

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

STATE OF FLORIDA,

Appellant,

v.

CASE NO.: 09-AP-04

Lower Court Case No.: 2008-CT-15844-O

ANDREW JORDAN,

Appellee.

Appeal from the County Court,
for Orange County,
Deborah B. Ansbro, Judge.

Lawson Lamar, State Attorney, and
Esther M. Whitehead, Assistant State Attorney,
for Appellant.

Andrew J. Chmelir, Esquire,
for Appellee.

Before O'KANE, M. SMITH, and GRINCEWICZ, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING TRIAL COURT

Appellant, State of Florida (the "State"), timely appeals the trial court's order granting Appellee Andrew Jordan's ("Jordan") Motion to Suppress. This Court has jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(1)(B) and 9.140(c)(1)(B). After consideration of the record on appeal and the parties' briefs, we dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and we affirm the trial court.

On October 29, 2008, Jordan was involved in a motor vehicle collision. At the conclusion

of the crash investigation, Officer R. D. Schellhorn (“Officer Schellhorn”), of the Orlando Police Department, initiated a DUI investigation and read Jordan his Miranda rights. Jordan responded that he understood his Miranda rights, and at that time he requested to speak to a lawyer. Officer Schellhorn then proceeded to ask Jordan questions and persuaded him to perform field sobriety exercises. Based on Officer Schellhorn’s observations, he arrested Jordan for DUI and transported him to the Orange County DUI Center. At the DUI Center, Jordan submitted to a breath test.

During the pretrial phase, Jordan filed a Motion to Suppress, specifically seeking to suppress, *inter alia*, the field sobriety exercises and the breath test. At the Motion to Suppress hearing, the State’s sole argument to validate and establish the admissibility of the field sobriety exercises was Jordan’s consent. The State failed to make any argument for the admissibility of the breath test. The trial court found that the State failed to meet its burden of proof, and it suppressed both the field sobriety exercises and the breath test results.

On appeal, the State’s sole argument is that the trial court erred in granting Jordan’s Motion to Suppress because field sobriety exercises are not voluntary and law enforcement officers can compel performance. Again, the State did not make any argument regarding the breath test. On the other hand, Jordan argues that the trial court’s order must be affirmed because the State’s sole argument on appeal was never presented to the trial court.

“[A] trial court’s ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court’s ruling.” Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002).

“[I]n order for an argument to be cognizable on appeal, it must be the specific contention

asserted as legal ground for the objection, exception, or motion below.” Baptiste v. State, 995 So. 2d 285, 302 (Fla. 2008) (quoting Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982)). There is no evidence in the record demonstrating that the State’s sole argument on appeal was ever raised before the trial court. In fact, the Motion to Suppress hearing transcript confirms that the argument was not raised at the hearing. Therefore, the argument has been waived, and this Court does not consider it.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court’s order granting Appellee Andrew Jordan’s Motion to Suppress is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the 23 rd day of August, 2010.

/S/

JULIE H. O’KANE
Circuit Judge

/S/

MAURA T. SMITH
Circuit Judge

/S/

DONALD E. GRINCEWICZ
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail or hand delivery to: **Esther M. Whitehead, Assistant State Attorney**, Post Office Box 1673, Orlando, Florida 32802 and **Andrew J. Chmelir, Esq., Jacobson, McClean, Chmelir & Ferwerda**, 351 East State Road 434, Suite A, Winter Springs, Florida 32708 on the 25th day of August, 2010.

/S/

Judicial Assistant