

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

STATE OF FLORIDA,
Appellant,

APPEAL CASE NO: 2020-AP-000003

v.

LOWER CASE NO: 2019-CT-003599-O

STEPHEN DALE BOHN, JR.,
Appellee.

Appeal from the County Court
for Orange County, Florida,
David P. Johnson, County Judge

Aramis D. Ayala, State Attorney
and Merrilyn Hoenemeyer,
Assistant State Attorney,
for Appellant.

Stuart I. Hyman, Esq.,
for Appellee.

Before CALDERON, STROWBRIDGE, and HARRIS, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT ORDER AND REMANDING

Following a traffic stop, Stephen Dale Bohn, Jr. (Appellee) was arrested for driving under the influence (DUI). The trial court granted Appellee's motion to suppress all evidence obtained as a result of the traffic stop. The State appeals. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). We reverse and remand.

Standard of Review

"A trial judge's ruling on a motion to suppress is clothed with a presumption of correctness with regard to determinations of historical fact. However, appellate courts must

independently review mixed questions of law and fact.” *Fitzpatrick v. State*, 900 So. 2d 495 (Fla. 2005) (citations omitted). This Court must “defer to the trial court’s factual findings if supported by competent, substantial evidence... [and] review the trial court’s application of the law to those factual findings de novo.” *Simms v. State*, 51 So. 3d 1264, 1265 (Fla. 2d DCA 2011) (citing *K.W. v. State*, 906 So. 2d 383, 384 (Fla. 2d DCA 2005)). Yet, “this deference to the trial court’s findings of fact does not fully apply when the findings are based on evidence other than live testimony.” See *Parker v. State*, 873 So. 2d 270, 279 (Fla. 2004); Cf. *Black v. State*, 59 So. 3d 340, 344 (Fla. 4th DCA 2011) (the trial court’s findings of fact based on live testimony are reviewed by the ordinary “competent, substantial evidence” standard, but the appellate court utilizes a “much less deferential standard” for findings that are based on its view of an interrogation video).

Analysis and Ruling

In cases involving traffic stops, the stop may not last longer than necessary to effectuate the purpose of the traffic stop, and the officer’s authority to detain an individual for this limited purpose ends when tasks tied to the traffic infraction are (or reasonably should have been) completed. *Presley v. State*, 227 So. 3d 95, 106 (Fla. 2017) (citing *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015)). Officers may only detain an individual for the reasonable duration of the traffic stop. *Id.* This includes: the length of time necessary to check the individual’s driver’s license, vehicle registration, and proof of insurance; check outstanding warrants; write a citation or warning; return documents; and to issue the warning or citation. *Id.* In order to detain an individual beyond completion of these tasks, an officer must have reasonable suspicion that criminal activity “may be afoot.” See *Cresswell v. State*,

564 So. 2d 480, 481 (Fla. 1990) (citing *Terry v. Ohio*, 392 US 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968)).

A court must look at the totality of the circumstances in order to determine reasonable suspicion. *See Maldonado v. State*, 992 So. 2d 839, 843 (Fla. 2d DCA 2008) (citing *Cresswell*, 564 So. 2d at 482). The reasonableness of a seizure depends on what the police do – not on a pre-determined temporal limitation. *See D.A. v. State*, 10 So. 3d 674, 677 (Fla. 3d DCA 2009); *see also State v. Merklein*, 388 So. 2d 218, 219 (Fla. 2d DCA 1980) (“The reasonableness of an investigatory detention depends on the circumstances surrounding the detention, and not solely on its length.”) (citation omitted).

At traffic stops involving DUIs, an officer may temporarily detain a driver based on reasonable suspicion that he may be driving impaired. *Origi v. State*, 912 So. 2d 69, 71 (Fla. 4th DCA 2005) (citing *State v. Taylor*, 648 So. 2d 701, 703-04 (Fla. 1995)). Indicators an officer observes, such as the smell of alcohol, as well as bloodshot and watery eyes, may give rise to the reasonable suspicion necessary to detain a driver for a DUI investigation. *See State v. Castaneda*, 79 So. 3d 41 (Fla. 4th DCA 2011).

At the hearing on the motion to suppress (which was technically two hearings held on two separate dates), Appellee did not contest the validity of the actual traffic stop – only his detention beyond the time necessary for the officer to issue two traffic citations. At the end of the second hearing, the trial court reserved ruling on the motion. The written order the trial court entered after the hearing focused on the time stamps in the body worn camera video admitted into evidence, including the specific time Appellee was stopped by the officer, the moment two assisting officers arrived at the traffic stop, the point at which Appellee was

ordered to exit his vehicle, and the time when one of the assisting officers asked Appellee to perform field sobriety exercises. Ultimately, the trial court concluded the traffic stop greatly exceeded the time necessary to issue the traffic citations and Appellee was illegally detained.

In support, the trial court cited *State v. Swick*, 24 Fla. L. Weekly Supp. 543a (Volusia Cty. Ct. June 20, 2016) and *Williams v. State*, 869 So. 2d 750 (Fla. 5th DCA 2004). In *Swick*, a Volusia County judge held it was unreasonable for the defendant to be detained for as long as it took three backup officers to arrive individually, when the first backup officer was qualified to conduct a DUI investigation and “nothing was done to address either the Defendant's traffic infraction or to investigate a possible DUI charge. The wait for someone else to arrive to begin a DUI investigation was unreasonable.”

Williams involved a traffic stop in which the defendant was charged with drug trafficking and weapons offenses. The defendant alleged the traffic stop exceeded the amount of time necessary to write the citation and that he was illegally detained after he was issued the citation. After thirty-five minutes from the initial stop, the officer issued the defendant a citation for his window tint. The defendant noted in his argument that there was no evidence the officer suspected criminal activity before the stop or while issuing the citation. The *Williams* court held that thirty-five minutes to obtain the necessary information and issue the citation was unreasonable given the facts and circumstances of the case.

In Appellee's case, the trial court is required to make findings on the threshold question of whether the officer had reasonable suspicion to detain Appellee for a DUI investigation. If the trial court were to find that there was reasonable suspicion to the detain Appellee for a DUI, it would then have to determine whether the officer exceeded the amount of time

necessary to conduct a DUI investigation. However, absent an articulable suspicion of any criminal activity, the trial court would have to determine if the officer's initial stop exceeded the time the required to issue citations and resolve the issues which initiated this stop.

At the conclusion of the second hearing (which occurred almost four months after the first hearing), the trial court reviewed some of its notes from the first hearing and specifically indicated that it would have to view the stop officer's body worn camera video again in order to determine if Appellee was justifiably detained until the assisting officers arrived. The trial court correctly noted it must analyze the totality of the circumstances. The trial court reserved ruling on the issue of whether the stop officer had reasonable suspicion to detain Appellee based on the driving pattern and indicators of impairment he observed. In review of the trial court's written order, the court made no findings to indicate that it engaged in this analysis.

This Court is well-aware that in its appellate capacity it cannot re-weigh evidence relied on by the trial court and make a credibility determination, as that is in the province of the trial court. *See Duke v. State*, 82 So. 3d 1155, 1158 (Fla. 2d DCA 2012). We must accept the trial court's findings of fact so long as they are supported by competent, substantial evidence. Nonetheless, we are unable to complete a *de novo* review of the trial court's application of the law to the facts, because it is unclear whether the trial court conducted a necessary part of the analysis.

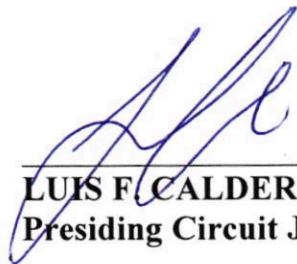
The trial court's written order makes no mention of the issue highlighted by the trial court at the hearing – whether the stop officer had reasonable suspicion to detain Appellee for a DUI investigation. The trial court is required to consider the totality of the circumstances in reaching its determination on this issue before continuing its analysis with regards to the

reasonableness of the length of time of the detention of the Defendant, focusing on the time stamps in the body worn camera video alone does not meet this standard.

Accordingly, the trial court's suppression order is reversed and the case is remanded for further proceedings consistent with this opinion.

REVERSED and REMANDED.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 21
_____ day of December, 2020.



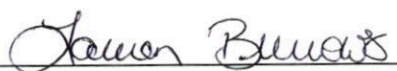
LUIS F. CALDERON
Presiding Circuit Judge

STROWBRIDGE and HARRIS, J.J., concur.

THE COURT WILL NOT ENTERTAIN ANY MOTION FOR REHEARING.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished on this 21 day of December, 2020, to the following: **Merrilyn Hoemeyer, Esq., Assistant State Attorney**, P.O. Box 1673, Orlando Florida 32802, or at PCF@sao9.org; and to **Stuart I. Hyman, Esq.**, 1520 East Amelia Street, Orlando, Florida 32803, or at shymanlaw@aol.com.



Judicial Assistant