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

APPELLATE CASE NO: 2016-AP-52-A-O
Lower Case No.: 2016-CT-006481-A-O

ALI RAZA MEHKERI,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

Appeal from the County Court
for Orange County, Florida
Andrew L. Cameron, County Court Judge

Robert Wesley, Public Defender,
and Stephen Krejci, Assistant Public Defender,
for Appellant

Aramis D. Ayala, State Attorney,
and Carol Levin Reiss, Assistant State Attorney,
for Appellee

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

PER CURIAM

FINAL ORDER REVERSING TRIAL COURT IN PART AND AFFIRMING IN PART

Ali Raza Mehkeri ("Appellant") appeals the following: (I)(A) the trial court's denial of a peremptory challenge against Juror Nfinger; (I)(B) in the alternative, the loss of the peremptory challenge to Juror Nfinger stems from the trial court's erroneous denial of cause challenges against Jurors Davila and Rodriguez; (I)(C) the trial court unfairly limited voir dire as to prospective Juror Sturgeon preventing rehabilitation; (I)(D) the trial court failed to require the

State to prove good cause to strike Juror Coggins for cause after the jury had been sworn as there was no reasonable doubt as to his qualifications to serve on the jury; (II) the trial court erred when it sustained Appellee's relevance objection as to Appellant's cross-examination of witness Harden; and (III) the trial court erred in denying the motion to suppress because no reasonable suspicion existed to detain Appellant. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

In its Answer Brief, Appellee concedes error as to claim (I)(A) - the trial court's denial of Appellant's peremptory challenge as to Juror Nfinger. The Court concurs with the concession of error. See Florida Rule of Criminal Procedure 3.350(d); *Peacher v. Cohn*, 786 So. 2d 1282, 1284 (Fla. 5th DCA 2001); and *Gilliam v. State*, 514 So. 2d 1098 (Fla. 1987). Having conceded error on claim (I)(A), the Court declines to address the merits of Appellant's remaining trial error claims set forth as (I)(B) - (D) and (II). However, the Court will address claim (III) that the trial court erred in denying Appellant's motion to suppress.

A trial court's ruling on a motion to suppress is subject to a mixed standard of review. The standard of review of the findings of fact is whether competent substantial evidence supports the trial court's factual findings. An appellate court reviewing a ruling on a motion to suppress presumes that a trial court's findings of fact are correct and reverses those findings only if they are not supported by competent substantial evidence. *Connor v. State*, 803 So. 2d 598, 608 (Fla. 2001). Whether a particular set of facts can justify a finding that a police officer had a reasonable suspicion to conduct an investigative detention is a question of law. *See Ornelas v. United States,* 517 U.S. 690, 697 (1996); *Ikner v. State,* 756 So. 2d 1116, 1118 (Fla. 1st DCA 2000). The court's application of the law to the facts is reviewed *de novo*. *Hawley v. State*, 913 So. 2d 98, 100 (Fla. 5th DCA 2005).

The evidence presented at the hearing on the motion to suppress was such that Officer David Ireland ("Ireland") responded to a call for service at the Friendly Confine's restaurant at 12:30 a.m., on August 4, 2016. It was reported that employees of the restaurant witnessed Appellant driving a blue BMW around the parking lot looking for a girl named Samantha and that Appellant had a curfew. At 1:03 a.m., Ireland witnessed the blue BMW driving around the parking lot traveling directly towards him. Ireland maintained visual contact with Appellant's vehicle as it drove through the parking lot and entered a parking spot and stopped. Ireland was unable to see the person driving the vehicle because it was dark outside, the vehicle had dark tint, and the vehicle's headlights were directly facing Ireland as it drove towards him.

Once the vehicle parked, Ireland immediately parked at the back passenger side of Appellant's vehicle while maintaining visual of the entire vehicle. Ireland did not utilize his emergency lights or siren. The vehicle's tag was registered to Appellant who had five (5) active suspensions on his license. Additionally, Ireland determined Appellant was on probation and had a curfew of 10:00 p.m. Ireland did not observe anyone enter or leave the vehicle after it parked other than Appellant who exited from the front passenger's door of the vehicle. There was no one in the vehicle after Appellant exited the vehicle.

Once Appellant exited the vehicle, Ireland observed he had red glassy eyes, slurred speech, and an obvious odor of alcohol emanating from his person, which became stronger as he spoke to Ireland. Appellant also exhibited an orbital sway when speaking with Ireland. Ireland testified that while it was dark outside, the parking lot was illuminated, and he was able to clearly see if anyone else exited the vehicle. Ireland maintained visual contact with the vehicle from the time it entered the parking lot and no one else besides Appellant was located within 100 feet of the vehicle.

The evidence at the hearing on the motion to suppress established Ireland had reasonable suspicion to detain Appellant and request field sobriety exercises in order to determine whether there was probable cause for an arrest. *Carder v. Dep't of Highway Safety & Motor Vehicles,* 15 Fla. L. Weekly Supp. 547a n. 2 (Fla. 9th Cir. Ct. Sept. 4, 2007) (combination of bloodshot, glassy eyes and odor of alcohol provide reasonable suspicion to request driver submit to FSE's, even if speech not slurred); and *Fewell v. State,* 14 Fla. L. Weekly Supp. 704a (Fla. 9th Cir. Ct. May 14, 2007) (bloodshot eyes and strong odor of alcoholic beverage sufficient reasonable suspicion to request FSE's). There was evidence Appellant was seen driving the vehicle around the parking lot prior to Ireland observing the vehicle enter the parking lot and pull into a parking spot. Furthermore, after maintaining a visual on the vehicle, no one entered or exited the driver's side of the vehicle once it stopped. Accordingly, this Court finds there was reasonable suspicion to believe Appellant was the driver of the vehicle and there was reasonable suspicion to detain Appellant in order to conduct a DUI investigation.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the trial court's order denying the motion to suppress is **AFFIRMED**. It is further **ORDERED AND ADJUDGED** that Appellant's conviction is **REVERSED** and the case is **REMANDED** for a new trial in light of Appellee's concession of error. Having reversed and remanded the case for a new trial, the Court declines to address any remaining trial court errors raised in claims (I)(B) – (D) and (II).

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this ___ day of _____, 2017.

/s/_____
GREG A. TYNAN
Presiding Circuit Judge

MUNYON and G. ADAMS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished by U.S. mail or hand delivery to **Stephan Krejci, Assistant Public Defender**, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801; **Carol Reiss, Assistant State Attorney,** Office of the State Attorney**,** 415 North Orange Avenue, Post Office Box 1673, Orlando, Florida 32801; and **The Honorable Andrew L. Cameron**, 415 N. Orange Avenue, Orlando, Florida 32801, on this ____ day of _____, 2017.

_____
Judicial Assistant