County Civil Court: CRIMINAL LAW – Search and Seizure – Stop – Trial court erred in granting motion to suppress when deputy acquired reasonable suspicion to detain Appellee while performing community care duties. Reversed and remanded. *State v. Michael Tompkins,* Case No. 12-CF-004472-ES (Fla. 6th Cir. App. Ct. May 21, 2013).

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: 512012CF004472A000ES
Appeal No: CRC1204472CFAES
L.T. No: 1103617XCJTES

MICHAEL TOMPKINS,
Appellee.
_____/

Appeal from Pasco County Court

County Judge Robert P. Cole

Matthew O. Parrish, A.S.A.
For Appellant

Randall C. Grantham, Esq.
for Appellee

ORDER AND OPINION

The State appeals the trial court's order granting Appellee's motion to suppress. Specifically, the State argues that the deputy did not initiate an unwarranted investigatory stop since the deputy acquired reasonable suspicion to detain Appellee while performing his community care duties. We agree. The trial court's order must be reversed, as set forth below.

FACTUAL BACKGROUND

On September 22, 2011, Appellee was issued a traffic citation charging him with DUI in violation of § 316.193. Appellee entered a plea of not guilty and filed a motion to suppress evidence derived from the stop. A hearing on the motion began on March 27, 2012 and was continued on May 22, 2012.

At the first hearing on the motion suppress before Judge Cole, Deputy Darrell Hill testified that he first made contact with Appellee's vehicle on September 22, 2011 at about 1:00 in the morning. Appellee's vehicle was sitting in the Big Lot's parking lot, perpendicular across three parking spaces with the engine running and the headlights on. Believing the driver could possibly be under the influence, Deputy Hill called for Deputy Anthony Peterson to respond to the scene. Once Deputy Peterson arrived, Deputy Hill turned the investigation over to him and stood by as back up.

At the second hearing, Deputy Anthony Peterson testified that upon reviewing the scene, he was concerned for Appellee's safety and continued with the welfare check. He specifically referred to several vehicular suicides that had occurred in the area as cause for his concern. Deputy Peterson made several efforts to awaken Appellee, including shining a light in his eyes, knocking on the windows, and shaking the entire vehicle, but with no success. Unable to get any response from Appellee, Deputy Peterson opened the driver's side door to shake Appellee physically. He immediately noticed an overwhelming odor of alcohol emanating from the vehicle. Deputy Peterson shook Appellee once and then again more vigorously. Appellee awoke momentarily, only to fall right back asleep again.

After getting Appellee to wake up and stay awake, Deputy Peterson noticed that Appellee had watery and bloodshot eyes. Appellee denied being afflicted with diabetes or any other medical issue. Contrary to the odor emanating from his breath, Appellee also denied having had anything to drink that evening. Deputy Peterson then asked Appellee to step outside and perform field sobriety exercises. Appellee refused and attempted to close the door on the deputy. When asked a second time, Appellee agreed to perform field sobriety exercises, which ultimately led to Appellee's arrest for DUI.

The trial court granted Appellee's motion to suppress. It concluded that an investigatory stop occurred when Deputy Peterson opened Appellee's door, and that reasonable suspicion did not exist at that time. The State filed a timely notice of appeal.

LAW AND ANALYSIS

It is well established that the community caretaking doctrine addresses law enforcement functions that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady v. Dombrowski, 413 U.S. 433, 441 (1973). Instead, searches carried out by law enforcement under the community care doctrine focus on the "concern for the safety of the general public." Id., at 447. In keeping with such community caretaking responsibilities, law enforcement could properly check Appellee's condition to determine whether he needed medical assistance. This type of limited contact has long been deemed a reasonable and prudent exercise of a law enforcement officer's duty to protect the safety of citizens. Lightbourne v. State, 438 s2 380, 388 (Fla. 1983).

In this case, when the officers saw Appellee's vehicle at one o'clock in the morning across three parking spaces with the headlights still on and the engine running, law enforcement was concerned about Appellee's welfare. After numerous efforts to awaken Appellee from outside his vehicle, law enforcement could still not obtain any response from Appellee. As such, law enforcement had to open the driver's door to physically shake Appellee. Upon opening the door, Deputy Peterson immediately noticed an overwhelming odor of alcohol emanating from the vehicle. After a couple of attempts to awaken Appellee by physically shaking him, Appellee woke up only to fall back asleep again. Once law enforcement was finally able to get Appellee to stay awake, Deputy Peterson noticed more signs of intoxication. Appellee denied any other medical issue.

Deputy Peterson was properly performing his community caretaking responsibilities when he tried to awaken Appellee. It was not until after several attempts

to rouse Appellee from outside the vehicle that Deputy Peterson finally opened Appellee's car door. At the point when Deputy Peterson decided to open the car door, Deputy Peterson and Deputy Hill had rapped on the window multiple times, shined a light in Appellee's face, and even shook the entire vehicle up and down in an attempt to wake him. Appellee's complete lack of response gave law enforcement a reasonable cause for concern. Significantly, it was not until after Deputy Peterson opened the car door performing his community care duties that he developed a reasonable suspicion. Deputy Peterson observed Appellee's strong odor of alcohol, bloodshot, watery eyes, and slurred and mumbled speech, which combined gave him reasonable suspicion to detain Appellee for a full investigatory stop. Contrary to the trial court's legal conclusion, the deputy did not initiate an unwarranted investigatory stop by opening Appellee's door, as the deputy was legitimately performing his community care duties. Taken together, the deputy's observations were enough to clear the bar for reasonable suspicion and continue with a DUI investigation. State v. Ameqrane, 39 So. 3d 339 (Fla. 2d DCA 2010).

The trial court relied primarily on Danielewicz v. State, 730 So. 2d 363 (Fla. 2d DCA 2010), which is distinguishable from the present case. In Danielewicz, the defendant was asleep and legally parked in her vehicle with the windows up when the officer attempted to wake her. The defendant awoke almost immediately and attempted to drive away, but the officer ordered her to exit her vehicle. The officer in Danielewicz did not have an opportunity to detect an odor of alcohol before ordering the defendant out, and he specifically stated during the motion that his only concern was a DUI investigation, not the defendant's personal health.

The Danielewicz decision was followed by State v. Jimoh, 67 So. 3d 240 (Fla. 2d DCA 2011), which is more analogous to this case. In Jimoh, the officer located the defendant asleep behind the wheel of a running vehicle. An odor of alcohol was detectable through the open window of the vehicle, and the defendant failed to respond to the officer banging on the roof and doors. After that, the officer reached into the vehicle and shook the defendant until she woke up. The appellate court found that the officer had reasonable suspicion to order an investigatory stop under the circumstances,

specifically citing Danielewicz as distinguishable because of the Jimoh defendant's unresponsiveness and odor of alcohol. Based on the rulings of Jimoh and Ameqrane, Deputy Peterson had reasonable suspicion to hold Appellee for a DUI investigation.

Deputy Peterson was properly acting within his duties as a police officer when he made contact with Appellee. Under the community caretaker function of his duties, he had just cause to open the door to Appellee's vehicle to check on his health and medical condition. An investigatory stop did not begin at that time because Appellee remained unconscious and was not aware of Deputy Peterson's actions. By the time Appellee regained consciousness, Deputy Peterson had acquired enough reasonable suspicion that Appellee was DUI to justify continuing with the investigation. The trial court's order shall be reversed and the cause remanded for further proceedings. It is therefore,

ORDERED AND ADJUDGED that the trial court's order is hereby REVERSED and the cause remanded for further proceedings.

DONE AND ORDERED in Chambers, at New Port Richey, Pasco County, Florida this 21st day of May 2013.

Original order entered on March 18, 2013 by Circuit Judges Stanley R. Mills, W. Lowell Bray, Jr., and Shawn Crane.

Copies to:
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