

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

CASE NO: 2011-AP-21  
Lower Court Case No: 2011-CT-939

**STATE OF FLORIDA,**

Appellant,  
vs.

**HARVEY LEE TILLMAN,**

Appellee.  
\_\_\_\_\_ /

Appeal from the County Court,  
for Orange County, Florida,  
Carolyn B. Freeman, County Court Judge

Robert Wesley, Public Defender and  
Karla M. Reyes, Assistant Public Defender,  
for Appellant

Lawson Lamar, State Attorney and  
Dugald McMillan, Assistant State Attorney,  
for Appellee

Before POWELL, KOMANSKI, and GRINCEWICZ, J.J.

**PER CURIAM.**

**FINAL ORDER REVERSING TRIAL COURT**

Appellant State of Florida appeals an order granting appellee Tillman's pretrial motion to suppress. We dispense with oral argument pursuant to Florida Appellate Rule 9.320, and reverse.

Neither the written order nor the transcript of the suppression hearing contained any findings of fact.<sup>1</sup> Therefore, after a careful, impartial review of the hearing transcript, we summarize the facts as follows.

Deputy Sheriff Lott testified that he was on routine patrol in uniform in a marked patrol car on Thursday, December 23, 2011 at 11:16 p.m. He observed a car illegally parked half on the sidewalk and half on the paved space in front of the business. The engine was running and the lights were off. Appellee was behind the wheel with the seat slightly reclined, his head leaning back, his eyes closed. In order to check on his welfare, the deputy pulled in behind Appellee's car, and tried to arouse him by shining his spotlight through Appellee's back window. Finally, after Deputy Lott shined his flashlight through the half opened driver's window and began speaking to him, Appellee became aroused and appeared slightly disoriented. His speech was sluggish and the deputy Lott noticed an odor of alcohol coming from Appellee or the car. Deputy Lott then asked Appellee to get out of his car which he did.

Deputy Denardo arrived as a backup officer. He testified that when he made contact Appellee was unsteady on his feet, and had a sway when he walked. His speech was very slow and slurred. His eyes were watery and bloodshot. He said he had a half a beer earlier. He performed poorly on the field sobriety exercises. Deputy Denardo then placed Appellee under arrest for DUI.

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<sup>1</sup>In the case at bar, *before* Tillman got out of his car, the officer observed the following: 1) it was late evening; 2) defendant's car was illegally parked in a bizarre manner; 3) Tillman was slow in arousing; 4) there was an odor of alcohol emanating from the car or his person; 5) his speech was sluggish; and 6) the officer testified he was concerned about the driver's well-being. The trial judge made not a single comment on the record which would indicate a weighing of the evidence or a credibility determination.

Once the facts have been determined, an appellate court must then consider whether the trial court applied the correct law to the facts in reaching its conclusion. This is a question of law, to be independently determined *de novo*. *Tyson v. State*, 922 So. 2d 338 (Fla. 5th DCA 2006); *State v. Ramos*, 755 So. 2d 836 (Fla. 5th DCA 2000). Each case must be decided on the totality of its own particular facts, with regard however to the outcomes of prior cases involving similar facts. *U.S. v. Arvizu*, 534 U.S. 266 (2002).

Florida appellate and trial courts have decided a series of cases dealing with investigative stops of parked cars having similar facts which we find controlling. *See Dermio v. State*, 112 So. 3d 551 (Fla. 2d DCA 2013); *State v. Jimoh*, 67 So. 3d 240 (Fla. 2d DCA 2010), *rev. den.* 64 So. 3d 117 (Fla. 2011); *Vitale v. State*, 946 So. 2d 1220 (Fla. 4th DCA 2007); *State v. Roosa*, 14 Fla. L. Weekly Supp. 1007a (Fla. 6th Cir. Ct. June 15, 2007); *State v. Wengers*, 12 Fla. L. Weekly Supp. 722a (Fla. 15th Cir. Ct. May 16, 2005); *Keyser v. State*, 11 Fla. L. Weekly Supp. 10a (Fla. 15th Cir.Ct. Oct. 28, 2003); *Zuniga v. Dep't of Highway Safety & Motor Vehicles*, 9 Fla. L. Weekly Supp. 524a (Fla. 13th Cir. Ct. May 20, 2002); *Gardner v. State*, 8 Fla. L. Weekly Supp. 350b (Fla. 15th Cir. Ct. April 3, 2001); *State v. Logan*, 10 Fla. L. Weekly Supp. 166a (Fla. 18th Cir. Ct. Jan. 25, 2001); *Sweetman v. State*, 13 Fla. L. Weekly Supp. 865a (Fla. 15th Cir.Ct. May 31, 1996); *State v. Gentile*, 18 Fla. L. Weekly Supp. 244a (Fla. Brevard Cty. Ct. Nov. 18, 2010); *State v. McHugh*, 7 Fla. L. Weekly Supp. 283a (Fla. Palm Beach Cty. Ct. 2000).

Appellee Tillman relies on *Danielewicz v. State*, 730 So. 2d 363 (Fla. 2d DCA 2002) in his brief here as he did at the suppression hearing. We assume that the trial court did likewise. But that case is factually distinguishable. There, the defendant was legally parked in the parking lot of a restaurant. The officer did not notice an odor of alcohol until *after* the defendant had exited the car. The officer did not testify that he was concerned for the defendant's well-being.

Based upon the foregoing, we reverse the trial court's order granting Tillman's motion to suppress and remand this case for further proceedings.

**REVERSED and REMANDED.**

**DONE AND ORDERED** at Orlando, Florida this 26th day of July, 2013.

/S/ \_\_\_\_\_  
**ROM W. POWELL**  
Senior Judge

/S/ \_\_\_\_\_  
**WALTER KOMANSKI**  
Circuit Judge

/S/ \_\_\_\_\_  
**DONALD E. GRINCEWICZ**  
Circuit Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing order was furnished to **Karla M. Reyes, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Carolyn B. Freeman**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 26th day of July, 2013.

/S/ \_\_\_\_\_  
Judicial Assistant