Pickenpaugh v. State (Fla. 6th Cir. Ct. 2008)

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JASON ALAN PICKENPAUGH, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 6th Judicial Circuit (Appellate) in and for Pinellas County. Case No. CRC 07-00028APANO.

UCN522006CT128299XXXXXX. January 24, 2008. Appeal from an Order Denying Motion to Suppress entered by the Pinellas County Court, County Judge Edwin B. Jagger, County Judge James Pierce . Counsel: Ricardo Rivera, for Appellant. C. Marie King, for Appellee.

ORDER AND OPINION

(PETERS, Judge.) THIS MATTER is before the Court on Appellant, Jason Alan Pickenpaugh's appeal from a decision of the Pinellas County Court to deny Appellant's motion to suppress. The defendant pleaded no contest to Driving Under the Influence, Obstructing or Resisting Without Violence, and Violation of Driver's License Restrictions but reserved his right to appeal the denial of his motion to suppress. After reviewing the briefs and record, this Court affirms the judgment.

Factual Background and Trial Court Proceedings At approximately 2:30 a.m. on August 22, 2006, Deputy Richard Farnham of the Pinellas County Sheriff's Office observed a vehicle operated by Defendant, Jason Alan Pickenpaugh, exceeding the posted speed limit while proceeding south on Park Street in St. Petersburg. The posted speed limit was 45 miles per hour and the Defendant was driving between 55 and 60 miles per hour. The deputy proceeded to follow the vehicle. The deputy checked the license plate number of the vehicle through his computer and received information that the registered owner had a “business purposes only” restriction on his driver's license. The deputy initiated a traffic stop and made contact with the Defendant. The Defendant filed a motion to suppress which was denied after hearing. The trial court's ruling was based on findings that the deputy observed the Defendant speeding, determined the Defendant's driving license was restricted to “business purposes only”, believed based on experience that most drivers own the vehicle they are driving, and based on experience at 2:30 a.m. drivers are not coming from a school, a church, a hospital or a job. The Defendant reserved the right to appeal the denial of the motion to suppress.

Standard of Review Our review of a trial court's ruling on a motion to suppress evidence involves a mixed question of law and fact. We accord a presumption of correctness with regard to the trial court's determination of facts where the trial court's factual findings are supported by competent, substantial evidence. However, we review the trial court's application of the law to those facts de novo. Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Connor v. State, 803 So.2d 598 (Fla. 2001); State v. Pruitt, 967 So.2d 1021 (Fla. 2nd DCA 2007).

Analysis 1. Generally. It is well established that the prohibition against unreasonable searches and seizures contained in the Fourth Amendment of the United States Constitution applies to investigatory stops of automobiles. United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). An examination of the validity of a traffic stop under the Fourth Amendment thus requires courts to determine whether the stop was reasonable. Terry v. Ohio, 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The constitutional reasonableness of a traffic stop under the

Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop, but rather it depends on the validity of the basis asserted by the officers involved in the stop. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). The Florida Supreme Court has adopted this objective test. Holland v. State, 696 So.2d 757 (Fla. 1997). The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop. Dobrin v. Department of Highway Safety & Motor Vehicles, 874 So.2d 1171 (Fla. 2004). Specifically, in the Whren case, the United States Supreme Court held that the temporary detention of a motorist is reasonable when an officer has probable cause to believe that the motorist has committed a traffic infraction. To justify an investigatory stop, the officer must have a reasonable suspicion that the person detained committed, is committing, or is about to commit a crime. § 901.151(2) Fla. Stat. (2006); Popple v. State, 626 So.2d 185 (Fla. 1993); Dept. of Highway Safety & Motor Vehicles v. DeShong, 603 So.2d 1349 (2nd DCA Fla. 1992); Randall v. State, 600 So.2d 553 (Fla. 2nd DCA 1992). A reasonable suspicion is “a suspicion which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge.” McMaster v. State, 780 So.2d 1026 (5th DCA Fla. 2001). While “reasonable suspicion” is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. The officer must be able to articulate more than an “inchoate and unparticularized suspicion or ‘hunch' ” of criminal activity. Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). “Mere” or “bare” suspicion, on the other hand, cannot support detention. State v. Stevens, 354 So.2d 1244 (4th DCA Fla. 1978); Coleman v. State, 333 So.2d 503 (Fla. 4th DCA 1976). Mere suspicion is no better than random selection, sheer guesswork, or hunch, and has no objective justification. See Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and Thomas v. State, 250 So.2d 15 (Fla.1st DCA 1971). The court determines the stop's legitimacy by considering the totality of the circumstances surrounding the stop. McMaster, 780 So.2d at 1029. In order for a traffic stop to be proper, the police must have a reasonable suspicion of criminal activity, or probable cause to believe a traffic infraction has been committed. Jones v. State, 842 So.2d 889 (Fla. 2nd DCA 2003).

2. The Present Case. In the present case, the trial court's factual findings are supported by competent, substantial evidence. The deputy first observed the Defendant speeding. This alone provided a lawful basis for the traffic stop.

The deputy also determined prior to the stop that Defendant had a “business purposes only” restriction on his driver's license. The circumstances of this case reasonably suggested a violation of that restriction. An officer's investigatory detention of a vehicle's driver is supported by a well founded suspicion of unlawful activity when the officer first determines that the vehicle's registered owner does not possess a valid driver's license. In such an instance, the officer's conduct is not dictated by personal whim or capriciousness. The detention is neither arbitrary nor directed to any particular individual demonstrating an intention to harass that person. Smith v. State, 574 So.2d 300 (5th DCA Fla. 1991); Guffey v. State, 796 So.2d 1191 (5th DCA 2001). In the present case the deputy was presented with circumstances that supported a well founded suspicion that

Defendant was driving in violation of his driver's license restriction. Green v. State, 743 So.2d 1233 (Fla. 5th DCA 1999). The traffic stop of the Defendant was lawful.

Conclusion The order of the trial court denying Appellant's Motion to Suppress should be affirmed.

IT IS THEREFORE ORDERED that the order of the trial court denying Appellant's Motion to Suppress is affirmed. (Michael F. Andrews, Raymond O. Gross and R. Timothy Peters, JJ.)

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