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 No. 5D20-673

FREDDIE PARKER,

Appellee.
_____/

Opinion filed February 12, 2021

Appeal from the Circuit Court
for Orange County,
Gail A. Adams, Judge.

Ashley Moody, Attorney General, Tallahassee, and Kaylee D. Tatman, Assistant Attorney General, Daytona Beach, for Appellant.

Robert Wesley, Public Defender, and Robert Thompson Adams IV and Brent Lightfoot, Assistant Public Defenders, Orlando, for Appellee.

LAMBERT, J.

The State of Florida appeals the trial court's order granting Appellee, Freddie Parker's, motion to suppress the cocaine and marijuana seized from his vehicle following a traffic stop, as well as any statements that Parker made to the deputy sheriffs during the stop. Concluding that the court applied an incorrect standard in evaluating the legality of the traffic stop, we reverse for further consideration.

FACTS—

Two deputies employed by the Orange County Sheriff's Department were riding in their patrol car when they came upon Parker's vehicle, which was stopped on a public roadway. Parker was the only occupant in his vehicle, and he was speaking with an individual seated on a bicycle positioned next to the driver's side window. The deputies stopped their car approximately twenty to thirty yards behind Parker's vehicle; and, after waiting ten to fifteen seconds, they exited the patrol car to initiate a traffic stop. Parker slowly moved his car slightly forward and parked it off the road. Parker then exited his car and walked towards the rear of it. During their initial contact, one of the deputies explained to Parker that he was being stopped because his car was improperly blocking the roadway and because the tint on the windows of his car appeared to be too dark.[1] The deputy also detected an odor of burnt cannabis coming from Parker.

Parker was asked by the deputies to provide his driver's license.[2] He walked back towards the driver's side door and opened the door to retrieve his license. The deputy had followed behind Parker; and when Parker opened the car door, the deputy smelled what he believed to be the odor of burnt cannabis coming from inside the car. Parker was detained; and the two deputies proceeded to conduct a warrantless search of Parker's car, where they found cocaine and a partially-smoked marijuana cigarette,

[1] Sections 316.2951–.2956, Florida Statutes (2019), provide that it is a noncriminal traffic infraction to operate a motor vehicle on which sunscreening material has been applied to the side or rear windows, which has the effect of altering the window's transparency beyond specified limits.

[2] *See Whitfield v. State*, 33 So. 3d 787, 790 (Fla. 5th DCA 2010) (providing that once a vehicle is stopped, an officer may conduct an investigation "reasonably related in scope to the circumstances that justified the traffic stop," including obtaining the driver's license).

sometimes referred to as a "blunt," that Parker acknowledged at the scene that he had smoked. Parker was arrested and later charged by information with the possession of cocaine.

Parker moved to suppress the cocaine and the marijuana recovered from his car as well as any statements that he made to the deputies during the traffic stop. Parker argued that the deputies had no probable cause to stop his vehicle for the alleged window tint violation, nor did the location of his stopped vehicle in the road provide them with probable cause that he had committed a traffic infraction.[3] Parker also argued in his motion that based upon recent amendments to Florida's medical marijuana statute, codified at section 381.986, Florida Statutes (2019), and with the 2019 enactment of section 581.217, Florida Statutes, titled "State Hemp Program," the odor of what the deputies perceived to be burnt cannabis emanating from his car no longer provided the deputies with probable cause to conduct the warrantless search.[4]

The trial court held an evidentiary hearing on Parker's motion at which both deputies testified. Additionally, as each deputy was equipped with a body-cam that visually recorded the stop and search of the vehicle and also their oral communications with Parker at the scene, the recordings from the body-cams were admitted into evidence

[3] Parker specifically argued in his motion that he had not violated section 316.1945, Florida Statutes (2019). This statute is titled "Stopping, standing, or parking prohibited in specified places," and makes it a noncriminal traffic infraction to stop, stand, or park one's vehicle in certain designated places.

[4] Parker acknowledged in his answer brief that, historically, the odor of cannabis has provided law enforcement officers with probable cause to conduct warrantless searches of a vehicle. *See State v. Reed*, 712 So. 2d 458, 460 (Fla. 5th DCA 1998) (recognizing that in a number of cases, "this court has held that to a trained and experienced police officer, the smell of cannabis emanating from a person or a vehicle, gives the police officer probable cause to search the person or the vehicle").

at this hearing without objection. Parker did not testify or call any witnesses, nor did he seek to admit any evidence. At the conclusion of the hearing, the trial court announced that it was granting the motion to suppress, finding, among other things, that the tint violation was "just a pretext [the deputies] used to stop [Parker]," and that "they intended to search the car to begin with." The court promptly entered an unelaborated written order granting Parker's motion to suppress, from which the State has timely appealed.

ANALYSIS—

Our review of this order of suppression requires that we defer to the trial court's factual findings, provided they are supported by competent substantial evidence. *See State v. Wimberly*, 988 So. 2d 116, 119 (Fla. 5th DCA 2008) (citing *Ikner v. State*, 756 So. 2d 1116, 1118 (Fla. 1st DCA 2000)). However, the trial court's legal conclusions are reviewed de novo. *Rodriguez v. State*, 187 So. 3d 841, 845 (Fla. 2015) (quoting *State v. Hankerson*, 65 So. 3d 502, 506 (Fla. 2011)). For the following reasons, we conclude that the trial court erred in its legal conclusion that the deputies' stop of Parker's vehicle for a tint violation was invalid because the stop was "pretextual."[5]

We begin with the fundamental principle that the commission of a traffic violation gives law enforcement the right to stop a vehicle. *See Hatcher v. State*, 834 So. 2d 314, 316 (Fla. 5th DCA 2003) (citing *State v. Kindle*, 782 So. 2d 971, 973 (Fla. 5th DCA 2001); *E.H. v. State*, 593 So. 2d 243, 244 (Fla. 5th DCA 1991)). While the trial court found the instant traffic stop invalid for being pretextual, the United States Supreme Court has made

[5] Based upon our resolution of this appeal on this issue, we decline to address separately whether, under the facts of this case, the odor emanating from Parker's vehicle provided the deputies with sufficient grounds under the Fourth Amendment to search the vehicle.

clear that the constitutional reasonableness of a traffic stop is not dependent on the subjective motivations of the individual officers involved. *See Whren v. United States*, 517 U.S. 806, 812–13 (1996). Instead, a traffic stop is considered reasonable under the Fourth Amendment to the United States Constitution "where the police have probable cause to believe that a traffic violation has occurred." *Id.* at 810 (citing *Delaware v. Prouse*, 440 U.S. 648, 659 (1979); *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977)). Thus, when addressing the constitutional validity of a traffic stop, a trial court is tasked with applying "a strict objective test which asks only whether any probable cause for the [traffic] stop existed." *Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997) (citing *Whren*, 517 U.S. at 819). Simply put, the trial court here erred when it did not apply this objective test to determine whether the deputies had probable cause for their traffic stop of Parker's vehicle.

Our decision in *Wimberly* is instructive. There, the police officers had stopped a vehicle because they believed that the vehicle's windows were illegally tinted. 988 So. 2d at 117. During the stop, the officers confirmed that the defendant, who was a passenger in the vehicle, had an outstanding warrant for his arrest for a probation violation. *Id.* at 117–18. The officers placed Wimberly under arrest; and, during a search of his person incident to the arrest, cannabis was found in his pocket. *Id.* at 118. Then, due in part to the additional smell of cannabis coming from inside the vehicle, the officers searched the vehicle and found additional contraband that Wimberly admitted at the scene belonged to him. *Id.*

Wimberly later moved to suppress the cannabis seized during the traffic stop and his incriminating statements made to the police, arguing that the officers "did not have a

founded suspicion that [Wimberly] was engaged in criminal activity" and that the purported tint violation "was a pretext for an otherwise invalid stop." *Id.* at 117 (alteration in original). At the suppression hearing, the two officers who conducted the traffic stop testified that they made the stop because they believed that the windows of the vehicle were illegally tinted. *Id.* Wimberly responded to this testimony by calling as a witness the owner of the shop where the vehicle's windows had been recently tinted. *Id.* at 118. The shop owner testified how and why the vehicle's window tint was legal. *Id.*

The trial court found the testimony of Wimberly's witness to be more credible than that of the officers. *Id.* It granted the motion to suppress, concluding that because the vehicle did not have an illegal tint on its windows at the time of the traffic stop, "law enforcement had no legal basis to conduct a traffic stop on the vehicle." *Id.*

On appeal, our court framed the determinative issue as "whether the officers had probable cause to believe that the windows of the car in which Wimberly was riding were illegally tinted, not whether the windows were actually illegally tinted." *Id.* at 119. We reminded that "[a] traffic stop based on an officer's incorrect but reasonable assessment of the facts does not violate the Fourth Amendment," *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 205 (2001); *United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003)), and that if the officer's traffic stop is based on a mistake of fact, the trial court must then determine whether the officer's mistake of fact was reasonable. *Id.* We concluded that the trial court erred in granting the motion to suppress because it applied an incorrect standard when it held that because the window tint was legal, the traffic stop was therefore invalid. *Id.* at 120. We reversed the suppression order for further consideration of the motion under the proper legal standard. *Id.*

As previously indicated, the trial court here erred when it did not apply the objective test under *Whren* that required it to resolve whether the deputies had probable cause to believe that Parker had committed a traffic violation. Accordingly, because the court applied an incorrect standard in determining the constitutional validity of the stop, we reverse the order granting the motion to suppress and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

COHEN and HARRIS, JJ., concur.