

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

State of Florida v. Evelyn Barone

Barone · No. No. 4D2022-2487 · Decided November 8, 2023

SUMMARY

The Florida Fourth District Court of Appeal reverses an order suppressing field sobriety exercise evidence in a misdemeanor DUI prosecution. The court holds that reasonable suspicion, rather than probable cause or voluntary consent, is sufficient for law enforcement to detain a driver and request field sobriety exercises, although an officer may not physically compel cooperation.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Judge Gross; Judge May; Judge Kuntz
JURISDICTION	Florida
DECIDED	November 8, 2023
DOCKET	No. 4D2022-2487
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed a nonfinal order granting the defendant's motion to suppress field sobriety exercises in a misdemeanor DUI prosecution.
STANDARD OF REVIEW	Orders on motions to suppress are reviewed under a mixed standard: factual determinations receive deference, while application of law to the facts is reviewed de novo. Because the issue presented was legal, review was de novo.
PRECEDENTIAL VALUE	published
PARTIES	State of Florida v. Evelyn Barone

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- probable cause
- appellate procedure

PRACTICE AREAS

- criminal procedure
- DUI
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether law enforcement may request and require a driver to perform field sobriety exercises based on reasonable suspicion of DUI, or whether probable cause is required.
2. Whether the driver's consent is relevant to the legality of the temporary investigative detention and request to perform field sobriety exercises.
3. Whether the trial court erred by suppressing the field sobriety exercise evidence.

HOLDINGS

1. An officer needs only reasonable suspicion that a driver has committed DUI or another law violation to temporarily detain the driver and request that the driver perform field sobriety exercises; probable cause is not required.
2. The defendant's consent is irrelevant to whether a temporary investigative detention and request for field sobriety exercises are supported by reasonable suspicion; the State need not establish voluntary consent as an exception to the warrant requirement.
3. Suppression was improper because the officer had reasonable suspicion to detain Barone and request field sobriety exercises.

KEY QUOTATIONS

“The proper standard for a law enforcement officer to request FSEs is a reasonable suspicion that a driver has committed a law violation.” (2)

“The defendant’s consent, however, is irrelevant to whether the temporary investigative detention is supported by a reasonable suspicion of criminal activity under Terry v. Ohio, 392 U.S. 1 (1968), and Florida’s Stop and Frisk Law, section 901.151, Florida Statutes (2022).” (3)

FACTUAL BACKGROUND

Two officers stopped Barone after observing her speed past marked police vehicles, drift into another lane, and correct herself. During the stop, the arresting officer observed an odor of alcohol, glossy eyes, slurred speech, difficulty locating her documents, an admission that she had consumed one drink, and unsteadiness. Barone initially agreed to perform roadside sobriety exercises, later questioned why she had to do them, and was handcuffed during the final exercise after the officer observed additional signs of impairment.

PROCEDURAL HISTORY

After an evidentiary hearing, the Circuit Court for the Seventeenth Judicial Circuit found that the officer had reasonable suspicion to detain Barone and ask her to perform field sobriety exercises, but concluded that probable cause was required to compel her to perform them. The trial court granted the motion to suppress. The State brought a nonfinal appeal, and the Fourth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must vacate the order granting the motion to suppress and enter an order denying the motion.

CASES CITED

- State v. T.M., 248 So. 3d 172, 173 (Fla. 4th DCA 2018)
- State v. Johnson, 361 So. 3d 911, 913-14 (Fla. 5th DCA 2023)
- State v. Taylor, 648 So. 2d 701, 703-04 (Fla. 1995)
- State v. Castaneda, 79 So. 3d 41, 42 (Fla. 4th DCA 2011)
- Origi v. State, 912 So. 2d 69, 71 (Fla. 4th DCA 2005)
- Terry v. Ohio, 392 U.S. 1 (1968)
- State v. Liefert, 247 So. 2d 18, 19 (Fla. 2d DCA 1971)
- Smith v. State, 753 So. 2d 713, 715 (Fla. 2d DCA 2000)