

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

APPELLATE CASE NO.: 2016-AP-000013-A-O
Lower Court Case Nos.: 2015-CT-004422-A-O
2015-CT-004423-A-O

STATE OF FLORIDA,

Appellant,

v.

RICHARD ROBERT WILSON,

Appellee.

Appeal from the County Court,
for Orange County, Florida,
Faye L. Allen, County Court Judge

Jeffrey L. Ashton, State Attorney, and
Carol L. Reiss, Assistant State Attorney,
for Appellant

Stuart I. Hyman, Esquire,
for Appellee

Before MUNYON, G. ADAMS, and TYNAN, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State of Florida (“Appellant”) appeals the trial court’s final order granting Richard Wilson’s (“Appellee”) Motion to Suppress. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). We reverse and remand.

On May 12, 2015, Appellee was arrested for driving under the influence (“DUI”) pursuant to section 316.193(4), Florida Statutes (2015). On June 1, 2015, Appellee filed a Motion to

Suppress contesting his traffic stop, detention, and arrest. On October 12, 2015, and February 29, 2016, the trial court conducted a suppression hearing and granted the motion.

At the hearing on the Motion, Corporal Richard Combs testified that he was traveling to work at approximately 7:00 p.m. on May 12, 2015, when he observed Appellee's vehicle ahead of him leave the roadway no less than four times over a short distance. The right side tires of Appellee's vehicle actually went off of the pavement and onto the grass. Corporal Combs was concerned that Appellee was texting and driving or had a medical issue, so he pulled up next to Appellee at an intersection, rolled down his window, and asked Appellee why he was texting and driving. Appellee stated that he was following the car in front of him, and he had a blank stare on his face. Corporal Combs asked Appellee why he was having a hard time staying on the road, and Appellee looked around, put a baseball cap on backwards, and continued to drive without responding. Combs's suspicions were raised following this interaction, as "those are clues to us that something is going on." Combs followed Appellee and initiated a traffic stop.

Combs approached Appellee and noticed that Appellee had glassy eyes and spoke with a "thick tongue." Combs testified, "When I saw that his eyes were glassy, and then it dawned on me that the reason he is driving off the road, the reason why he couldn't answer my questions in an appropriate manner, the blank look on his face, the glassy eyes, it dawned on me that he was intoxicated." Based on Appellee's demeanor, Combs asked Appellee if he had been drinking, and Appellee admitted that he had several beers. Combs then requested a traffic unit. Deputy Scott Danjou arrived within six to eight minutes, while Combs was in the process of writing two traffic citations.

Deputy Danjou testified that when he approached Appellee, Appellee initially refused to exit his vehicle, but then attempted to exit the vehicle while his seatbelt was still fastened.

Appellee had slurred speech, red and glassy eyes, constricted pupils, a strong odor of alcohol emitting from his breath, and a staggered walk. Appellee told Danjou that he had a few drinks and ranked himself as a five on a scale of zero to ten, with zero being sober and ten being completely impaired. Deputy Danjou believed that Appellee was under the influence of alcohol and requested that he do field sobriety exercises. Appellee refused to complete all of the exercises and walked back towards his vehicle. He was arrested for DUI.

At the hearing, the trial court granted the Motion finding that there was no reasonable suspicion for the traffic stop and no probable cause to detain and arrest Appellee. The trial court explained that “the reason why is not because the Court doesn’t believe the defendant went off the road four times,” but because there was nothing in the record to support Corporal Combs’s testimony that Appellee was texting and driving.

A trial court’s ruling on a motion to suppress is subject to a mixed standard of review. “An appellate court is bound by the trial court’s findings of fact that are supported by competent, substantial evidence; however, the application of the law to the facts is subject to de novo review.” *State v. K.N.*, 66 So. 3d 380, 384 (Fla. 5th DCA 2011) (citing *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002)). “A trial court’s determination of reasonable suspicion to conduct an investigatory stop and probable cause to arrest is reviewed de novo.” *Id.*; *Ornelas v. United States*, 517 U.S. 690, 697 (1996).

An officer need only have a reasonable suspicion to stop a motor vehicle for a violation of the traffic laws. *Carter v. State*, 120 So. 3d 207, 209 (Fla. 5th DCA 2013). *See also State v. Frierson*, 926 So. 2d 1139, 1142 (Fla. 2006); *Hilton v. State*, 961 So. 2d 284, 295 (Fla. 2007); *Brown v. State*, 719 So. 2d 1243, 1245 (Fla. 5th DCA 1998); *Lacombe v. State*, 14 Fla. L. Weekly Supp. 1083a (Fla. 9th Cir. Ct. Sept. 12, 2007). In reviewing the lawfulness of an officer’s stop for

a violation of traffic laws, “[t]he correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop.” *Dobrin v. Dep’t of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174 (Fla. 2004). If there is *any* objective basis for the traffic stop, even if it is not the same basis stated by the officer, the stop is constitutional. *Dep’t of Highway Safety & Motor Vehicles v. Jones*, 935 So. 2d 532, 534 (Fla. 3d DCA 2006) (citing *Dep’t of Highway Safety & Motor Vehicles v. Utley*, 930 So. 2d 698 (Fla. 1st DCA 2006)); *Lacombe*, 14 Fla. L. Weekly Supp. 1083a (“If the facts ‘provide any objective basis to justify the stop . . . the stop is constitutional.’”). The subjective knowledge, motivation, or intention of the officer is wholly irrelevant. *Jones*, 935 So. 2d at 534 (citing *Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997)).

Here, the trial court agreed that an officer has reasonable suspicion to stop a vehicle for running off the road like the Appellee did in this case. However, the trial court improperly focused on Corporal Combs’s subjective intent in making the stop, finding that Combs stopped Appellee because he thought Appellee was texting and driving. The trial court stated, “I have to know what he **thought** when he was communicating with the defendant about the alleged texting,” and “If the defendant was not texting, then the officer should not have stopped him.” As stated above, Corporal Combs’s subjective knowledge or intent is wholly irrelevant. Appellee’s act of running off the road provided Corporal Combs with reasonable suspicion to initiate the traffic stop, even if Combs asserted a different basis for the stop.

Furthermore, it is true that in the absence of reasonable suspicion of other crimes, an officer who stops a driver for a traffic infraction may not detain him longer than necessary to write the ticket. *State v. Breed*, 917 So. 2d 206, 208 (Fla. 5th DCA 2005). However, there was no evidence here of any delay by Corporal Combs in detaining Appellee. Combs was in the process of writing

the two traffic citations when Deputy Danjou arrived at the scene within six to eight minutes. *See Sanchez v. State*, 847 So. 2d 1043, 1046 (Fla. 4th DCA 2003) (holding that the detention of a speeding motorist for five to ten minutes was not unreasonable where the officer was still writing the citation when a K-9 unit arrived); *Sands v. State*, 753 So. 2d 630, 632 (Fla. 5th DCA 2000) (holding that a fifteen-minute detention of a motorist for a traffic violation was not unreasonable where the officer was still writing the ticket when the K-9 unit arrived).

Regardless of the reasonably short delay, Combs had a reasonable suspicion to detain Appellee based on his observations of Appellee's erratic driving pattern and demeanor. And, based on Deputy Danjou's subsequent observations, there was reasonable suspicion to detain Appellee to conduct a DUI investigation, and probable cause to arrest Appellee for DUI.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's order granting the Motion to Suppress is **REVERSED** and this cause is **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 13th day of September, 2016.

/S/
LISA T. MUNYON
Presiding Circuit Judge

G. ADAMS and TYNAN, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to: **The Honorable Faye L. Allen**, 425 North Orange Avenue, Suite 420, Orlando, Florida 32801; **Carol L. Reiss, Assistant State Attorney**, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801; and **Stuart I. Hyman, Esquire**, 1520 East Amelia Street, Orlando, Florida 32803, on this 13th day of September, 2016.

/S/ _____
Judicial Assistant