

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 10-697

HEATH COREY FORD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered DECEMBER 1, 2010

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
EASTERN DISTRICT
[NO. CR09-196ED]

HONORABLE KENT CROW,
JUDGE

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant Heath Corey Ford appeals his conviction for driving while intoxicated. Ford entered a conditional guilty plea, reserving the right to appeal the denial of his motion to suppress. Ford argues that the trial court clearly erred in denying his motion to suppress because the sheriff's deputy lacked probable cause to initiate a traffic stop. We reverse and remand.

Our review of a motion to suppress is well settled. We conduct a de novo review based upon the totality of the circumstances, reversing only if the trial court's ruling is clearly against the preponderance of the evidence. *Mosley v. State*, 2009 Ark. App. 799, at 3–4. An officer must have probable cause to believe that a driver of a vehicle has committed a violation of a traffic law in order to make a valid stop. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009).

Probable cause is defined as facts or circumstances within a law enforcement officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed. *Hinojosa v. State*, 2009 Ark. 301. In assessing the existence of probable cause, our review is liberal rather than strict. *Mosley, supra*. Factual determinations relating to search and seizure must be judged against an objective standard. *Hillard v. State*, 321 Ark. 39, 900 S.W.2d 167 (1995). The existence of probable cause does not depend on whether the accused was actually guilty of the violation believed to have occurred. *Mosley, supra*. Arkansas Code Annotated section 27-51-104 (Supp. 2009) sets forth what constitutes careless and prohibited driving.

With this standard of review, we examine the largely undisputed evidence presented to the trial judge. Just prior to midnight on March 14, 2009, a Carroll County sheriff's deputy, Joel Hand, was on patrol in Berryville along Highway 62, a four-lane thoroughfare, when he observed a Chevy pick-up truck just ahead of him weaving in the lane. Hand described the driver as having "trouble keeping control."

Hand observed the truck move back and forth three times from the dotted-white line in the left side to the right side near the concrete curb. Hand said the truck tires ran onto the horizontal portion of concrete that meets the asphalt. Hand agreed that Ford's truck did not strike the actual raised portion of the curb. Hand stated that Ford's lane was bounded by the dotted-white line and the curb, and Ford was free to drive "straight" between those boundaries.

Hand testified, “[W]hen he is going from one side to the other, consistently, he’s not controlling that vehicle very well. . . . [H]e almost ran up on the sidewalk, which is failure to maintain control.” Hand’s main concern was that the truck “was going to go up on the sidewalk” where any person walking would have been hit by a side mirror or the truck itself. After the stop, Ford was arrested for driving while intoxicated. Hand believed that the offense of failure to maintain control would be subsumed by a citation for driving while intoxicated, so Ford was not cited for the former offense.

The issue presented to the trial judge was whether this presented probable cause to initiate a traffic stop. Ford’s attorney argued that this case was indistinguishable from *Barrientos v. State*, 72 Ark. App. 376, 39 S.W.3d 17 (2001), where our court held that weaving within a lane of traffic does not constitute failing to maintain control over a vehicle. There, although the officer admitted that weaving within the interstate traffic lane was not a moving violation, he stopped Barrientos’s vehicle because he thought the driver was sleepy. We held there that the stop was not proper and reversed the denial of the motion to suppress. The State argued that Ford’s situation was much more egregious than the facts in *Barrientos* because Ford was weaving over a shorter observed distance and operating the truck near a sidewalk inside a town.

The judge rendered his ruling from the bench, acknowledging that this was an extremely close call but finding that the officer had probable cause to initiate a stop for a moving violation under Ark. Code Ann. § 27-51-104(b)(8). The motion to suppress was

therefore denied, and this appeal resulted. We are now presented with the same arguments on appeal.

Our court in *Barrientos* specifically held that “weaving within one’s own lane” does not constitute “failing to maintain control.” In contrast, our supreme court affirmed the denial of a motion to suppress in *Piercefield v. State*, 316 Ark. 128, 871 S.W.2d 348 (1994), because Piercefield’s motorcycle was seen weaving from the centerline to the shoulder of the highway; the officer was concerned that the driver might be driving while intoxicated. In *Piercefield*, the trial court’s decision was not clearly erroneous because there was observed movement outside the traffic lane. Because Ford was not observed driving outside the boundaries of his designated lane of traffic, we conclude that it was clearly erroneous for the trial court to find that probable cause existed to stop his truck for a moving violation. See *Barrientos*, *supra*.

Although the State is correct that we can affirm a trial court ruling when the right result is reached but the wrong reasoning is used, *Cain v. State*, 2010 Ark. App. 30, we disagree that there existed probable cause to believe Ford committed some other moving violation. The testimony presented by Hand does not establish probable cause to believe that Ford was driving too close to persons or an object adjacent to the street, in violation of Ark. Code Ann. § 27-51-104(b)(4). The trial judge rejected that very proposition. There was no evidence of pedestrians in the area, and the officer acknowledged that Ford was within his designated boundaries, which necessarily meant he had to drive close to the curb. Because weaving within the boundaries of a traffic lane does not constitute failure to maintain control,

Cite as 2010 Ark. App. 795

contemplated in Ark. Code Ann. § 27-51-104(a), (b)(6), and (b)(8), we reverse the denial of Ford's motion to suppress.

Reversed and remanded.

KINARD and ABRAMSON, JJ., agree.