IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

EDWIN AGUIAR,

Appellant,

v. Case No. 5D15-1627

STATE OF FLORIDA,

Appellee.

________________________________/

Opinion filed October 30, 2015

Appeal from the Circuit Court for Osceola County,
A. James Craner, Judge.

James S. Purdy, Public Defender, and George D.E. Burden, Assistant Public Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Robin A. Compton, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Edwin Aguiar appeals his convictions and sentences on charges of possession of cocaine, attempted tampering with physical evidence and possession of drug

paraphernalia, to which he pled *nolo contendre*, reserving the right to challenge the denial of his dispositive motion to suppress.[1] We reverse.

Aguiar was the front seat passenger in a vehicle being stopped because a brake light was out and the driver was not wearing a seat belt. When the driver pulled into a restaurant parking lot, into a marked space, Aguiar immediately exited the passenger-side door—even prior to the vehicle resting at a complete stop. The officer conducting the traffic stop ordered Aguiar back into the vehicle, and Aguiar ultimately complied—after which the officer noticed the bag of cocaine.

As explained in *Wilson v. State*, 734 So. 2d 1107, 1112 (Fla. 4th DCA 1999), although a "traffic violation sufficiently justifies subjecting the driver to detention . . . [t]he restraint on the liberty of the blameless passenger is, in contrast, an unreasonable interference." As such, an "officer must have an articulable founded suspicion of criminal activity or a reasonable belief that the passenger poses a threat to the safety of the officer, himself, or others before ordering the passenger to return to and remain in the vehicle." *Id.* at 1113. Here, the officer clearly had no basis to order Aguiar back into the vehicle at the time that he did so. The officer was simply concerned that Aguiar might "run," or leave, which Aguiar had a right to do. *Id.* The State's attempt to justify the detention based upon Aguiar's reaction to the unlawful command to return to the vehicle—that Aguiar did not comply immediately, but questioned the command and looked nervous, etc.—is unavailing. It should not require explanation that whether an officer has reasonable suspicion to detain an individual should be judged on the facts observed by

---

[1] The trial court withheld adjudication and sentenced Aguiar to concurrent probationary sentences of three years on the felony counts and 360 days on the misdemeanor.

the officer prior to the command to stay or return—not after. *Cf. Durham v. State*, 40 Fla. L. Weekly D2121 (Fla. 5th DCA Sept. 11, 2015) ("We also note the obvious erosion to Fourth Amendment protection that would occur if the courts were to sanction a procedure by which police could manufacture an exigency . . . .").

Accordingly, we reverse the convictions and sentences, and remand with instructions that the motion to suppress be granted and all charges be dismissed.

REVERSED AND REMANDED WITH INSTRUCTIONS.

LAWSON, C.J., COHEN and BERGER, JJ., concur.