

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

STATE OF FLORIDA,

Appellant,

vs.

MATTHEW RAYMOND GRACE,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Martha C. Adams, County Court Judge

Jeffrey L. Ashton, State Attorney
and Farral A. Haber, Assistant State Attorney
for Appellant

Jason T. Forman, Esq.
for Appellee

Before S. KEST, THORPE and EVANS, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Following a traffic crash investigation, Matthew Raymond Grace (“Appellee”) was arrested for driving under the influence. The trial court granted his motion to suppress the initial detention, field sobriety exercises, and arrest. The State (“Appellant”) now appeals. We reverse.

Facts and Procedural History

On October 11, 2013, Appellee filed a motion to suppress his detention, DUI exercises, and arrest. A hearing on the motion to suppress was held on February 7, 2014, and the trial court granted the motion to suppress on February 10, 2014.

At the suppression hearing, Trooper Rolando Reyes testified as follows: On May 5, 2013, around 4:00 a.m., he received notice of a traffic crash that was close to his location from dispatch, and he saw Appellee less than a minute after. He noticed Appellee trying to change the front tire of a black vehicle on the shoulder of the road, and there was no one else around. Appellee was not free to leave when Trooper Reyes first approached and asked for his ID. Trooper Reyes never saw a crash occur or Appellee driving, and Appellee handed him his ID immediately. Appellee had slurred speech, bloodshot and watery eyes, and Trooper Reyes detected the odor of an alcoholic beverage emanating from Appellee's lower face area. The vehicle looked like it had just been involved in a crash because there was damage on the front of the vehicle, the bumper was detached, there was immediate fresh black paint transfer on the guardrail, and the airbags were deployed.

After concluding his crash investigation, Trooper Reyes suspected that Appellee may have been impaired and conducted a DUI investigation. He gave Appellee *Miranda* warnings and advised him about the DUI investigation. Appellee stated that he was coming from a friend's house, admitted to having three to four rum and cokes that night, and believed that he was on State Road 528, when they were on State Road 408. Appellee also stated that he was the driver at the time of the collision, there was no one else in the vehicle at the time, and agreed to perform field sobriety exercises.

During the horizontal gaze nystagmus exercise, Appellee had an orbital sway and kept turning his head side to side, despite the trooper telling him not to. During the walk and turn exercise, Appellee lost his balance in the starting position, took 28 steps forward instead of 9, turned improperly, and took 34 steps back after the trooper demonstrated 9 steps back. After the walk and turn exercise, Appellee admitted that he had four to five drinks, instead of three to four. During the one leg stand exercise, Appellee began the exercise early, put his foot down, and swayed side to side in an attempt to maintain his balance. Appellee was then arrested for DUI.

The events were recorded and the video was played for the trial court with the agreement of the State and defense. Trooper Reyes agreed that the video was accurate and stated that Appellee slurred his speech and had difficulty walking in the video. The guardrail where the crash occurred was not depicted in the video, but the swaying from side to side during the one-leg stand would be in the video. Trooper Reyes did not specifically remember why Appellee's turn was improper during the walk and turn. The cars driving by created a distraction to him and Appellee.

On February 10, 2014, the trial court granted the motion to suppress. The trial court found that (1) there was not enough evidence to show that Appellee was in a crash; (2) there was not enough evidence to show that Appellee was in actual physical control or behind the wheel of the vehicle, and there was no evidence about where the keys were or that the lights were on; (3) the DUI exercises were not credible, because the trooper and Appellee were both swaying in the wind, and Appellee did take too many steps, but there was a lift in the road. The trial court ruled that (1) there was no probable cause to stop Appellee or put him in actual physical control of the car or part of a crash; (2) there was not reasonable suspicion to start the DUI investigation; and (3) there was not probable cause to arrest Appellee for DUI.

Issues

Whether the trial court erred when it held that (1) there was an unlawful stop, (2) there was not reasonable suspicion to begin a DUI investigation, and (3) there was not probable cause to arrest Appellee for DUI.

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 and Conclusion

The Court must initially determine whether Appellee's detention pursuant to a crash investigation was proper. There is no minimum amount of damage that must occur to label an incident a traffic crash, although the term "reasonably contemplates some degree of damage." *State, Dep't of Highway Safety & Motor Vehicles v. Williams*, 937 So. 2d 815, 817 (Fla. 1st DCA 2006). The trial court was permitted to consider Trooper Reyes's testimony that he was told there was a crash as "hearsay evidence is admissible in suppression hearings." *State v. Littles*, 68 So. 3d 976, 978 (Fla. 5th DCA 2011). Based upon receiving the service call of a crash nearby and seeing Appellee on the side of the road changing a tire, the initial detention pursuant to a traffic crash investigation was proper.

Next, the Court must determine whether Trooper Reyes had reasonable suspicion that Appellee was driving while impaired in order to conduct a DUI investigation. *State v. Taylor*, 648 So. 2d 701, 703-704 (Fla. 1995). Trooper Reyes had reasonable suspicion to conduct a DUI investigation based upon the following: Appellee appeared disoriented and had bloodshot and

watery eyes; Appellee had trouble putting sentences together and exhibited slurred speech; Trooper Reyes detected the odor of an alcoholic beverage emanating from Appellee's lower face area; Appellee was changing the vehicle's tire; there was no one else around the vehicle; it was 4:00 a.m.; and the vehicle looked like it had recently been involved in a crash because there was fresh paint transfer on the guardrail, which was the same color as the vehicle, the bumper was detached, and the airbags were deployed.

The Court must then determine whether there was probable cause to arrest Appellee for DUI. The trial court found that Trooper Reyes's testimony about the DUI exercises was not credible and there was competent substantial evidence to support that factual finding. However, based upon Trooper Reyes's observations of bloodshot and watery eyes, disorientation, slurred speech, the odor of alcohol, signs of a recent crash, and that Appellee was the only one around changing the tire of the vehicle at 4:00 a.m., Trooper Reyes had probable cause to arrest Appellee for DUI.

It is therefore **ORDERED AND ADJUDGED** that the trial court's granting of the motion to suppress is **REVERSED** and we remand for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 31st day of December, 2014.

/S/
SALLY D. M. KEST
Presiding Circuit Court Judge

THORPE and EVANS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Farral A. Haber, Assistant State Attorney**, 415 N. Orange Avenue, P.O. Box 1673, Suite 300, Orlando, Florida 32801; and to **Jason T. Forman, Esq., Counsel for Appellee**, 633 Southeast Third Avenue, Suite 4F, Fort Lauderdale, Florida 33301, this 31st day of December, 2014.

/S/ _____
Judicial Assistant