

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

MELVIN PANIAGUA,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. CJAP 08-01

Cty Ct Case No. 48-2007-CT-013249-O

Appeal from the County Court,
Orange County

Hon. Maureen Bell, County Judge

Lamaya A. Henry, Esquire,
for Appellant

Christina J. Patterson, Assistant State Attorney
for Appellee

Before Rom W. Powell, Senior Judge, Stan Strickland and Tim Shea, J. J.

FINAL ORDER AFFIRMING LOWER COURT

Appellant Paniagua entered a conditional plea of nolo contendere to the charge of DUI and appeals an order denying his pre-trial motion to suppress evidence. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. After careful consideration of the record on appeal, the transcript of the motion hearing, the briefs filed by counsel and the applicable law, we affirm.

Appellant correctly states in his brief that under *section 316.645, Florida Statutes*, an officer has the authority to arrest a person for DUI where he investigates a traffic crash and

develops probable cause to charge the person with the offense of driving while intoxicated. Appellant's two arguments are (1) that the state did not establish that a traffic crash occurred, and (2) that the investigating officer did not see appellant driving or in control of a motor vehicle, thus lacking probable cause for one of the essential elements of the offense of driving while intoxicated.

Under the statute, it is not necessary that a crash of a vehicle actually occurred; it is sufficient if the investigating officer *reasonably believed* that such crash occurred. *See Runyon v. Dep't of Highway Safety and Motor Vehicles*, 10 Fla. Law Weekly Supp. 588a (Fla. 13th Cir. Ct. June 13, 2003). After discussing the various meanings of the word "crash," the court in *Dep't of Highway Safety and Motor Vehicles v. Williams*, 937 So. 2d 815 (Fla. 1st DCA 2006), held that minimal damage to Williams' car resulting from an impact with another object was sufficient to establish a "traffic crash" within the meaning of the statute.

Here, when the investigating officer arrived there was only appellant's damaged car there on the shoulder with appellant sitting nearby. The officer testified he believed that appellant's car had collided with a median strip. In our view, the officer's belief was reasonable, and there was sufficient competent evidence to establish that a traffic crash within the meaning of the statute had occurred.

Further, two courts have held that although the investigating officer may not see it, he can rely upon circumstantial evidence to deduce that a defendant was driving a vehicle. *See Boynton v. State*, 556 So. 2d 428 (Fla. 4th DCA 1989) (car inoperable in ditch; defendant the sole occupant in driver's seat). *See also State v. Hemmerly*, 723 So. 2d 324 (Fla. 5th DCA 1998) (two occupants in rear seat of damaged car; one occupant indicated the other was driving and the other, the defendant Hemmerly, made no response).

In the instant case, the damaged car was on the shoulder with no other vehicles around, one tire was flat and another tire was lying on the ground three feet away. Appellant was the sole person at the scene. When asked, appellant told the officer he was coming from a bar and had had three drinks. We find that this was sufficient competent evidence to establish circumstantially that appellant was driving the damaged vehicle. [Appellant does not challenge the trial judge's implied finding that there was probable cause that appellant was alcohol impaired.]

Based upon the foregoing, we conclude that the officer here was investigating a "traffic crash" within the purview of *section 316.645, Florida Statutes*, and that while doing so he developed probable cause that appellant had been driving while under the influence of alcohol so as to lawfully charge appellant and arrest him for the offense of DUI.

Consequently, the order appealed from is

AFFIRMED.

DONE and ORDERED at Orlando, Florida this 2nd day of August, 2010.

/S/
Rom W. Powell, Senior Judge

/S/
Stan Strickland, Circuit Judge

/S/
Tim Shea, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Lamaya A. Henry, Esquire, attorney for appellant, 1999 W. Colonial Dr., Orlando FL 32804, and to Christiana J. Patterson, Assistant State Attorney, attorney for appellee, P.O. Box 1693, Orlando FL 32801, by mail, this 2nd day of August, 2010.

Judicial Assistant