

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEAN BENT,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D19-1920

Opinion filed August 12, 2020.

Appeal from the Circuit Court for Polk
County; Neil A. Roddenbery, Judge.

Howard L. Dimmig, II, Public Defender,
and Susan M. Shanahan, Assistant
Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Donna S. Koch,
Assistant Attorney General, Tampa, for
Appellee.

NORTHCUTT, Judge.

When the circuit court denied Dean Bent's dispositive motion to suppress, he pleaded no contest to drug and paraphernalia possession charges and reserved his right to contest that ruling on appeal. We reverse Bent's convictions and sentences because the evidence of the offenses was the fruit of an illegal traffic stop.

It would be possible to describe the underlying scenario in more detail, but the focal issue here is whether Bent violated the law when, late at night in rural Polk County, he parked his car with its driver's-side tires resting along the fog line at the edge of a two-lane road. A sheriff's deputy on patrol encountered Bent sitting in the car, detained him, and ultimately arrested him for possessing contraband. At the suppression hearing the deputy testified that Bent's car was parked illegally because "if anyone were to come down that south side lane, they would end up having to go into the northbound lane to swerve around so that — to not clip the edge of the vehicle."

The deputy acknowledged that the car was not in a "no parking" zone. Also, the fog line was only four or five inches—less than the width of a tire—from the edge of the road. Still, he said, "the car was on the roadway. Therefore, if a vehicle were to come down that road it could present a hazard."

Q. [On cross-examination] But there was no hazard at that point, correct?

A. There –

Q. There was no traffic.

A. Right. We don't want to wait for traffic to come to make –

.....

A. You can't obstruct. You can't park your car and leave your car in the middle of the roadway.

Bent echoed the deputy's testimony that there was no traffic. No cars passed by while he was parked there, he said. He disputed the deputy's claim that his tires were on the edge of the pavement, asserting instead that he had parked completely off the road.

When denying the motion to suppress, the circuit court explained that "[t]he Court finds [the deputy's] testimony that Defendant's car was protruding into the roadway to be credible. [The deputy] therefore had probable cause to stop Defendant." The circuit court did not specify which statute or ordinance Bent violated by parking his car with its wheels on the edge of the pavement. For that matter, no one in this case—not the deputy, the prosecutor, the circuit court, or the State in this appeal—has ever identified a provision of law that forbids parking a vehicle in the manner that the deputy found objectionable on the night he detained Bent.

The State cites two cases for the proposition that a valid stop may be undertaken on the basis of a parking violation, but those cases are unavailing here. In State v. Battle, 232 So. 3d 493, 494–95 & n.1 (Fla. 2d DCA 2017), there was no dispute that the defendant's car was illegally parked facing against the authorized flow of traffic in violation of section 316.195(2), Florida Statutes (2015). State v. Arevalo, 112 So. 3d 529, 531 (Fla. 4th DCA 2013), held that a traffic stop was justified when the officer observed the motorist park in a marked "no parking" zone contrary to section 316.1945(1)(c)(2), Florida Statutes (2011). It is undisputed that neither of those statutes applied in Bent's case.

The deputy's assertion that "you can't obstruct" might have been a reference to section 316.2045, Florida Statutes (2018), entitled "Obstruction of public streets, highways, and roads." But a violation of section 316.2045(1) requires either (1) "impeding, hindering, stifling, retarding, or restraining traffic or passage" or (2) "endangering the safe movement of vehicles or pedestrians." Moreover, by its terms, the statute prohibits only a willful, i.e., intentional, obstruction. § 316.2045(1);

Underwood v. State, 801 So. 2d 200, 202–03 (Fla. 4th DCA 2001). Especially in the absence of traffic, simply being stopped in the road does not evince an intention to obstruct in violation of section 316.2045. Underwood, 801 So. 2d at 201 (car stopped in middle of street); Koppelman v. State, 876 So. 2d 618, 619 (Fla. 4th DCA 2004) (pick-up truck sitting stationary in an unpaved roadway). The deputy's speculation that an approaching vehicle would have had to divert in order to avoid Bent's car makes no difference. This court has held that "[t]he mere 'potential to block or interfere with traffic is insufficient to justify [a] stop' " for violating this statute. L.J.S. v. State, 905 So. 2d 222, 225 (Fla. 2d DCA 2005) (alteration in original) (quoting Koppelman, 876 So. 2d at 622).

The deputy's stop and detention of Bent was not legally permissible. Therefore, the circuit court should have granted Bent's dispositive motion to suppress the evidence seized as a result of the stop. We reverse Bent's convictions and sentences, and we remand with instructions to discharge him.

Reversed and remanded.

KELLY and SLEET, JJ., Concur.