NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ZACHARY ANTONIO GREEN, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D18-3587

Opinion filed April 24, 2020.

Appeal from the Circuit Court for Hillsborough County; Mark D. Kiser, Judge.

Howard L. Dimmig, II, Public Defender, and William L. Sharwell, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Katherine Coombs Cline, Assistant Attorney General, Tampa, for Appellee.

BLACK, Judge.

Zachary Green pleaded nolo contendere to possession of cannabis and possession of drug paraphernalia. Green reserved the right to appeal the denial of his

dispositive motion to suppress. Because the evidence at the hearing on Green's motion established that the traffic stop was unlawful, the trial court erred in denying his motion to suppress. We therefore reverse Green's convictions. We note that Green's probation was terminated on June 25, 2019.

The traffic stop which precipitated the charges occurred on March 18, 2018, at 8:48 a.m. when Green was pulled over due to his vehicle having a broken left tail light. After approaching the vehicle, the officer who stopped Green smelled marijuana, searched the vehicle, and arrested Green on the possession charges. Green was also cited for a violation of section 316.215, Florida Statutes (2018). In his motion to suppress, Green relied on Zarba v. State, 993 So. 2d 1000 (Fla. 2d DCA 2007), and argued that the traffic stop was unlawful and that therefore the search of his vehicle after the officer smelled marijuana was illegal and the evidence resulting from that search should be suppressed.

At the suppression hearing, the officer who stopped Green testified that he witnessed Green brake at a stop sign and saw that Green's vehicle had a broken left tail light which emitted white light. In response to questioning by the State, the officer testified that "vehicles are unsafe or defective" when there are equipment failures and that "white lights showing in the rear is unsafe because vehicles uniformly have red in the back, so if there's white showing in the back, [other drivers] can think a vehicle is approaching them instead of going away from them." The officer then testified that he was relying on section 316.215 when he stopped Green.

On cross-examination, the officer testified that he was not sure how many brake lights the vehicle had been equipped with but knew the right tail light worked. He

did not know if the vehicle had two, three, or more brake lights. The officer testified that it would not have mattered how many brake lights the vehicle had or how many were working because he would have stopped the vehicle for the broken tail light regardless. The officer also testified that he did not remember if any red light was being emitted from the broken tail light.

Green testified that on the day he was pulled over he had three brake lights working. He had placed red tape on the left tail light, but the other two lights—the one in the back window and the right tail light—were not broken and were working.

The trial court denied Green's motion, finding that State v. Shuck, 913 So. 2d 69 (Fla. 4th DCA 2005), was more relevant than Zarba. The court found that white light emanating from a tail light is evidence that equipment is not in a functional state and therefore provided sufficient justification for a stop.

"In reviewing an order denying a motion to suppress, we afford 'a presumption of correctness' to the [trial] court's findings of fact, but we review mixed questions of law and fact de novo." Peterson v. State, 264 So. 3d 1183, 1187-88 (Fla. 2d DCA 2019) (quoting Pasha v. State, 225 So. 3d 688, 703 (Fla. 2017)).

"Generally, traffic stops are deemed reasonable 'where the police have probable cause to believe that a traffic violation has occurred.' The validity of a traffic stop is judged on an objective basis, and therefore, 'the subjective knowledge, motivation, or intention of the individual officer involved [is] wholly irrelevant.' " Id. at 1188 (alteration in original) (first quoting Langello v. State, 970 So. 2d 491, 492 (Fla. 2d DCA 2007); and then quoting Hurd v. State, 958 So. 2d 600, 602 (Fla. 4th DCA 2007)). Section 316.215(1), the statute relied upon by the officer who stopped Green, provides:

> It is a violation of this chapter for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden, or fail to perform any act required, under this chapter.

(Emphasis added.) The language of section 316.215(1) is substantially the same as the language of section 316.610:

> It is a violation of this chapter for any person to drive or move, or for the owner or his or her duly authorized representative to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

(Emphasis added.) Thus, the case law discussing section 316.610 is applicable to our analysis, including this court's decision in Zarba.

"The [S]tate must show that under the facts and circumstances a reasonable officer would have stopped the vehicle . . . . " Hilton v. State, 961 So. 2d 284, 291 n.3 (Fla. 2007) (quoting Doctor v. State, 596 So. 2d 442, 446 (Fla. 1992)). "[F]or a stop to be constitutional under the 'not in proper adjustment or repair' section of 316.610(1), the equipment defect or damage must be in violation of the law." Id. at 290. Thus, section 316.610 must be read together with those statutes that delineate specific equipment requirements. See id. (citing Doctor, 596 So. 2d at 446). This court has held

that the section of chapter 316 that enumerates the requirements for tail lights does not prohibit the operation of a vehicle with a nonfunctioning tail light where there are two other fully operational lights. Zarba, 993 So. 2d at 1001; State v. Burger, 921 So. 2d 847, 848 (Fla. 2d DCA 2006); see Hilton, 961 So. 2d at 290. "[I]f two of the vehicle's three brake lights were operational, this was sufficient to comply with the requirements of section 316.222(1), Florida Statues (2004)." Zarba, 993 So. 2d at 1001 (citing Burger, 921 So. 2d at 848). And although Zarba discusses only that the right rear tail light did not work, versus being broken or emitting a white light, the operative analysis does not change. Section 316.222(1) requires every motor vehicle to have "two or more stop lamps meeting the requirements of [section] 316.234(1)." Section 316.234(1) requires that the stop lamps "on the rear of the vehicle . . . display a red or amber light, visible from a distance of not less than 300 feet to the rear." The evidence at the hearing indisputably established that Green's vehicle had two operational rear brake lights.

For the stop to have been lawful, where the vehicle was otherwise in compliance with the requirements of section 316.222, the broken tail light must have posed a safety hazard. See Hilton, 961 So. 2d at 290-91. That is, if the broken tail light "as it existed and as it was observed by the officer[] would have created an objectively reasonable suspicion that [Green's] vehicle was unsafe" the stop would have been valid. See id. at 295. The evidence must "provide 'a particularized and objective basis' to suspect" that the vehicle is being operated while in an unsafe condition. See id. at 297 (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)). And whether a broken

tail light "constitutes a violation of Florida law [as an unsafe condition] is variable and must be evaluated on a case-by-case basis." See id. at 295.

Here, the State did little to meet its burden; at best, the State's questions led the officer to testify that white light emanating from the rear of a vehicle could be a safety concern. Cf. Zarba, 993 So. 2d at 1001 ("Officer Sweat did not testify that this deficiency[—one brake light not working—]rendered the vehicle in such an unsafe condition that its continued operation endangered any person or property."). There was no attempt to address the fact that it was 8:48 a.m.; nor was there any attempt to rebut Green's testimony that the other two brake lights were operational and that red tape covered some portion of the broken tail light such that some red light was also emitted. Cf. Langello, 970 So. 2d at 492 ("When asked whether the tag was rendered illegible because of the single malfunctioning light, [the officer] testified that she could not recall."). The officer's testimony in this case is similar to the officer's testimony in Springer v. State, 125 So. 3d 271 (Fla. 4th DCA 2013), which was found to be "insufficient to objectively show the vehicle was unsafe." Id. at 272-73. In Springer, "the officer testified that he stopped the vehicle due to the missing sideview mirror on the driver's side." Id. at 272. When asked if he felt that the vehicle was unsafe, the officer responded: "Well, it was missing the sideview mirror on the driver's side. If you need to turn lanes, you need to use your mirror." Id. Moreover, the supreme court's decision in Perez-Garcia v. State, 983 So. 2d 578 (Fla. 2008), quashed a decision of the Third District which concluded that, as a matter of law, an inoperable rear tail light is an objectively unsafe condition. Id. at 578-79 (quashing State v. Perez-Garcia, 917 So. 2d 894, 897 (Fla. 3d DCA 2005), which held "that a vehicle traveling the highway with an

inoperable brake light is a vehicle in an 'unsafe condition' within the meaning of the unnumbered paragraph of section 316.610"). And this court otherwise expressly disagreed with the Third District that "having only two of three brake lights working creates a safety hazard that endangers persons or property when the statute only requires that two rear 'stop lamps' display 'a red or amber light . . . upon application of the service (foot) brake.' " Zarba, 993 So. 2d at 1003; cf. Springer, 125 So. 3d at 274 ("[T]he absence of a single mirror on the exterior of the car neither violates the statute nor renders the vehicle unsafe by an objectively reasonable standard, without proof there was no other sideview or rearview mirror on the vehicle.").

Finally, as to the trial court's reliance on Schuck, we note that Schuck was decided prior to the supreme court's decision in Hilton and we question its continuing validity in light of Hilton, particularly as the Schuck court appears to have determined as a matter of law that a broken tail light—regardless of the number of operational brake lights—provides reasonable cause to stop the vehicle based on a founded suspicion that it is in violation of section 316.221(1). See Schuck, 913 So. 2d at 70-71 ("[T]he officer had reasonable cause to believe that the taillamp required proper repair or was not equipped as required by law."). Further, while Hilton relied on Doctor, Schuck rejected the argument that an affirmance was required under Doctor. Id. And Schuck also relied on this court's Hilton opinion which was quashed by the supreme court and resulted in its Hilton opinion. At a minimum, Schuck misread and erroneously applied section 316.221(1).[1] And contrary to the argument presented by the State, Schuck

[1]Schuck addressed a violation of section 316.221(1), which provides in pertinent part that "[e]very motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be

does not address whether the vehicle's broken tail light rendered it "unsafe." Thus, although the facts of Schuck are similar to the facts of our case, Schuck is not controlling.

Under the objective test, the traffic stop was unlawful. While the officer testified that white light emanating from the broken tail light could be unsafe, he was clear that the basis for the stop in this instance was the fact that the light was broken and not that the vehicle was "in such unsafe condition as to endanger any person." The stop was effectuated at 8:48 a.m. Green's undisputed testimony was that his vehicle had two other brake lights, the right tail light and a center high-mounted brake light, which were both fully operational.

The State failed to present a particularized basis to suspect that the vehicle was unsafe; and it is not objectively reasonable to believe that a vehicle with a single broken tail light emitting some amount of white light but which was otherwise covered with red tape would be unsafe where the vehicle had two additional fully operational brake lights. See Hilton, 961 So. 2d at 295. This is particularly true in daylight hours, as was the case here. Cf. Schuck, 913 So. 2d at 69 & n.1 (taking judicial notice of the fact that at the time of the stop, 8:40 p.m., it was dark out).

The trial court erred in denying the dispositive motion to suppress. Green's judgment and sentences are reversed, and we remand with directions that the trial court vacate his convictions.

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equipped with at least two taillamps mounted on the rear, which, when lighted as required in s. 316.217, shall emit a red light plainly visible from a distance of 1,000 feet to the rear." (Emphasis added.) It is unclear why the court considered section 316.221(1) rather than section 316.222(1) where there is no indication that Schuck's vehicle was "being drawn at the end of a combination of vehicles."

Reversed and remanded.

VILLANTI and ROTHSTEIN-YOUAKIM, JJ., Concur.