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

APPELLATE CASE NO: CJAP 06-37
LOWER COURT CASE NO: 2006-CT-11149

STATE OF FLORIDA,
Appellant,
vs.

JOHN DAVID CALLAWAY,
Appellee.
_____/

Appeal from the County Court for Orange County, Florida, Mike Murphy, County Court Judge

Lawson Lamar, State Attorney and Lamya A. Henry, Assistant State Attorney, for Appellant

Warren W. Lindsey, Esq. and William R. Ponall, Esq., for Appellee

Before M. SMITH, MUNYON, and WATTLES, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State appeals the trial court's order rendered on October 3, 2006, granting John Callaway's (hereinafter "Appellee") Motion to Suppress.

Clair Flahaven testified at the suppression hearing that on July 22, 2006 at approximately 1:00 a.m., Appellee hit her Jeep Grand Cherokee from behind with his vehicle. According to Ms. Flahaven at the time of the crash, she was stopped at a red light at the intersection of University Boulevard and Suntree Boulevard in the left hand turn lane and there were no vehicles in front or behind her vehicle. Ms. Flahaven testified that her Jeep Grand Cherokee was pushed forward as a result of the impact. She stated that she exited her vehicle to observe the

damage and noticed that there was a lot of damage to Appellee's car but little damage to her vehicle. An Orange County deputy arrived at the scene and asked Ms. Flahaven and Appellee to pull their vehicles over to the side of the road. As Appellee began to move his vehicle to the side of the road, Ms. Flahaven claimed she heard Appellee and another vehicle get into an accident.

Trooper Leonard Yuknavage from the Florida Highway Patrol was dispatched to the crash location. He testified that when he arrived at the scene, he observed one vehicle in the intersection and another vehicle just past the intersection. Trooper Yuknavage claimed that he spoke with the driver of the second crash who stated that he was in the right lane when Appellee pulled out in front of him from the turn lane and he couldn't stop in time and they hit. Trooper Yuknavage also stated that Ms. Flahaven and Appellee both indicated that Appellee's vehicle was in the intersection. The trooper testified that he made contact with Ms. Flahaven and she explained what happened. The trooper stated that after he prepared a crash report and called tow trucks to remove the vehicles from the roadway, he instructed the parties involved in the crashes to exchange driver information.

Trooper Yuknavage testified that when he spoke with Appellee, he noticed an odor of alcohol, slow speech, red droopy eyes, a noticeable sway, and a red paper wristband on Appellee's left wrist. The trooper claimed that he informed Appellee that he was conducting a criminal investigation of Driving Under the Influence ("DUI") and read Appellee his *Miranda* rights. According to the trooper, Appellee said that he was coming from a local restaurant and had about four beers. The trooper stated that he then conducted field sobriety tests and arrested Appellee for DUI. Appellee was transported to the Orange County Breath Testing Center where he was given a breath test and the results were 0.210 and 0.230.

Appellee alleged in his Motion to Suppress that there was no probable cause to arrest him for DUI. The court made the specific finding that the trooper conducted his investigation at the scene of a crash. However, the court granted the Motion to Suppress and ruled that the State failed to establish that the trooper made a valid warrantless arrest for Driving Under the Influence pursuant to section 316.645, Florida Statutes (2006) because the trooper did not testify that he observed damage to any of the vehicles involved in the crash.

A ruling on a motion to suppress is a mixed question of law and fact. *State v. Kindle*, 782 So. 2d 971 (Fla. 5th DCA 2001). When reviewing a ruling on a motion to suppress, an appellate court must accept the trial court's findings of historical fact. *Pagan v. State*, 830 So. 2d 792 (Fla. 2002); *State v. Rodriguez*, 904 So. 2d 594 (Fla. 5th DCA 2005). The trial court's application of the law to the facts in a motion to suppress is reviewed under a de novo standard. *Id.*

The State argues that Appellee was lawfully arrested for DUI pursuant to section 316.645, Florida Statutes. The court found that Trooper Yuknavage conducted an investigation at the scene of a crash and Ms. Flahaven testified that there was a lot of damage to Callaway's vehicle as a result of the crash. The State claims that the fact that the trooper had to call a tow truck to remove the vehicles involved indicates that there was damage to the vehicles. The State argues that these facts demonstrate that there was a traffic crash and the trooper's failure to specifically use the word damage at the hearing should not render Appellee's arrest unlawful.

Appellee argues that his arrest could only be considered lawful if the State established that section 316.645 applied because the offense was not committed in the presence of the arresting officer. He claims that the State failed to meet its burden because the trooper provided no testimony that he or any other law enforcement officer personally observed any damage on any of the vehicles involved in the incident. He also claims that without such testimony, there is

no basis for the court to conclude that the trooper had reasonable cause to believe that he committed the offense of DUI in connection with a traffic crash. Appellee argues that information concerning damage relayed to the trooper by a witness could not be considered for purposes of reasonable determination pursuant to section 316.645.

Generally, a law enforcement officer may only make a warrantless arrest for a misdemeanor if the offense was committed in the officer's presence. § 901.15, Fla. Stat. (2006); *State v. Hemmerly*, 723 So. 2d 324 (Fla. 5th DCA 1998). Section 316.645, Florida Statutes is an exception to this rule which provides:

> "A police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash, when based upon personal investigation, the officer has reasonable and probable grounds to believe that a person has committed any under the provisions of this chapter or chapter 322 in connection with the crash."

In the instant case, Appellee was not in his car when the trooper arrived at the scene and the crashes did not take place in the trooper's presence. Therefore, the State must establish that the arrest was valid pursuant to the exception in section 316.645. The trial court relied on *Department of Highway Safety and Motor Vehicles v. Williams*, 937 So. 2d 815 (Fla. 1st DCA 2006) in making its decision. In *Williams*, the court concluded that the term "traffic crash" contemplates some degree of damage, even if it's only nominal, but does not imply that the damage must have occurred to the property of another. *Williams*, 937 So. 2d at 817. The court considered the common definition of "crash" defined as "a breaking to pieces by or as if by collision," and "collide" defined as "to come together with solid or direct impact." *Id.* (citations omitted).

The trial court in this case interpreted *Williams* as requiring the trooper to testify about damage caused by the crash in order for the State to meet its burden of a valid arrest pursuant to

section 316.645. However, the *Williams* court did not state that the officer is required to testify that there was damage to establish that a traffic crash occurred pursuant to section 316.645. In fact, in *Brooks v. State*, the court affirmed the trial court's finding that a "traffic crash" occurred pursuant to section 316.645 although the record revealed that the deputy did not see any signs of damage. *Brooks v. State*, 14 Fla. Supp. 616a (Fla. 17th Cir. Ct. 2007), *cert. denied*, 4D07-1894 (Fla. 4th DCA 2007). The court also stated that the conclusion that a traffic crash occurred was supported by testimony of the other party involved in the crash that appellant's vehicle "collided" with her vehicle. *Id.* Similarly in the instant case, it is not necessary for the trooper to testify about signs of damage in order to establish that a traffic crash occurred. Ms. Flahaven's testimony that Appellee hit her vehicle from behind, Appellee's vehicle had a lot of damage, and she told the trooper what happened establishes that there was a traffic crash. In addition, the testimony of the trooper that the second party involved in the accident reported that his and Appellee's car "hit" further supports a finding that a traffic crash occurred.

Appellee's argument that information concerning damage relayed to the trooper by a witness could not be considered for purposes of reasonable determination pursuant to 316.645 is incorrect. A law enforcement officer is not barred from testifying at a criminal trial regarding statements made by a non-defendant during a traffic investigation since the defendant's privilege against self-incrimination would not be violated. § 316.066(4), Fla. Stat. (2005), *amended by* § 316.066(7), Fla. Stat. (2006); *State v. Cino*, 931 So. 2d 164, 168 (Fla. 5th DCA 2006). Therefore, Ms. Flahaven's testimony can be considered to establish that a traffic crash occurred. In addition, the trooper's testimony that he was dispatched to the scene of a crash; the trooper's testimony that the party involved in the second crash stated that his vehicle and Appellee's vehicle "hit"; the fact that the trooper called tow trucks to remove the vehicles; and the trial

court's finding that the trooper made his investigation at the scene of a crash all support a finding that there was a traffic crash. Therefore, the evidence put forth by the State was sufficient to establish that a traffic crash occurred pursuant to section 316.645.

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 matter is **REMANDED** for further proceedings.

DONE AND ORDERED on this __10__ day of _October_____ 2007.

__/S/_____
MAURA T. SMITH
Circuit Court Judge

__/S/_____
LISA T. MUNYON
Circuit Court Judge

___/S/_____
BOB WATTLES
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order Reversing Trial Court has been provided to **Warren W. Lindsey, Esq. and William R. Ponall, Esq**., Kirkconnell, Lindsey, Snure, and Yates, P.A., P.O. Box 2728, Winter Park, Florida 32790-2728; and to **Lamya A. Henry, Assistant State Attorney**, P.O. Box 1673, Orlando, Florida 32802 this _10____ day of ____October_____ 2007.

___/S/_____
Judicial Assistant