

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

APPELLATE CASE NO: **07-AP-83**
LOWER COURT CASE NO: 2007-CT-113028-O

STATE OF FLORIDA,
Appellant,
vs.

AMANDA SUE SCOTT,
Appellee.

Appeal from the County Court for Orange County,
Florida, Maureen Bell, County Court Judge

Lawson Lamar, State Attorney, and Christina J. Dubois,
Assistant State Attorney, for Appellant

Joerg F. Jaeger, Esquire, Jaeger & Blankner,
for Appellee

Before LeBlanc, Kirkwood, and Mackinnon, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

The State of Florida appeals the trial court's Order granting Amanda Sue Scott's Motion to Suppress, rendered November 30, 2007. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). After consideration of the record on appeal and the parties' briefs, this Court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, affirms the ruling of the trial court.

Deputy Recca observed Ms. Scott's vehicle pass him at a high rate of speed. He followed the vehicle for half a mile and observed it traveling too fast for the area. Therefore, he initiated a traffic stop. At that point, he did not suspect the driver was

under the influence of alcohol. Ms. Scott produced her driver's license without incident and after a search, produced expired registration and insurance documents, for which she was not cited. Most of the time, she was facing away from the officer and smoking a cigarette. After confirming the validity of the license, Deputy Recca issued a citation, returned the driver's license, and began to explain the citation.

Deputy Recca then observed that Ms. Scott had glassy red eyes, and he detected the odor of alcohol but not slurred speech. He asked if she had anything to drink and she replied that she had consumed two beers and a glass of wine after dinner. He asked her to perform field sobriety exercises and based on his observations, placed her under arrest for DUI. On cross-examination, he acknowledged he had not seen her vehicle weaving or crossing the lanes of traffic.

The trial court granted Ms. Scott's Motion to Suppress, finding the "continued detention ... after issuance of the citation was improper." The trial court also found "no testimony was presented of any observations made by Deputy Recca that [Ms. Scott] was impaired by the alcohol she had consumed earlier and there was no reasonable suspicion to believe that [Ms. Scott] was engaged in criminal activity."

On appeal, the State raises two arguments: (1) A law enforcement officer does not have to tell the defendant they are free to leave after identification is given back. [sic] (2) Reasonable suspicion is the standard for a law enforcement officer to investigate a DUI and red, glassy, watery eyes, odor of alcohol, and speeding is enough reasonable suspicion. [sic]

"A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness and the court must interpret the evidence and

reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling.” *Terry v. State*, 668 So. 2d 954, 958 (Fla. 1996). A motion to suppress presents a mixed question of law and fact. The standard of review for the findings of fact is whether they are supported by competent, substantial evidence, whereas review of the application of the law to the facts is de novo. *Ornelas v. United States*, 517 U.S. 690 (1996).

The circuit court, in reviewing the ruling on a motion to suppress, may not reweigh the evidence or substitute its judgment for that of the lower court. If there is any competent substantial evidence to support the trial court's ruling, it must be sustained regardless of the reviewing court's opinion as to its appropriateness. The circuit court should accept the county court's determination of the facts and its evaluation of the witnesses. *Maurer v. State*, 668 So.2d 1077, 1079 (Fla. 5th DCA 1996). The county court is free to ignore or place less emphasis on certain testimony and need not give equal weight to all evidence presented at the suppression hearing. *Sunby v. State*, 845 So. 2d 1006, 1007 (Fla. 5th DCA 2003).

The State first contends an officer does not have to tell a motorist she is free to leave. This is a curious argument, because there is no indication the trial court believed otherwise. The suppression Order merely states, correctly, that to justify detention beyond the time needed to issue a citation, the officer must have a reasonable suspicion based on articulable facts that criminal activity is occurring.

The State also argues the trial court erred when its Order indicated that Ms. Scott's continued detention after issuance of the citation was improper, *citing State v. Stone*, 889 So. 2d 999 (Fla. 5th DCA 2004). This would appear to be the more

substantive point. Once an officer stops a car for a traffic infraction,¹ the officer is justified in detaining the driver “only for the time reasonably necessary to issue a citation or warning.” *D.A. v. State*, 10 So. 3d 674, 676 (Fla. 3d DCA 2009), quoting *State v. Moore*, 791 So. 2d 1246, 1249 (Fla. 1st DCA 2001). However, additional questions do not automatically make the detention unreasonable. *Id.*; *Stone*, 889 So. 2d at 1000. In this respect, the State’s argument is well-taken, but this Court finds there was competent, substantial evidence to support the trial court’s ruling.

After issuing the citation, the officer was not required to ignore Ms. Scott’s glassy red eyes or the odor of alcohol and arguably, these factors, combined with her speeding, *could* establish reasonable suspicion that she was driving under the influence of alcohol. Regardless, the trial court found the officer did not testify that he made any observations that indicated Ms. Scott was actually impaired by alcohol, before asking her to perform field sobriety exercises, and found there was no reasonable suspicion she was engaged in criminal activity. In support, the suppression Order cited four other trial court orders with similar facts, including *State v. Littlefield*, 13 Fla. L. Weekly Supp. 1000a (9th Cir. 2006).²

The trial court did not find the officer’s testimony sufficient to establish reasonable suspicion for her continued detention. To find that the trial court should have

¹ There is no dispute that the initial stop for speeding was valid.

² In *Littlefield*, an officer followed the driver, conducted a traffic stop for a malfunctioning tail light, and as in the instant case, smelled alcohol and observed that the driver’s eyes were glassy and watery. He noticed no other signs of impairment or abnormal speech. The trial court found there was no reasonable suspicion to commence a DUI investigation and granted Littlefield’s Motion to Suppress.

denied the Motion to Suppress would be to re-weigh the evidence and substitute the opinion of this Court, which is not appropriate.

Based on the foregoing, it is ORDERED AND ADJUDGED that the judgment and sentence of the trial court are AFFIRMED.

DONE AND ORDERED on this 6th day of January 2010.

/S/ _____
ROBERT P. LEBLANC
Circuit Court Judge

/S/ _____
LAWRENCE R. KIRKWOOD
Circuit Court Judge

/S/ _____
CYNTHIA Z. MACKINNON
Circuit Court Judge

Certificate of Service

I certify that a copy of the foregoing Final Order Affirming Trial Court has been provided this 6th day of January 2010 to Christina J. Dubois, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; and to Joerg F. Jaeger, Esquire, Jaeger & Blankner, 217 E. Ivanhoe Boulevard North, Orlando, Florida 32804.

/S/ _____
Judicial Assistant