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

STATE OF FLORIDA,

Appellant,

v.

BIANCA NICOLE BURRELL,

Appellee.
_____/

CASE NO.: 2015-AP-12-A-O
Lower Case No.: 2013-CT-8377-A-O

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

Jeffrey L. Ashton, State Attorney
Stacy G. Fallon, Assistant State Attorney
Attorney for Appellant

William R. Ponall, Esq.
Attorney for Appellee

Before LATIMORE, ROCHE, APTE, JJ.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State appeals an order granting Appellee's motion to suppress evidence regarding Appellee's performance on field sobriety exercises during her DUI arrest. Where a motion to suppress involves mixed questions of fact and law, the standard of review for the trial court's factual findings is whether competent substantial evidence supports the findings; the court's application of the law to the facts is reviewed de novo. *Hawley v. State*, 913 So. 2d 98, 100 (Fla. 5th DCA 2005).

Deputy Nye testified at the suppression hearing that on August 31, 2013 at about 12:40 a.m., he saw a vehicle approach an intersection and continue past the stop sign and stop line, coming to a stop in the crosswalk six feet past the stop line. The car turned right, after which the deputy initiated a traffic stop for failure to stop at the stop line. He said that when he spoke the driver, Appellee, her

breath smelled of alcohol and her eyes were bloodshot and watery. She told him she was coming from a bar and had four beers. He asked her to exit her car. He testified that she was unsteady and fell against the car. The deputy called for backup for a DUI investigation. On cross examination, the deputy admitted that the photographs submitted by the State did not show a crosswalk painted on the road at this particular intersection.

The DUI officer, Deputy Dobbins, testified that, in addition to the information conveyed to him by Deputy Nye, he independently observed the odor of alcohol, and watery, glassy, bloodshot eyes, along with a wristband he knew to be of the type given out by establishments serving alcohol. He said Appellee told him she was coming from a bar and that she had four beers. He initiated field sobriety exercises and he testified as to her performance on them. Dobbins said on cross examination that he did not ask Appellee to perform the exercises or inform her about what would happen if she refused, but simply told her to do them. The trial court also had the video of the exercises to review.

The trial court suppressed the results of the field sobriety exercises. It first found that the stop line at this intersection was not in line with the stop sign and that, in order to see cross traffic, a driver would have to proceed past both the stop sign and the stop line before stopping. It found that Appellee did stop at the intersection, thus providing no basis for a traffic stop.

Regardless of where a stop line is located in relation to a stop sign or to the cross street, a driver is obligated to come to a complete stop before the stop line: "[e]xcept when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line." § 316.123(2)(a), Fla. Stat. (2015). "When a vehicle pull[s] beyond or ahead of the stop line, a traffic infraction has occurred under section 316.123(2)(a), and a valid traffic stop may result." *State v. Daniels*, 158 So. 3d 629, 631 (Fla. 5th DCA 2014). The trial court found that there was no marked crosswalk but it

did not question the deputy's testimony that Appellee stopped past the stop line. Instead, it incorrectly concluded that her stop past the line was sufficient. It was not and it provided a lawful basis for the deputy to pull her car over.

The trial court found that the field sobriety exercises should be suppressed because Dobbins did not ask Appellee to perform them or advise her that they were voluntary. There is no requirement in the law that an officer do either. To the contrary, "the Fourth Amendment does not require any such warning of a right to refuse [to perform these exercises]." *State v. Whelan*, 728 So. 2d 807, 811 (Fla. 3d DCA 1999).

The trial court seemed to conclude that a minor deviation in the deputy's administration of the exercises (moving around Appellee during one of tests) somehow impacted their validity but there was no evidence that it did so. While the trial court did not specifically address the issue of whether there was probable cause to arrest Appellee for DUI, it implicitly found a lack of probable cause when it found that she performed the exercise without "any issues" and used this conclusion to support their suppression.

A directive to perform field sobriety exercises may be based on reasonable suspicion that a driver may be impaired. *State v. Ameqrane*, 39 So. 3d 339, 341 (Fla. 2d DCA 2010). The deputy had reasonable suspicion to require the exercises and did not have to inform Appellee of any right to refuse or of the consequences of refusal. Whether he had probable cause to arrest Appellee after the tests depends on a totality of the circumstances and requires that the facts "are to be analyzed from the officer's knowledge, practical experience, special training, and other trustworthy information." *Mathis v. Coats*, 24 So. 3d 1284, 1288 (Fla. 2d DCA 2010). The totality of circumstances here included Appellee's perhaps-not-terrible performance (although the deputy did testify to her repeated swaying and failure to follow several directions) but was not limited to that performance. In addition, there was the odor of alcohol on Appellee's breath, her bloodshot, watery eyes, her

stumble when she exited the car, and her admission that she was coming from a bar and had consumed four beers.

Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. . . Probable cause is not the same as beyond a reasonable doubt." *Williams v. State*, 731 So. 2d 48, 50 (Fla. 2d DCA 1999) (internal citations omitted); see also *State v. Catt*, 839 So. 2d 757, 759 (Fla. 2d DCA 2003). Based on the totality of circumstances, the deputy had probable cause to arrest Appellee and there is no legal basis for the suppression of her field test results or any reference to them at trial. Whether the tests and other evidence demonstrate Appellee's unlawful impairment beyond a reasonable doubt is a question for the jury.

IT IS THEREFORE **ORDERED AND ADJUDGED** that the Order of the trial court is **REVERSED** and the matter **REMANDED** for further proceedings.

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

/S/
ALICIA L. LATIMORE
Circuit Court Judge

ROCHE and APTE J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to the **Honorable Elizabeth Starr,** Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida, 32801**; Stacy G. Fallon, Esq.,** Assistant State Attorney, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; and **William R. Ponall, Esq.,** Snure and Ponall**,** 425 W New England Ave., Ste. 200, Winter Park, FL 32789-4228 on the 3rd day of November, 2015.

/S/

Judicial Assistant