

**IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR DESOTO COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO.: 2022-CT [REDACTED]

v.

[REDACTED],

Defendant.

_____ /

ORDER GRANTING THE DEFENDANT'S MOTION TO SUPPRESS

This cause having come before the Court on the Defendant's motion to suppress any and all evidence seized and/or obtained from the Defendant that is relevant to her alleged impairment, including observations, results of the Field Sobriety Exercises, and oral or written statements, the result of the implied consent procedures and the Defendant's refusal to submit to a breath test.

ANALYSIS

The facts of the case are relatively straightforward. The Defendant was operating a motor vehicle when it became inoperable, because it was, what is best described as stuck in a ditch. Officer Lagunas of the Arcadia Police Department was dispatched to what was described to her by the dispatcher as a "crash" involving only the Defendant's vehicle. The officer testified that the Defendant's vehicle was "nose down in a ditch" and there was no damage to the vehicle and that, in her opinion, there was no crash. The officer noted that there was no other vehicle or property involved. Further, she did not investigate the incident as a crash or file a traffic crash report.

Officer Lagunas testified that as she met the Defendant, she noted indicators of impairment. Based on her observations, she began a DUI investigation which led to the Defendant's arrest for DUI. Officer Lagunas testified that she did not witness the Defendant in actual physical control of the motor vehicle but noted that another person, presumably the person who reported the incident, saw the Defendant operating the vehicle.

The Defendant argues that suppression is appropriate, because the officer did not see the DUI (driving or actual physical control) of the vehicle in her presence based in part on the Section 901.15(5) Florida Statutes which states:

When arrest by officer without warrant is lawful. —A law enforcement officer may arrest a person without a warrant when: A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

Further, *Wagner v. State*, 2023 WL 3749370 (4th DCA 2023) identified only three circumstances when a law enforcement officer can arrest a person for misdemeanor DUI without an arrest warrant:

1. The officer witnesses each element of a prima facie case,
2. The officer is investigating an **accident** and develops probable cause to charge DUI, (emphasis added) or
3. One officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to arrest.

ADJUDGED: Although the State concedes the Defendant's vehicle was not in a crash, the Court examined the meaning of the word crash and the use of the word "accident" as used in *Wagner*. The terms are not synonymous. The word accident, which has been given a broader meaning in *Gaulden v. State*, 195 So.3d, 1123,1125 (Fla.2016), has been replaced with the word crash in §316.645, Florida Statutes, to wit:

Arrest authority of officer at scene of a traffic crash. —A police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash.

Our Supreme Court has defined "vehicle involved in a crash" as a "vehicle must collide with another vehicle, person or object." *Gaulden v. State*, 195 So.3d, 1123,1125 (Fla.2016). (Defining the word crash in the context of §316.027(1)(b)).

The Defendant further argued that since Officer Lagunas did not witness the Defendant driving the vehicle or in actual physical control of the vehicle and since there was no "crash," Officer Lagunas did not investigate a crash pursuant to Section 316.645 and lacked personal knowledge through an investigation to develop probable cause that the defendant was in actual physical control of the vehicle as an essential element of DUI. This argument has merit.

In determining whether the Defendant was in actual physical control of a vehicle, it must be clear that an officer can rely on circumstantial evidence from which the officer could deduce that the defendant was driving the vehicle while intoxicated. *Steiner v. State*, 690 So. 2d 706 (Fla. 4th DCA 1997). "An offense is committed in the presence or view of an officer, within the meaning of the rule authorizing an arrest without a warrant, when the officer received knowledge of the commission of an offense in his presence through any of his senses, or by inferences properly to be drawn from the testimony of the senses, or when the facts and circumstances occurring within his observation, in connection with, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case." *Id.* citing *State v. Englehardt*, 465 So.2d 1366 (Fla. 4th DCA 1985), quoting from 6A C.J.S. *Arrest* §18.

However, in *Steiner*, as is the case here, the officer never saw the defendant in the vehicle. There is no testimony of circumstantial evidence that the officer could conclude that the Defendant was operating the vehicle and the only way the officer could conclude that the Defendant was behind the wheel or was in actual physical control of the vehicle was from the statement of others, who were not law enforcement officers. *Id.*

Here, as in the facts of *Steiner*, the officer did not witness one of the essential elements of the crime, to wit, the Defendant's actual physical control of a vehicle. If Courts were to rely on others' observations which were relayed to the officer's knowledge, of an essential element of a crime, then as to misdemeanors there would be no point in the statutory requirement that the misdemeanor be committed in the officer's presence. This is clearly inconsistent with the statutory requirement of §901.15. *Id.*

ORDERDED and ADJUDGED: the Motion to Suppress any evidence that the Defendant was driving a motor vehicle or in actual physical control of a motor vehicle is GRANTED.

DONE and ORDERED in chambers, in Arcadia, Desoto County Florida, this 15th day of June 2023.



eSigned by GUY FLOWERS, County Judge 06/15/2023 14:42:46 GsthFok3
County Judge Guy A. Flowers

Copies Furnished to:

SAO

Defense Attorney John P. Rutkowski