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

STATE OF FLORIDA,

Appellant,

v.

Case Nos. 5D21-232
LT Case Nos. 2020-CT-003212-A-O
2020-AP-000010-A-O

ALYSSA ANN ABACHE,

Appellee.

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Opinion filed November 5, 2021

Appeal from the County Court
for Orange County,
Adam McGinnis, Judge.

Ashley Moody, Attorney General, Tallahassee, and Richard A. Pallas, Jr., Assistant Attorney General, Daytona Beach, for Appellant.

Michael H. Lafay, of NeJame Law, Orlando, for Appellee.

EVANDER, J.

The State of Florida timely appealed an order suppressing evidence in a DUI case. We have jurisdiction.[1] Because the trial court erroneously found that law enforcement officers violated the *Miranda*[2] rights of appellee, Alyssa Abache, we reverse.

On the evening in question, Florida Highway Patrol Trooper Ryan Mooney was dispatched to the scene of a motor vehicle collision. During the course of his accident investigation, Trooper Mooney came into contact with Abache—the alleged driver of one of the vehicles involved in the collision. As a result of his observations of Abache, Trooper Mooney believed that Abache had been driving under the influence of an alcoholic beverage to the extent that her faculties may have been impaired. He moved Abache away from the other individuals gathered around the accident scene, advised her that he was conducting a criminal investigation, and read her *Miranda* warnings.

At Trooper Mooney's request, Abache agreed to perform certain field sobriety exercises. However, immediately prior to Abache's commencement of the exercises, an acquaintance of Abache moved toward Trooper

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[1] Florida Rule of Appellate Procedure 9.140(c)(1)(B) authorizes the State to appeal an order "suppressing before trial confessions, admissions or evidence obtained by search and seizure."

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

Mooney, held up a cell phone, stated that Abache's attorney was on the phone, and asked that Abache be permitted to speak to her attorney. Another law enforcement officer told Abache's acquaintance to leave the area. As a result, Abache did not speak to her attorney prior to performing the field sobriety exercises. At the conclusion of the field sobriety exercises, Trooper Mooney arrested Abache for DUI.

Abache subsequently filed a motion to suppress all evidence derived from and related to her performance of the field sobriety exercises. She alleged that the law enforcement officer's refusal to notify her that her attorney was telephonically present and had requested to speak with her constituted a due process violation under Article 1, section 9 of the Florida Constitution. After conducting an evidentiary hearing, the trial court entered an order granting Abache's motion. However, the trial court order did not address Abache's due process argument. Rather, the trial court found that "once *Miranda* [was] read to the Defendant, even if not required, that the Defendant [was] afforded all the rights associated with *Miranda*." The trial court then concluded that law enforcement officers had violated Abache's *Miranda* rights when they did not allow her to speak with her attorney.

The trial court's decision contravenes the United States Supreme Court's decision in *Moran v. Burbine*, 475 U.S. 412 (1986). There, the

Supreme Court held that the failure of police to inform the defendant of the efforts of his attorney, who had been retained by the defendant's sister without his knowledge, to reach him did not deprive the defendant of his right to counsel or vitiate his waiver of his *Miranda* rights:

> The purpose of the *Miranda* warning . . . is to dissipate the compulsion inherent in custodial interrogation and, in doing so, guard against abridgment of the suspect's Fifth Amendment rights. Clearly, a rule that focuses on how the police treat an attorney—conduct that has no relevance at all to the degree of compulsion experienced by the defendant during interrogation—would ignore both *Miranda's* mission and its only source of legitimacy.
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> Nor are we prepared to adopt a rule requiring that the police inform a suspect of an attorney's efforts to reach him. While such rule might add marginally to *Miranda's* goal of dispelling the compulsion inherent in custodial interrogation, overriding practical considerations counsel against its adoption.

Id. at 425. Accordingly, the trial court erred in granting Abache's motion on the grounds that her *Miranda* rights had been violated.

Abache argues that we should employ the "tipsy coachman" rule and affirm on the ground that Abache's due process rights were violated. Under the tipsy coachman rule, "if a trial court reaches the right result, but for the wrong reasons, it would be upheld if there is any basis which would support judgment in the record." *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999). However, an appellate court should not employ the tipsy coachman rule where the trial court has not made the necessary

factual findings on the issue. *Bueno v. Workman*, 20 So. 3d 993, 998 (Fla. 4th DCA 2009). Here, the trial court did not address Abache's due process argument. Additionally, the factual findings that were made by the trial court were not sufficient for us to fully address the merits of such argument.

REVERSED and REMANDED.

HARRIS, J., concurs.
NARDELLA, J., dissents, with opinion.

NARDELLA, J., dissents with opinion.

"In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Because the State of Florida's initial brief overlooks both the United States Supreme Court's ruling in *Moran v. Burbine*, 475 U.S. 412 (1986), and the reasoning behind the high court's ruling, I respectfully dissent. *Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) (explaining the dispassionate role of an appellate court).