lawful stop.” A judge’s oral pronouncement controls over the written order. *State v. Hunton*, 699 So. 2d 320, 321 (Fla. 2d DCA 1997); *Mott v. State*, 489 So. 2d 854, 855 (Fla. 5th DCA 1986). Therefore, we remand for the trial court to revise the written order.

It is therefore **ORDERED AND ADJUDGED** as follows:

We **REMAND** for the trial court to revise the written order.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 18th day of December, 2014.

/S/

HEATHER L. HIGBEE
Presiding Circuit Court Judge

WOOTEN and H. RODRIGUEZ, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Cherish R. Adams, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802; and to **Michael Bryan Sanchez, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801 this 19th day of December, 2014.

/S/ _____
Judicial Assistant