

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

STATE OF FLORIDA,

APPELLATE CASE NO: 2013-AP-25-A-O
Lower Case No. 2012-CT-10331-A-O

Appellant,

vs.

KYLE JOHN SCHROETTINGER,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
A James Craner, County Court Judge

Jeffrey L. Ashton, State Attorney
and Syed M. Qadri, Assistant State Attorney
for Appellant

Paula C. Coffman, Esq.
for Appellee

Before APTE, THORPE and MURPHY, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Following a traffic stop, Kyle John Schroettinger (“Appellee”) was arrested for driving under the influence. The trial court granted his motion to suppress the traffic stop. The State (“Appellant”) now appeals. We reverse.

Facts and Procedural History

On April 8, 2013, Appellee filed a motion to suppress the traffic stop. On May 28, 2013, the trial court granted the motion to suppress, following a hearing held on that same day. During the hearing, Officer Mark Carter testified as follows:

On November 4, 2012, at approximately 5:00 a.m., while driving East on Colonial Drive, Officer Carter noticed a vehicle swerve twice over the double yellow lines and conducted a traffic stop. Appellee swerved into a level concrete median, but did not swerve into oncoming traffic or affect any other traffic or drivers. Officer Carter could not recall if the swerve was a jerking movement or if Appellee had his turn signal on, but at least half of Appellee's car went completely over the double yellow line. It did not appear to him that Appellee was making a turn and the movement was not gradual. Officer Carter was not exactly sure if the lane was a turn lane, but it was large enough for a vehicle to enter and he was not aware of a reason for a vehicle to be in that space.

Officer Carter was not sure what to think, but wanted to make sure Appellee was okay, and at that time of the night the quick swerve over the line twice led him to believe that Appellee could be impaired. Officer Carter did not notice any other driving pattern except for the swerves as Appellee was not speeding or going abnormally slow and did not make any erratic stops. Officer Carter had been an officer with the Orlando Police Department for 1 ½ years.

At the conclusion of the suppression hearing, the trial court granted Appellee's motion to suppress. The trial court orally found that: (1) there was no violation of section 316.089(1), because there was no evidence that Appellee affected any other traffic or did not operate the car as nearly as practicable within a single lane; (2) it did not hear any evidence of a welfare check; (3) the instant case was distinguishable from *Yanes v. State*, 877 So. 2d 25 (Fla. 5th DCA 2004), because Appellee went over the line twice instead of three times, and there was no discussion of distance over which the swerves were observed, while the observation in *Yanes* was over the course of a mile; (4) the officer did not articulate why he thought he was impaired, but just uttered the "magic words" that the driver could be impaired; and (5) it was a close call but he

would give the benefit to Appellee. The trial court entered the written order granting the motion to suppress the traffic stop at the conclusion of the hearing on May 28, 2013. The State filed a Notice of Appeal on June 4, 2013.

Issues

Appellant raises the following two issues on appeal: (1) the trial court erred when it found that probable cause was required to determine whether the stop was legal; and (2) the trial court erred when it found that an officer must articulate why someone is impaired to justify a traffic stop under *Yanes*. Appellee responds that the trial court's presumptively correct ruling should be affirmed.

Standard of Review

A trial court's ruling on a motion to suppress is subject to a mixed standard of review. The standard of review for findings of fact is whether competent, substantial evidence supports those findings; however the application of law to the facts is reviewed *de novo*. *State v. Quinn*, 41 So. 3d 1011, 1013 (Fla. 5th DCA 2010). “

Analysis and Conclusion

The Fifth District Court has explained that “[a]s a general matter, the decision to stop an automobile is reasonable for purposes of the Fourth Amendment where the police have probable cause to believe that a traffic violation has occurred.” *State v. Lee*, 957 So. 2d 76, 79 (Fla. 5th DCA 2007) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *State v. Robinson*, 756 So. 2d 249, 250 (Fla. 5th DCA 2000) (the subjective intention of the officer who made the traffic stop is not relevant in the probable cause analysis).

There was competent, substantial evidence to support the trial court's findings of fact that Appellee swerved twice over the double yellow lines as testified to by Officer Carter. It is

unclear from the record whether the trial court applied the reasonable suspicion or probable cause standard when it determined that there was not a sufficient basis for the stop; however this Court must conduct a *de novo* review of the application of the law to the facts. Section 316.081(4), Florida Statutes provides that:

Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under paragraph (1)(b). However, this subsection shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road, or driveway.

Thus, the trial courts factual finding that Appellee swerved twice over the double yellow line provided probable cause for a traffic stop. *See State v. Arellano*, 13 Fla. L. Weekly Supp. 952a (Fla. 9th Cir. Ct. June 7, 2006).

It is therefore **ORDERED AND ADJUDGED** that the trial court's finding that the initial traffic stop was unlawful is **REVERSED** and we remand for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 11th day of September, 2014.

/S/
ALAN S. APTE
Presiding Circuit Court Judge

THORPE and MURPHY, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Syed M. Qadri, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 300, Orlando, Florida 32801; and to **Paula C. Coffman, Esq., Counsel for Appellee**, Post Office Box 561229, Orlando, Florida 32856 this 11th day of September, 2014.

/S/ _____
Judicial Assistant