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AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

RACHAEL L. ADAMS,

Appellant

Case No. CRC10-00037APANO

v.

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed: 2/15/12

Appeal from the County Court
for Pinellas County
County Judge John Carballo

William Bennett, Esquire
Attorney for Appellant

Natalie Crozier, Esquire
Assistant State Attorney
Attorney for Appellee

ORDER AND OPINION

COVERT, JUDGE

This opinion is based on an appeal from the trial court's denial of the Appellant's Motion to Suppress which claims there was a lack of reasonable suspicion or probable cause to conduct a stop of the Appellant because the known citizen informants did not have firsthand knowledge of

the facts which identified the Appellant as the suspect. We have jurisdiction. Art. V, § (5) (b), Fla. Const., §26.012 (1), Fla. Stat. (2010).

STATEMENT OF FACTS

On May 19, 2009, the defendant, Rachel Adams (Appellant), hit a man while at the "Chick-A-Boom Room" bar in Dunedin, Florida. Andrew Buckenham, a bartender who was working in the bar on the night in question, witnessed the incident and subsequently called and reported it to the police. Deputy Jason Johnson was dispatched to investigate the incident. Prior to Deputy Johnson's arrival, Mr. Buckenham told Cary Lamb, a fellow employee that was present in the bar who was not working. Lamb did not witness the incident, but Buckenham told him that the defendant at the bar had hit someone and then left. Lamb knew who Buckenham was referring to as the defendant was known at the bar.

Lamb went outside and watched the defendant get into her vehicle. Shortly thereafter, Deputy Johnson arrived to investigate the battery call, and Lamb and Daniel Weber approached him in the parking lot while he was in his vehicle. Lamb and Weber then pointed to the only vehicle in the lot that was moving and Lamb informed Deputy Johnson that she was the suspect he was looking for. Deputy Johnson then pulled up behind the vehicle and was able to ascertain through the driver's side mirror that the driver was a female. Subsequently, Deputy Johnson initiated a traffic stop at which time he was able to make observations of the defendant's sobriety. Afterwards, the defendant was arrested and charged with DUI.

ANALYSIS

Florida Statute §901.151(2), authorizes law enforcement to conduct an investigatory stop of a person who the officer believes was involved, or is about to be involved, in the commission of a crime. The relevant portion states,

Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed...a violation of the laws of this state..., he may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding his presence abroad which led the officer to believe that he has committed...a criminal offense.

In *London v. State*, 540 So.2d 211 (Fla. 2d DCA 1989), the scope of Florida Statute §901.151(2) was extended to include traffic stops. "All that is required for a vehicle stop... to be valid is a founded suspicion on the part of the officer effectuating the stop that the occupants have committed or are about to commit a crime." *London* at 213 (citing *Sumlin v. State*, 433 So.2d 1303 (Fla. 2d DCA 1983)). Thus, the initial question in this case is whether Deputy Johnson had reasonable suspicion to conduct an investigatory stop of the defendant's vehicle. "In determining whether an officer had reasonable suspicion in any given case, the totality of the circumstances – the whole picture – must be taken into account." *Cresswell v. State*, 564 So.2d 480, 482 (Fla. 1990) (citing *U.S. v. Cortez*, 449 U.S. 411, 417-418 (1981)).

"[R]easonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause...[it] is dependent upon both the content of information possessed by police and its degree of reliability. Both factors-quantity and quality-are considered in the 'totality of the circumstances-the whole picture'...when evaluating whether there is reasonable suspicion." *Baptiste v. State*, 995 So.2d 285,291 (Fla. 2008).

Appellee relies on two cases to illustrate what satisfies the definition of reasonable suspicion in a totality of the circumstances analysis. First, Appellee cites *State v. Pelland*, 5 Fla. L. Weekly Supp. 724a (Fla. 10th Cir. 1998), where an officer was dispatched to a domestic violence call. While that officer was en route, another officer heard a radio transmission describing the suspect's vehicle and tag number and subsequently pulled the suspect's vehicle

over. *Id.* The court held that the officer had reasonable suspicion to conduct an investigatory stop based on the totality of the circumstances.

In *Romanoff v. State*, 391 So.2d 783 (Fla. 4th DCA 1980), an officer responded to a call about a suspect brandishing a firearm at a hotel before fleeing in a white Chevrolet. The call reporting the incident came from an anonymous source. *Id.* at 783. The officer pulled over a vehicle matching that description on "instinct" when it pulled in front of him within one block of the hotel. *Id.* at 784. The court held that the officer had reasonable suspicion to make an investigatory stop based on the anonymous tip, combined with the facts that the officer noticed the vehicle near the scene and that it was the only vehicle in the area matching the description. *Id.*

Similarly in this case, Deputy Johnson was dispatched to the Chic-a-boom Room in response to an alleged crime, in this case a battery. However in this instance the call did not come from an anonymous source, but rather from Andrew Buckenham, whose identity was readily discoverable, as evidenced by the fact that he spoke to the police after the incident and disclosed his identity to them.

Buckenham's tip advised Deputy Johnson that the battery was committed by a woman. When Deputy Johnson arrived on the scene he was approached by two individuals; both of them pointed at the only vehicle in the parking lot that was moving and one said, "That's her". Deputy Johnson ascertained that it was indeed a woman driving the car before he pulled the car over.

As in *Romanoff*, the totality of the circumstances supports the finding that Deputy Johnson had reasonable suspicion to pull the vehicle over and conduct an investigatory stop. Deputy Johnson was relying on a highly reliable tip, a tip even more reliable than the one in *Romanoff*, which informed him that a woman committed the battery. The vehicle in this case was

discovered in close proximity to the location Deputy Johnson was dispatched to, even closer to the location of the incident than the vehicle in *Romanoff*, and was the only vehicle in the parking lot that was moving at the time. These facts, combined with the fact that Deputy Johnson observed that the driver was female, gave Deputy Johnson reasonable suspicion to stop the vehicle.

In addition, Deputy Johnson's suspicion towards the defendant was further increased by the fact that Cary Lamb and Daniel Weber approached him in the parking lot and pointed at the only moving vehicle, with Lamb yelling, "That's her". Although Lamb did not actually witness the alleged battery, he was informed of it by his co-worker, Andrew Buckenham, an eyewitness to the incident. Lamb testified that he knew that the defendant was the person Buckenham was referring to, and that he watched the defendant exit the bar and enter her vehicle.

In *Manning v. State*, an officer responded to a burglary call from a victim who did not witness the burglary, but was informed of who committed it by a neighbor. *Manning v. State*, 957 So.2d 111 (Fla. 4th DCA 2007). The victim knew the person who was alleged to have committed the burglary and gave a description of him to the officer. *Id.* at 112. While the officer was investigating the scene, one of the victim's neighbors observed a gold car driving by and told the victim that a gold car had been parked outside of the victim's house the night before. *Id.* at 113. As the car drove by, the victim was able to determine that the driver was the man who he believed had committed the burglary, and informed the officer that the suspect was in that car. *Id.* The officer pulled the car over, subsequently discovered that the driver had in fact committed the burglary, and arrested the driver. *Id.* The court held that the officer had reasonable suspicion to stop the defendant's car, for purposes of further investigation, even though neither the victim,

nor the neighbor who relayed the initial tip to the victim, had seen the defendant commit the burglary. *Id.* at 114.

Similarly to the officer in *Manning*, Deputy Johnson received information from witnesses who did not witness the alleged incident firsthand, but who had been informed of the incident and were familiar with the individual who was alleged to have committed the crime. However, unlike in *Manning*, in this case Deputy Johnson also had information from an eyewitness to the battery, and that eyewitness informed Deputy Johnson that the suspect was a female. Knowing that the suspect was a female, that he was in close proximity to the location where the battery occurred, that there was only one car in the parking lot that was moving, and that car was being driven by a female, Lamb's statement was merely one factor among many that led Deputy Johnson to stop the defendant's car. Given the totality of the circumstances, particularly the fact that there was an eyewitness to the battery, Deputy Johnson had additional information that was more reliable than the officer in *Manning*, who had reasonable suspicion based solely on the tip from an individual who did not witness the crime. Unlike the officer in *Manning*, who relied solely on the neighbor's tip as the basis for his reasonable suspicion, Deputy Johnson was not acting on the tip from Lamb and Weber alone; he was acting on that tip in the context of the other information that he had been provided. The information that Deputy Johnson received from Lamb and Weber did not form the sole basis of his reasonable suspicion for stopping the defendant's car; it further corroborated the information he previously received.

Furthermore, unlike the neighbor in *Manning*, who merely noticed the car but gave no indication that he knew the defendant was in it; in this case Lamb actually watched the defendant get into the vehicle and thus knew for certain that she was inside it.

In support of their argument that Deputy Johnson did not have reasonable suspicion to stop the defendant's vehicle, Appellant compares this case to *Nicholo v. State*, 379 So.2d 169 (Fla. 4th DCA 1980), where an informant told the police that Nicholo had stolen credit cards. Nicholo was subsequently stopped and searched by law enforcement, based solely on the informant's unverified tip. *Id.* The district court reversed the trial court's decision and granted the defendant's motion to suppress, holding that the search was improper. *Id.* The court noted the necessity of verifying both the reliability of the informant and the credibility of the informant's information when the informant's information is the basis for a warrantless arrest. *Id.*

Appellant notes that in this case, as in *Nicholo*, Deputy Johnson did not verify the reliability or credibility of Cary Lamb, or the information Lamb provided to Deputy Johnson. However, Appellant's comparison of *Nicholo* to the present case is misplaced. Although Appellant is correct that Deputy Johnson did not verify Lamb's tip before stopping the defendant's vehicle, the difference between this case and *Nicholo* is that *Nicholo* involved a warrantless search for evidence and not an investigatory stop such as the one that occurred in this case.

To have conducted a valid search in *Nicholo*, the police would have had to have either obtained a valid search warrant, or shown that they had probable cause to search the defendant, and that there were exigent circumstances. *See, Potts v. Johnson*, 654 So.2d 596 (Fla. 3d DCA 1995). However, in the present case, Deputy Johnson did not conduct a search of either the defendant or the defendant's car, but rather the deputy conducted a vehicle stop. As previously stated, an officer only needs to have reasonable suspicion that the person has committed a crime in order to effectuate a temporary detention such as a traffic stop. Also as previously stated, reasonable suspicion can be established by information that may not be suitable to establish

probable cause. Therefore, because the search in *Nicholo* required a showing of probable cause, while the traffic stop in the present case only required a showing of reasonable suspicion, *Nicholo* is irrelevant to the case at hand.

Appellant also cites *Whittle v. State*, 903 So.2d 210 (Fla. 2d DCA 2005), where the district court overturned the trial court's denial of a motion to suppress. In *Whittle*, police relied on information from a confidential informant in searching and arresting the defendant for drug possession. *Id.* The informant stated that the information provided to the police had come from a conversation she had overheard, making it hearsay information. *Id.* The court held that this information alone was not sufficient to establish probable cause. *Id.*

As with *Nicholo*, Appellant's comparison of the case at hand to *Whittle* is incorrect. *Whittle* is not applicable to the case at hand, because like *Nicholo*, the issue involved a warrantless search. Furthermore, of crucial importance is that the court in *Whittle* said that while the informant's information was not sufficient to establish probable cause, "[t]he hearsay information conveyed by the informant in this case may have been a reasonable foundation upon which to begin a criminal investigation. It may have warranted an attempt at a consensual encounter in the parking lot that could have evolved to a valid investigatory stop." *Id.* at 213. The present case involved just such an investigatory stop, requiring only reasonable suspicion and not probable cause, rendering *Whittle* irrelevant to the case at hand.

In addition, the information conveyed from Cary Lamb to Deputy Johnson is not hearsay in the same manner as the information provided by the informant in *Whittle*. In *Whittle*, the informant claimed that the information had come from a conversation she had overheard, but she could not identify the parties to the conversation. Conversely, in this case the information that Lamb provided to Deputy Johnson had been received by Lamb directly from Andrew

Buckenham, who Lamb knew, and Lamb had no reason to doubt the veracity of Buckenham's claim. The fact that the source of Lamb's information could be verified makes the information more reliable than the informant's tip in *Whittle*.

Appellant also cites *Keeling v. State*, 929 So.2d 1169 (Fla. 2d DCA 2006), where an officer was told that a red truck had been present at a brawl and was given the address of the truck's owner. The officer was not told whether the truck's owner was suspect. *Id.* As he was approaching the address, the officer spotted a red truck matching the description leaving the apartment complex, and he pulled the car over and subsequently arrested the driver for DUI. *Id.* The appellate court reversed the trial court's denial of a motion to suppress, holding that the officer's "independent observations did not...give rise to anything more than a mere suspicion of unlawful activity", and that the officer lacked the reasonable suspicion necessary to stop the defendant's vehicle. *Id.* The court's opinion was that the officer merely had the right to conduct a casual citizen encounter with the defendant and not a full investigatory stop. *Id.*

Appellant contends that the present case is similar to *Keeling*, and that Deputy Johnson merely had the authority to conduct a casual citizen encounter with the defendant, and not an investigatory stop; however, Appellant's comparison is incorrect. The difference between the present case and *Keeling* is that in *Keeling* the officer clearly stated that he did not know if the defendant was a suspect. Conversely, in the present case Deputy Johnson had a reasonable belief that the defendant had recently committed a crime, based on the incident that Buckenham had reported, and the totality of the circumstances when Deputy Johnson arrived. As a result, unlike the officer in *Keeling*, who was acting on mere speculation, Deputy Johnson had the reasonable suspicion necessary to stop the defendant based on Florida Statute §901.151(2) and *London v. State*.

Finally, Appellant cites *M.J. v. State*, 399 So.2d 996 (Fla. 1st DCA 1981), and *Vanslyke v. State*, 936 So.2d 1218 (Fla. 2d DCA 2006) as examples of improper searches that resulted in successful motions to suppress evidence obtained during the search. Like *Nicholo* and *Whittle*, these cases involve warrantless searches, which required probable cause, and thus these cases are not applicable to the issue of the traffic stop in this case.

CONCLUSION

The trial court was correct in denying the defendant's Motion to Suppress. To stop the defendant's vehicle and conduct an investigatory search Deputy Johnson only needed reasonable suspicion that the defendant had committed a crime. Deputy Johnson had reasonable suspicion that the defendant had committed a battery based on the totality of the circumstances, including the fact that: (1) he was dispatched to the bar in response to a battery committed by a woman; (2) the defendant's car was found in close proximity to the scene of the crime, both in time and location; (3) Lamb and Weber pointed to the defendant's car and Lamb stated, "That's her"; (4) the defendant's vehicle was the only one that was moving in the parking lot at the time; and (5) he could see that the driver of the car was a female, matching the description of the individual who committed the battery.

Lamb and Weber's identification of the defendant's vehicle was merely one additional factor that Deputy Johnson considered in his determination of reasonable suspicion to stop the defendant's car. Although neither Lamb nor Weber witnessed the defendant commit the battery, Lamb was informed about the battery by Buckenham who did witness it. Lamb knew Buckenham and had sound reason to believe him, and Lamb witnessed the defendant enter the vehicle.

Based on the totality of the circumstances Deputy Johnson had reasonable suspicion to stop the defendant's vehicle, thus the subsequent arrest was valid. Therefore, this court **Affirms** the trial court's denial of the motion to suppress.

ACCORDINGLY, this Court AFFIRMS the trial court's order denying the Motion to Suppress and the judgment and sentence in this case.

DEMERS and HELINGER, C. JJ. Concur.

ORDERED at Pinellas County, Florida this 15th day of Feb, 2012.

David A. Demers, and Chris Helinger.

Copies:

The Honorable Judge John Carballo

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