NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

STATE OF FLORIDA

Appellant,

v.

Appeal No. CRC 10-00065APANO
UCN ~~522009CT058657XXXXXX~~
~~522009CT058654XXXXXX~~

JOSHUA MONTGOMERY

Appellee.

_____/

Opinion filed 4/26/12.

Appeal from a judgment entered
by the Pinellas County Court
County Court Judge William H. Overton

Benjamin Kanoski, Esquire
Assistant State Attorney
Attorney for the Appellant

Douglas J. Greenberg, Esquire
Attorney for the Appellee

ORDER AND OPINION

PER CURIAM

THIS MATTER is before the Court on Appellant's appeal from an order granting Appellee's Motion to Suppress. After review of the record and the briefs, this Court reverses the order of the trial court.

Relevant Factual Background and Trial Court Proceedings

On May 31, 2009 an officer of the St. Pete Beach Police Department observed a golf cart being driven by Appellee on the sidewalk approaching Gulf Boulevard. According to the officer, the golf cart was "pulling right up to the edge, almost entering Gulf Blvd." He also recognized the golf cart as being owned by a local restaurant and that it had been stolen "several times before." As the officer approached the vehicle, he believed the golf cart was trying to pull out onto Gulf Blvd., which is a traffic violation. A traffic stop was then initiated. This stop then led to an arrest for Driving Under the Influence.

On July 19, 2010 the trial court heard a Motion to Suppress evidence obtained from the traffic stop. After hearing testimony from the arresting officer, the trial court granted the motion reasoning that the officer only had a "hunch" that the golf cart was stolen and it could have been borrowed with permission. (R.42.) The court also found that there were "no articulable facts that show a crime is, was, or has been committed" as the cited traffic violation of driving a golf cart on the street had not yet occurred. (R. 43.) However, the trial court acknowledged that the officer could have conducted a stop for the traffic violation of operating a motorized vehicle on the sidewalk. (R. 42.) The court ruled that if the officer had conducted the stop because of this and not because of a suspicion of theft, there may have been enough reasonable suspicion to justify a stop. (R. 42.)

Issue

Whether the officer had reasonable suspicion to conduct a stop when he cited an invalid reason for a traffic violation but another valid reason existed.

Analysis

Fla. Stat. § 316.1945 makes it illegal for a vehicle to "stop, stand, or park on a sidewalk." Fla. Stat. § 316.1945(1)(a)(2). Additionally, under Fla. Stat. § 316.1995 "a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway." Fla. Stat. § 316.1995(1). In *Meister v. Fisher*, 462 So.2d 1071, 1072 (Fla. 1984), the court said:

> A golf cart is clearly a motor vehicle. The legislature has recently specifically so defined it in section 316.003(68), Florida Statutes (1983), which states:
> "(68) GOLF CART.-A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes."

Additionally, the officer testified that he observed the golf cart stopped on the sidewalk. Here it is clear from the record that these statutes were violated and a traffic stop would have been reasonable. Constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved. *Whren v. United States,* 517 U.S. 806 (1996).

While the officer had no intention of issuing a citation for this violation, the proper test is "whether an officer *could have* stopped the vehicle for a traffic infraction." *State v. Hernandez*, 718 So.2d 833, 836 (Fla. 3d DCA 1998) (emphasis added). According to *Whren*, "Detention of a motorist is reasonable where probable cause exists to believe that a traffic violation has occurred." *Whren* at 806. In this case, the officer could have stopped the vehicle for being stopped on the sidewalk and therefore the actual stop is validated.

Conclusion

ACCORDINGLY we find the trial court committed reversible error in granting Appellee's motion. We therefore REVERSE AND REMAND WITH INSTRUCTIONS THAT THE TRIAL JUDGE ACT IN ACCORDANCE WITH THIS OPINION.

ORDERED at St. Petersburg, Pinellas County, Florida this 25th day of April, 2012.

Original order entered on April 25, 2012, by Circuit Judges Joseph A. Bulone, Thane B. Covert, and David A. Demers.

cc: Honorable William H. Overton
Benjamin Kanoski, Assistant State Attorney
Douglas J. Greenberg, Esquire