

County Criminal Court: CRIMINAL LAW – DUI – Motion to Suppress. The trial court's findings of fact are entitled to deference absent a showing of clear error. The Court, conducting a *de novo* review of the legal findings, agreed that there was insufficient evidence to establish that the stop was a consensual encounter or to establish reasonable suspicion of criminal activity. Affirmed. *State v. Eichler*, No. 16-CF-2572-WS (Fla. 6th Cir. App. Ct. Dec. 2, 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.

**UCN: 512016CF002572A000WS
Appeal No: CRC16002572CFAWS
L.T. No: 14-MM-3640-WS**

**ERIC BRIAN EICHLER,
Appellee.**

_____/

On appeal from County Court,
Honorable Debra Roberts,

Stefen M. Diskey, Esq.,
for Appellant,

Curtis M. Crider, Esq.,
for Appellee.

ORDER AND OPINION

The trial court did not commit error in granting Appellee's motion to suppress. The trial court's findings of fact are entitled to deference absent a showing of clear error. The order of the trial court is affirmed.

STATEMENT OF THE CASE AND FACTS

Appellant was issued criminal traffic citations on May 26, 2014, for driving under the influence in violation of § 316.193, Fla. Stat., and refusal to submit to testing in violation of § 316.1939 Fla. Stat. Prior to trial, Appellee moved to suppress evidence obtained during the DUI investigation conducted after Appellee was stopped for failing to respond to officer's direction to drive around the scene of an accident. In Appellee's motion, he alleged there was no reasonable suspicion of criminal activity.

At the hearing on the motion to suppress, Deputy Spicuglia testified that he was directing traffic around a crash site at an intersection. At some point later, Trooper LaRose arrived on scene to investigate the accident. Deputy Spicuglia stated that he observed a BMW arrive at the south side of the scene, and the driver was later identified as Appellee. Deputy Spicuglia further stated that Appellee's vehicle was the only car present in the northbound roadway at that time. The Deputy testified that Appellee did not respond to two attempts to move his car around the accident. According to the testimony, after these attempts, Deputy Spicuglia approached the BMW, tapped on the window, and instructed Appellee to roll it down. When Appellee opened his window, the Deputy observed signs of intoxication. The Deputy flagged over Trooper LaRose to investigate the DUI and Deputy Spicuglia returned to directing traffic. Deputy Spicuglia did not write a report, but testified he remember the facts despite not having written a report.

Trooper LaRose who was investigating the scene of the accident also testified at the hearing on Appellee's motion to suppress. According to Trooper LaRose's testimony, Appellee stopped his car behind the trooper's own vehicle. Trooper LaRose testified that Deputy Spicuglia approached Trooper LaRose and advised him Appellee was impaired. Trooper LaRose further testified that he made arrangements for another trooper to finish the accident investigation while LaRose conducted the DUI investigation. The officers' testimony conflicts with Trooper LaRose's probable cause affidavit. The affidavit indicates Trooper LaRose arrived on scene as the Appellee pulled in behind him, whereas Deputy Spicuglia's testimony asserts Appellee was the only car when Appellee pulled up and stopped. The affidavit continues to state only that Trooper LaRose made contact with Appellee observing signs of intoxication, and makes no mention of Deputy Spicuglia, contrary to the officers' testimony that Deputy Spicuglia made first contact with Appellee.

The trial court issued an interlocutory order granting Appellee's motion to suppress evidence obtained during the DUI investigation, finding insufficient evidence to support the stop. The trial court found that Deputy Spicuglia's testimony was inconsistent with the testimony of Trooper LaRose regarding the arrival of the BMW to the accident scene. The trial court also found it was unclear from the evidence which

officer first made contact with Appellee. Additionally, the trial court found that the testimony regarding the sequence of activities during the incident was ambiguous.

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 that the trial court’s findings of fact are clearly erroneous. Appellant alleges that the record does not support a finding that the testimony of the officers was inconsistent as to the facts in this case. Appellant further contends that the trial court incorrectly applied the law in granting the motion to suppress. Appellant alleges that the facts show that law enforcement made consensual contact with Appellee and that, therefore, reasonable suspicion of criminal activity was not required. *Dermio v. State*, 112 So. 3d 551, 556 (Fla. 2d DCA 2013) (holding that when an encounter with an officer is found to be consensual it is not necessary that the officer have a reasonable suspicion of criminal activity). Alternatively, Appellant argues that there was reasonable suspicion to support the stop.

The trial court’s findings of fact are not clearly erroneous. In this case, the trial court was not persuaded by the testimony of the law enforcement officers and the probable cause affidavit. After hearing their testimony, the trial court found inconsistencies as to where Appellee’s vehicle pulled up when approaching the crash, how initial contact was made, and which officer made initial contact. The trial court also found a lack of clarity in the officers’ testimony. This Court cannot reweigh the evidence or determine witness credibility. *Duke v. State*, 82 So. 3d 1155, 1158 (Fla. 2d DCA 2012). Sitting as the trier of fact, the trial court was free to disregard any testimony it found unconvincing, even the testimony of a police officer and even when it is the only evidence presented. *Sunby v. State*, 845 So. 2d 1006 (Fla. 5th DCA 2003). After

reviewing the record, Appellant has failed to demonstrate that the trial court findings are clearly erroneous. As such, the Court must defer to the trial court's findings of fact.

The trial court also did not err in its application of the law. "[T]he determination of whether the application of the law to the historical facts establishes an adequate basis for the trial court's ruling is subject to *de novo* review." *Connor v. State*, 803 So. 2d 598, 608 (Fla. 2001). Deferring to the trial court's findings of fact, this Court, conducting a *de novo* review of the legal findings, agrees that there is insufficient evidence to establish that the stop was a consensual encounter or to establish reasonable suspicion of criminal activity.

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 and ADJUDGED that the order of the trial court is AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 2nd day of December, 2016.

Original order entered on December 2, 2016, by Circuit Judges Linda Babb, Susan Barthle, and Kimberly Campbell.