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

APPELLATE CASE NO: 2014-AP-000027-A-O
LOWER CASE NO.: 2014-CT-001011-A-O

FRANKLIN W. CHASE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

Appeal from the County Court
for Orange County, Florida
Jeanette D. Bigney, County Court Judge

David S. Katz, for Appellant

Jeffrey L. Ashton, State Attorney
Erin Claire Bartholomew-Cook, Assistant State Attorney
for Appellee

Before TURNER, UNDERWOOD, MYERS, J.J.

FINAL ORDER REVERSING TRIAL COURT

Franklin Chase ("Appellant") appeals the denial of his Motion to Suppress 1. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

Facts and Procedural History

On February 3, 2014, Florida State Trooper, Peter Kilgore, arrested Appellant at the scene of the accident. Prior to Deputy Kilgore's arrival, an unknown Orange County Deputy had taken possession of Appellant's driver's license. That Deputy detained Appellant at the scene and turned him, and the license, over to Trooper Kilgore. The Trooper conducted an accident

investigation, asked Appellant to take a field sobriety test, and then arrested Appellant for driving under the influence, based on the test and the Trooper's observations.

Appellant filed a motion to suppress all evidence, including statements, observations, tests, etc., obtained as a result of an unlawful stop, seizure, search, and arrest. The motion alleged not only that Trooper Kilgore violated Appellant's rights, but also that Appellant "was detained for an unreasonable and unconstitutional amount of time awaiting the arrival of Trooper Kilgore."

On April 4, 2014, a hearing was held on Appellant's Motion to Suppress 1. In addition to Trooper Kilgore's testimony, as described above, the State called Giovanna Poma to testify. Ms. Poma stated that on February 3, 2014, her vehicle was struck from behind by Defendant's white pickup truck. After the crash, Ms. Poma knocked on the driver's door of Appellant's vehicle and asked if he were ok. Appellant lifted his head and looked at her, but did not respond. At the close of evidence, Appellant argued that the State had not presented any evidence as to why the Orange County Deputy had detained Appellant. The State argued that since the Orange County Deputy arrived at the scene of an accident, this was a crash investigation and Appellant was not free to leave the scene, but was required to stay on scene to give his information.

The trial court denied the motion. On May 16, 2014, the court entered a written order denying Appellant's Motion to Suppress and Motion for Reconsideration.

Standard of Review

A reviewing court must accept the trial court's findings of fact after a suppression hearing, unless they are clearly erroneous. *State v. Setzler*, 667 So. 2d 343, 346 (1st DCA 1995). The trial court's findings of fact must be supported by competent, substantial evidence. *Id.* The trial court's application of law to the facts is reviewed de novo. *Id.* The trial court's ruling has a

presumption of correctness, and is entitled to be interpreted in the light most favorable to the prevailing party. *Id*.

Analysis

The initial burden on a motion to suppress an illegal search is on the defendant to make an initial showing that the search was invalid. When that prima facie showing is made, however, the burden shifts to the state to prove that the search is valid. *Miles v. State,* 953 So.2d 778, 779 (Fla. 4th DCA 2007).

A warrantless search constitutes a prima facie showing which shifts to the state the burden of showing the search's legality. *Andress v. State*, 351 So.2d 350, 350 (Fla. 4th DCA 1977).

"[A]bsent an articulable suspicion of criminal activity, the time an officer takes to issue a citation should last no longer than is necessary to make any required license or registration checks and to write the citation. *Whitfield v. State,* 33 So. 3d 787, 790 (Fla. Dist. Ct. App. 2010) (citations omitted).

In the instant case, the State stipulated to the fact that it had the burden. Thus, the State was required to present evidence that the stop/detention/search was legal. The State presented Ms. Poma and Trooper Kilgore in its attempt to do so.

In its written order, the trial court noted that Appellant argued that there was a detention by the Orange County Deputy who had possession of Mr. Chase and Ms. Poma's drivers licenses. Citing to *Golphin v. State,* 945 So. 2d 1174 (Fla. 2006), the trial court held, in its written order, that "the retention of identification during the course of further investigation or search certainly factors into whether a seizure has occurred." The court then noted that

emergency vehicles were present and "there was no testimony to support whether Mr. Chase or Ms. Poma were free to leave or not free to leave."

It is precisely because of this lack of testimony that the State did not carry its burden. In its Answer Brief, the State contends that the contested stop and seizure was conducted by Trooper Kilgore, not the unknown Orange County Sheriff's Deputy. The State claims that the fact that the Trooper received Appellant's driver's license from the Deputy is insufficient to show the Deputy committed an illegal detention, and that Appellant did not present any evidence that demonstrated an illegal detention prior to Trooper Kilgore's interaction with him.

The State claims that Appellant was required to remain on scene because he presented no evidence that he complied with the mandates of section 316.065 Florida Statutes and gave notice of the crash to the local police department. The State contends that the videotape entered into evidence at the hearing showed damage in excess of $500 and thus section 316.065 was implicated. The State further alleges that no evidence was presented by Appellant that he was present against his will, that he was held for an unreasonably long amount of time, or that he was capable of leaving the scene had he wished.

However, as acknowledged by the State at the hearing on the motion to suppress, it was the State's burden to prove the stop/search/detention was constitutional. Thus, it is the State's burden to present evidence establishing that Appellant was not present against his will, and was not held for an unreasonable long amount of time.

In the instant case, there was no testimony of damage to Ms. Poma or to any vehicle or other property at all, let alone damage of at least $500. Thus, there was no evidence that Appellant was required to immediately notify the police, never mind remain at the scene of the accident. There was no testimony at all regarding whether the Deputy simply asked for Appellant's license or demanded it; whether Appellant was told by the Deputy to remain on

scene or not. Nor was there any testimony regarding the length of time between the Deputy obtaining Appellant's license and the arrival of Trooper Kilgore.

Contrary to the State's contention, Appellant not only alleged that his detention by Trooper Kilgore was unconstitutional, but that the initial detention by the Deputy was unlawful. It was incumbent upon the State to present evidence to show that the initial detention by the Orange County Deputy was lawful. Testimony by the Deputy regarding how he took possession of Appellant's driver's license, and why and how long he detained Appellant before Trooper Kilgore arrived may have provided such information. However, the State did not present this evidence. It did not present any evidence at all regarding the initial detention. Thus, it did not meet its burden of proof at the suppression hearing and the motion should have been granted.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the order denying Appellant's Motion to Suppress 1 is **REVERSED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 2nd day of September, 2015.

/S/
THOMAS W. TURNER
Presiding Circuit Judge

UNDERWOOD and MYERS, J.J., concur.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Final Order Affirming Trial Court has been provided to **David S. Katz, Esquire**, Katz & Phillips, P.A., 509 W. Colonial Dr., Orlando, Florida 32804, and to **Erin Claire Bartholomew-Cook, Esquire**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801 this 2nd day of September, 2015.

/S/
Judicial Assistant