

County Criminal Court: CRIMINAL LAW — Search & Seizure — Stop —The trial court did not err in granting the motion to suppress, finding no probable cause to support the traffic stop. Affirmed. *State of Florida v. Jeffrey Mainland*, No. 15-CF-6586-WS (Fla. 6th Cir. App. Ct. April 27, 2016).

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

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

STATE OF FLORIDA,
Appellant,

v.

JEFFREY MAINLAND,
Appellee.

UCN: 512015CF006586A000WS
Appeal No: CRC1506586CFAWS
L.T. No: 15-5413XBRT-WS

_____/

On appeal from County Court,

Honorable Debra Roberts,

Andrew Woodliff, Esq.,
for Appellant,

Daniel Pawuk, Esq.,
for Appellee.

ORDER AND OPINION

The trial court did not commit error in granting Appellee's motion to suppress, finding no probable cause to support the traffic stop. Affirmed.

STATEMENT OF THE CASE AND FACTS

Appellee was arrested for DUI. Appellee moved to suppress the evidence obtained as a result of a traffic stop, alleging there was no probable cause to support the stop. At the hearing on the motion, the court heard testimony from Trooper Smith, who conducted the stop. A video was admitted into evidence showing Appellee driving for thirty seconds before the Trooper turned his overhead lights on to conduct the stop. The Trooper testified Appellee began to follow another vehicle too closely, at a distance

of two car lengths behind the other vehicle while traveling 50 miles per hour.¹ The Trooper testified Appellee did not speed, fishtail or affect any other traffic. Prior to observing Appellee following too closely, the Trooper observed Appellee's tires squealing or spinning, and observed Appellee accelerating at a high rate of speed, although he never observed Appellee speeding. The Trooper testified it rained earlier in the evening and the roads were wet. The Trooper testified that drivers should take more caution and maintain a greater distance between vehicles when roads are wet. The Trooper testified his camera did not capture the squealing tires or Appellee following too closely because it only starts recording thirty seconds prior to activation of the emergency lights. The trial court granted the motion to suppress, finding a lack of probable cause to support the stop.

STANDARD OF REVIEW

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). The appellate court reviews the trial court's application of the law to the facts of the case pursuant to a de novo standard. *Id*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error." *Ornelas*, 517 U.S. at 699. See *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

LAW AND ANALYSIS

Appellant contends the trial court applied the wrong standard of law and the order should be reversed. The trial court found a lack of probable cause to stop Appellee for improper start because "mere squealing of tires is not an improper start," citing *Donaldson v. State*, 803 So. 2d 856 (Fla. 4th DCA 2002), and *Accomando v. Dep't of Highway Safety and Motor Vehicles*, No. 03-5064AP-88B (Fla. Sixth Cir. App. Ct., Feb. 19, 2004). The trial court rejected State's argument "that even if there was no probable cause to stop the defendant for an improper start, the defendant violated a provision of the DHSMV's handbook which requires vehicles drive at least five car lengths behind the vehicle in front of it," finding "the State failed to present any statute or

¹ The Trooper testified that the Florida Driver Handbook recommends a distance of one car length between vehicles for every ten miles per hour of speed.

case law supporting such a requirement.” The trial court stated it reached its decision after hearing testimony and arguments and having viewed the audio/video recording.

Appellant contends this case is distinguishable from *Donaldson*, because in this case the Trooper observed more than just squealing of tires: the Trooper observed squealing of tires, accelerating at a high speed twice, and following too closely. See 803 So. 2d 856. Appellant contends probable cause was not based on violation of the recommendations from the handbook, but was based on alleged violation of § 316.0895(1), Fla. Stat. (“The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway”). Appellant contends the testimony was sufficient to demonstrate probable cause for a violation for following too closely.

Appellee responds that the trial court correctly found no probable cause for the traffic stop because an improper start violation is not supported by the observation of squealing tires alone when there is no indication of a danger posed to public safety. See *Donaldson*, 803 So. 2d 856; § 316.154, Fla. Stat. Appellee contends the finding of a lack of probable cause is supported by competent, substantial evidence and should be affirmed. See *Sunby v. State*, 845 So. 2d 1006, 1007 (Fla. 5th DCA 2003).

Appellant relies on *U.S. v. Orozco*, 422 Fed. Appx. 783, 784-85 (11th Cir. 2011), to support the contention that the court should uphold a traffic stop based on the officer’s testimony that the vehicle was following too closely. The Court in *Orozco* recognized that the trial court had credited the officer’s testimony in that case, and that the officer’s testimony was supported by the video recording. See *id.* at 785. In this case, it does not appear that the trial court was persuaded by either the officer’s testimony or the video recording. “An order granting or denying a motion to suppress is presumptively correct and a reviewing court should interpret the evidence and reasonable inferences and deductions drawn therefrom in a manner most favorable to sustaining the trial court’s ruling.” *Velez v. State*, 554 So. 2d 545, 548 (Fla. 5th DCA 1989). Although Appellant contends the Trooper’s credibility should not have been called into question, the trial court may properly determine the credibility to be given the

testimony and was free to disregard any of the testimony the court found not to be credible. See *State v. Robinson*, 740 So. 2d 9, 14 (Fla. 1st DCA 1999); *Sunby*, 845 So. 2d 1006. The trial court's findings of fact are reviewed "only for clear error," and the Court will "give due weight to inferences drawn from those facts." *L.J.S. v. State*, 905 So. 2d 222, 224 (Fla. 2d DCA 2005). See *Pagan*, 830 So. 2d at 806. The order of the trial court is affirmed.

CONCLUSION

The Court finds no error in the trial court's order granting the motion to suppress. The order of the trial court is affirmed.

It is hereby ORDERED that the order of the trial court is AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 27th day of April, 2016.

Original order entered on April 27, 2016, by Circuit Judges Linda Babb, Susan Barthle and Daniel D. Diskey.