Allart v. State (Fla. 6th Cir. Ct. 2002)

Reported at 9 Fla. L. Weekly Supp. 499c. Pinellas County appellate division.

MICHAEL C. ALLART, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 6th Judicial Circuit (Appellate) in and for Pinellas County. Case No. CRC 00-14360 CFANO. Opinion filed June 27, 2001. Order Granting, In Part, Appellant's Motion For Rehearing, filed June 6, 2002. Appeal from a judgment and sentence entered by the Pinellas County Court, County Judge William Overton. David A. Demers, John Schaefer and Irene H. Sullivan, Judges. Counsel: Shea Moxon, for Appellant. Robert McLlaughlin, Assistant State Attorney. ORDER AND OPINION

(Schaefer, J.) THIS MATTER is before the Court on the defendant's appeal of a judgment and sentence entered by the Pinellas County Court following a no contest plea. The defendant reserved his right to appeal. After reviewing the briefs and record, this Court affirms the judgment and sentence.

The defendant was stopped because he ran a red light and was drifting and weaving. Upon stopping the defendant, the deputy noticed that the suspect had bloodshot, watery eyes, a flushed face, a slight sway and a distinct odor of alcohol on his breath. After the deputy checked the defendant's driver's license he noticed that it restricted the defendant to business purposes only driving. The deputy asked the defendant where he was coming from and where he was going. The defendant responded that he had come from a friend's house and was going to McDonald's to get something to eat. The defendant also stated that he drank a beer when he got off work, and that he had stopped by a friend's house on his way home from work. The defendant had gotten off work at 5:30 p.m. He was stopped at 10:00 p.m. The defendant was arrested for violating his driver's license restriction. Subsequently, he was also charged with DUI.

In the proceedings below, the defendant filed a motion to suppress all evidence obtained after his arrest and a motion to dismiss the driving in violation of his driver's license restriction charge. Both motions were denied. The defendant is appealing the trial court's decisions denying his motion to suppress and motion to dismiss. The defendant claims that his arrest for violating a driver's license restriction was invalid because he really was not violating his business purposes only restriction since he was only going to get something to eat. This Court finds the arrest valid under two theories. First, the deputy could have arrested the defendant for DUI. Given the evidence -- weaving and drifting, the odor of alcohol, the swaying, the bloodshot and watery eyes, and the admission of drinking -- the deputy had ample probable cause to make an arrest for DUI. The fact that the deputy may not have believed he had sufficient probable cause to arrest for DUI, but chose to arrest for the driver's license restriction violation instead, is not dispositive. McNeil v. State, 512 So.2d 1062 (Fla. 4th DCA 1987).

The second reason the arrest was proper is that the deputy had probable cause to believe that the defendant had indeed violated his driver's license restriction. The evidence was that the defendant had left work about 5:30 and had spent his time visiting a friend, drinking beer and behaving as if he had no restriction at all. The idea that it was all permissible as long as he intended to end his sojourn at McDonalds is not persuasive. Under these facts the deputy was justified in arresting the

defendant for driving in violation of his driver's license restriction. Since the defendant could have been arrested under either theory, the arrest was valid. Therefore, the trial court was correct to deny the motion to suppress.

Finally, the defendant argues that the charge of driving in violation of his driver's restriction should have been dismissed because eating is a valid business purpose. Under the facts of this case, the trial court could easily determine that the defendant was not merely driving to get something to eat. Again, the defendant did not obtain immunity because of his stated intent to ultimately end his night at McDonalds. This Court will not rule as a matter of law that beginning, ending, or stopping along the way for food always grants the driver blanket immunity to ignore his or her driving restriction. Each case must be decided upon the facts. In the case at bar, the trial judge was free to conclude that the evidence showed a violation of the driving restriction. Therefore, the motion to dismiss was properly denied.

IT IS THEREFORE ORDERED that the judgment and sentence are affirmed.

_____ ORDER GRANTING, IN PART, APPELLANT'S MOTION FOR REHEARING THIS MATTER is before the Court on the appellant's motion for rehearing of a previous Order and Opinion entered by this Court in the above-styled appeal. After reviewing the motion and again reviewing the record, this Court grants, in part, the appellant's motion for rehearing.

This Court holds that as a matter of law a business purposes only restriction permits a driver to drive to shop for the basic necessities of life, such as, in this case at bar, food. The question in this case is what was the appellant actually doing when he was driving. If he was merely coming from his house to McDonalds to get something to eat, that was permissible. If, on the other hand, this drive was part of a larger sojourn, then that would be a violation. A review of the circumstances of the arrest leaves the general impression that it was part of a larger sojourn. At least that is what the police officer, trial court, and initially this Court concluded. However, as pointed out by the appellant in his motion for rehearing, that is not what the actual evidence showed. The evidence only showed that the appellant drove from his house to McDonalds. Although there is a strong suspicion that the appellant was also driving other places that night, such as to his friend's house, there is no actual evidence of that. Therefore, the conviction cannot stand.

The appellant's argument that there was no probable cause to arrest the appellant for DUI is without merit. Even if this Court were to accept the appellant's interpretation of the video that he was not swaying and did not drift and weave while driving, sufficient information still existed to establish probable cause that the appellant was DUI. The appellant had just run a red light, there was the odor of alcohol on the appellant's breath, his eyes were bloodshot and watery, and he admitted drinking.

IT IS THEREFORE ORDERED that the appellant's motion for rehearing is granted as to the violation of a driver's license business purposes only restriction conviction. As to the DUI conviction, it is denied. IT IS FURTHER ORDERED that the conviction for violating the driver's license restriction is vacated.

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