

**County Criminal Court: CRIMINAL LAW— Search and Seizure – Stop.** Trial court erred in granting motion to suppress, finding the length of Appellee’s detention was unreasonable. Considering the totality of the circumstances, the detention was not unreasonable as a matter of law. The order granting the motion to suppress is reversed and the cause is remanded for further proceedings. The cross-appeal is dismissed. Reversed and Remanded. *State of Florida v. Dawn Hall*, No. 14-CF-8219-WS (Fla. 6th Cir. App. Ct. December 16, 2015).

**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 and Cross-Appellee,**

**UCN: 512014CF008219A000WS  
Appeal No: CRC14008219CFAWS  
L.T. No: 2014-A1LWJ3ET-WS**

v.

**DAWN HALL,  
Appellee and Cross-Appellant.**

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On appeal from County Court,  
Honorable Anne Wansboro,  
Office of the State Attorney,  
for Appellant/Cross-Appellee,  
Matthew Kindel, Esq.,  
for Appellee/Cross-Appellant.

**ORDER AND OPINION**

The Court finds it was error to grant the motion to suppress finding Appellee’s detention before initiating an auto accident and subsequent DUI investigation was unreasonable. The Court further finds Appellee’s cross-appeal challenging the denial of a motion to suppress post-Miranda statements does not involve sufficiently similar issues of law or fact to permit the Court to consider the cross-appeal of an otherwise non-appealable order. The order of the trial court granting the motion to suppress is reversed and the cause is remanded for further proceedings. The cross-appeal is dismissed without consideration on the merits.

## **STATEMENT OF THE CASE AND FACTS**

On May 28, 2014, Appellee's vehicle left the roadway and struck a mailbox. Deputy Endricks responded to the accident scene around 5:13 p.m. and made contact with Appellee. Deputy Endricks observed signs of impairment including an odor of alcohol, glassy bloodshot eyes, and balance issues. The Deputy called Florida Highway Patrol (FHP) to investigate circumstances surrounding the accident pursuant to the policy of the Sheriff's Office, because the accident occurred in an unincorporated area of Pasco County. Deputy Housel later arrived on the scene. After waiting for a period of time, Deputy Housel notified a supervisor that FHP was going to have a delayed response time. Around 6:15 p.m. Sergeant Rowand, the supervisor of the traffic unit, arrived on the scene, was briefed on what had occurred, and called another Deputy to the scene to conduct the investigation due to the delay in arrival of FHP. Deputy Rosenbloom arrived on the scene around 6:24 p.m., completed the accident investigation and then began an investigation for DUI based on observations of Appellee. Appellee was cited for DUI. Appellee filed a motion to suppress, seeking to suppress evidence obtained as a result of the detention at the accident scene. The trial court granted the motion, finding the delay of one hour and ten minutes to be unreasonable when any of the other deputies on the scene could have performed the DUI investigation at any time. Appellant seeks review of the order granting the motion to suppress. Appellee filed a cross-appeal challenging the portion of the trial court's order denying Appellee's motion to suppress post-Miranda statements made by Appellee during the DUI investigation.

## **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). This Court reviews the trial court's application of the law to the facts of the case pursuant to a de novo standard. *Id.* See *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Peticion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error," and the Court will give deference to inferences drawn from those facts by the trial court and law enforcement officers. *Ornelas*, 517 U.S. at 699. See *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

## LAW AND ANALYSIS

Appellant contends that the length of Appellee's detention after the accident was not unreasonable. An officer who observes factors giving rise to a reasonable suspicion that a crime is being committed or has been committed, after making a lawful investigatory stop, may further detain a person in order "to conduct a reasonable inquiry to confirm or deny that probable cause existed to make an arrest." *State v. Taylor*, 648 So. 2d 701, 703 (Fla. 1995) (citing § 901.151, Fla. Stat.). The person may not be detained "longer than is reasonably necessary" to determine whether there is probable cause for an arrest. § 901.151(3). "It is permissible to detain suspects for a reasonable time to investigate the circumstances warranting an investigatory stop as well as any suspicious circumstances produced by the stop." *State v. Merklein*, 388 So. 2d 218, 219 (Fla. 2d DCA 1980) (citing *State v. Lopez*, 369 So. 2d 623 (Fla. 2d DCA 1979)). "The reasonableness of an investigatory detention depends on the circumstances surrounding the detention, and not solely on its length." *Id.* Appellant contends the length of the detention was not unreasonable given the observations of the deputies and the circumstances of the case. The evidence was sufficient to support a reasonable suspicion that Appellee was driving under the influence, and Appellee's detention was justified based on the circumstances. See *Origi v. State*, 912 So. 2d 69, 70 (Fla. 4th DCA 2005); *Sterbenz v. State*, 12 Fla. L. Weekly Supp. 612a (Fla. 6th Cir. Ct. March 4, 2005).

Appellee contends the trial court properly found the detention was unreasonable. Two additional officers who were qualified to conduct an accident and DUI investigation arrived on the scene after Deputy Endricks called for assistance. The investigation did not occur until Deputy Rosenbloom arrived on the scene around 6:24 p.m., approximately one hour and ten minutes after Deputy Endricks initially made contact with Appellee. Appellee contends there is not sufficient justification for Appellee's continued detention when any of the other officers on the scene could have performed the investigation prior to Deputy Rosenbloom's arrival.

Deputy Rosenbloom testified it was the policy of the Sheriff's Office to contact FHP to respond to accidents in unincorporated areas of Pasco County, and the deputies on the scene were waiting for FHP, who advised that the call was holding because they

were extremely busy and it would be some time before FHP could respond. Deputy Rosenbloom testified to having more knowledge and experience investigating accidents than the other deputies. Deputy Rosenbloom testified that it was not unusual for FHP to not immediately respond, and that when extenuating circumstances were present the Sheriff's Office had the option to respond and investigate an accident.

Deputy Rowand testified that FHP could take anywhere from forty-five minutes to three hours to respond to a call, and that upon arriving at the scene he decided to proceed with the accident investigation because the officers had been waiting a little over an hour. Deputy Rowand testified that as the supervisor of the unit he typically did not perform accident investigations, but assigned the investigations, although he was trained to perform accident investigations and field sobriety tests. Deputy Rowand called Deputy Rosenbloom to conduct the investigation.

Deputy Endricks testified to calling FHP several times to check the status of the response, but could not get an estimated response time. Deputy Endricks testified the response was taking longer than usual and the Deputy notified Deputy Housel of the delay, who then made contact with Deputy Rowand to request traffic units to respond to the accident. Deputy Endricks testified to observing indicators that Appellee was impaired after first responding to the accident scene.

"In assessing whether a detention is too long in duration to be justified as an investigative stop," courts should "examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985). In *Sharpe*, the Court stated:

A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But '[t]he fact that the protection of the public might, in the abstract, have been accomplished by less intrusive means does not, itself, render the search unreasonable.' The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

*Id.* at 686-87. A court making such an assessment should question whether there was any “delay unnecessary to the legitimate investigation of the law enforcement officers,” or any “evidence that the officers were dilatory in their investigation.” See *id.* at 687-88.

The detention in this case was not unreasonable as a matter of law considering the facts and surrounding circumstances. The length of the detention alone is insufficient to render it unreasonable absent additional facts. See *Sharpe*, 470 U.S. at 686-87. The question before the Court is not whether it was possible for the officers on the scene to accomplish the objectives by alternative means, but whether the officers’ actions were unreasonable. See *id.* at 687-88. The initial stop in this case resulted from Appellee’s traffic accident, and Appellee was obligated to remain at the scene of the accident until an investigation into the accident was conducted. See §§ 316.061, 316.062, Fla. Stat. The investigating officer informed Appellee at the conclusion of the accident investigation that he was beginning a DUI investigation, and there was no delay between the accident investigation and DUI investigation. It was not unreasonable for the officers to wait for FHP to respond to the traffic accident, which was the policy of the Sheriff’s Office, prior to conducting the accident investigation. The record does not demonstrate the officers in this case acted unreasonably in pursuing the investigation or caused unnecessary delay that would render the detention unreasonable. It was error to grant the motion to suppress on this basis. The order of the trial court is reversed and the cause is remanded for further proceedings.

### **CROSS-APPEAL**

Appellee challenges the portion of the trial court’s order denying the motion to suppress post-Miranda statements made by Appellee. The Court must first determine whether it may consider the cross-appeal challenging a nonfinal order which would otherwise not be appealable at this stage in the proceedings. Fla. R. App. P. 9.140(b)(4), provides that a defendant may raise a cross-appeal before trial, but such cross-appeals are “limited to related issues resolved in the same order being appealed.” The “rule permits the defendant to cross-appeal an issue at a time when the defendant would have no right to initiate a nonfinal appeal,” and “expands the appellate court’s scope of review to include an issue that it would not have had jurisdiction to review

directly.” *State v. Cassells*, 835 So. 2d 397, 401 (Fla. 2d DCA 2003) (citing *Lopez v. State*, 638 So. 2d 931, 933 (Fla. 1994)). Appellate courts have asserted jurisdiction over cross-appeals when the issues are “legally intertwined or closely factually related.” See *State v. Vitale*, 118 So. 3d 853, 855 (Fla. 5th DCA 2013); *State v. Miyasato*, 805 So. 2d 818, 820, n. 1 (Fla. 2d DCA 2001); *State v. Waterman*, 613 So. 2d 565, 566 (Fla. 2d DCA 1993). The cross-appeal does not involve sufficiently related issues to properly bring it before this Court. The reasonableness of Appellee’s detention raises separate legal and factual issues from the question of whether Appellee’s Miranda rights were violated in this case. The cross-appeal is therefore dismissed without consideration on the merits.

### **CONCLUSION**

Appellee’s detention was not unreasonable given the totality of the circumstances. Appellee was obligated to remain at the accident scene and the DUI investigation began subsequent to the accident investigation. The record does not demonstrate the actions of the officers in this case were unreasonable. The order granting the motion to suppress is reversed and the cause is remanded for further proceedings. The cross-appeal is dismissed.

It is ORDERED AND ADJUDGED that the order of the trial court is REVERSED and the cause is REMANDED for further proceedings.

It is FURTHER ORDERED that the cross-appeal is DISMISSED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 16th day of December, 2015.

Original order entered on December 16, 2015, by Circuit Judges Susan Barthle, Shawn Crane and Daniel D. Diskey.