

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2009-AP-58  
Lower Court Case No: 2009-CT-478

**STATE OF FLORIDA,**

Appellant,  
vs.

**ANGELINE L. BARATTA,**

Appellee.  
\_\_\_\_\_ /

Appeal from the County Court,  
for Orange County, Florida,  
Deborah B. Ansbro, County Court Judge

Lawson Lamar, State Attorney and  
David Margolis, Assistant State Attorney  
for Appellant

Jason A. Cameron, Esq.,  
for Appellee

Before POWELL, DAWSON, and THORPE, J.J.

**PER CURIAM.**

**FINAL ORDER REVERSING TRIAL COURT**

The State appeals from an order granting Baratta's pretrial motion to suppress. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We reverse.

The facts can be summarized as follows. Between 2:20 and 2:30 a.m. on a Saturday morning, Deputy Recca, a well trained and experienced officer, observed Appellee's vehicle approaching him in light too moderate for traffic on the road. When he first observed Appellee's vehicle, "it didn't appear that any (of her vehicle's) head lights were on, but then it almost

seemed like ...the daytime running lights (i.e. parking lights) were on;” that they were “very dim, almost even hard to see even at night.” (Tr. p.6-7). It indicated to him that “[e]ither she was having issues with her vehicle and maybe her headlights weren’t working.” (Tr. p.7). When asked why he stopped her, he explained to her that he “didn’t think her headlights were on...or they were very dim or maybe her running lights were on. “Then ...(he) noticed also that the toggle switch for the headlights on the left side of the steering wheel was in the ‘off’ position.” (Tr. p.9). All of Deputy Recca’s testimony, taken as a whole, points to the fact that, contrary to the trial court’s findings, he stopped Appellee because he observed that the headlights of her vehicle were not on.

In the order clarifying the ruling made from the bench, the trial judge found that the deputy stopped Appellee only because he “testified he stopped Defendant for ‘public safety’<sup>1</sup> reasons, and not for violation of any law or regulation or for any reasonable suspicion that Defendant was impaired.” These findings were not supported by competent, substantial evidence. They were incorrect. Since Deputy Recca was the only witness, and his testimony was not controverted, discredited, impeached, self-contradicting nor physically impossible, the trial judge was bound to accept it for purposes of deciding the motion. *See State v. G.H.*, 549 So.2d 1148 (Fla. 3d DCA 1989); *State v. Jones*, 849 So.2d 438 (Fla. 3d DCA 2003). Indeed, his testimony was substantial, competent evidence establishing the validity of the stop.

It is well settled that an officer’s observation of a traffic violation establishes the necessary reasonable suspicion for the stop of a vehicle. *See Whren v. U.S.*, 517 U.S. 806 (1996); *Hilton v. State*, 901 So.2d 155 (Fla. 2d DCA 2005), decision quashed on other grounds, 961 So.2d 284 (Fla. 2007); *Holland v. State*, 696 So.2d 757 (Fla. 1997), *State v. Kindle*, 782

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<sup>1</sup> The only testimony he gave on this point was as follows: Q: So you – when you initiated the stop of her vehicle, did you have any concerns for public safety? A: Yes.

So.2d 971 (Fla. 5th DCA 2001). Under sections 316.220 and 316.217(1)(a) & (5), Florida Statutes, it is a civil infraction to operate a motor vehicle on a public road during the hours from sunset to sunrise with the headlamps (headlights) not illuminated.<sup>2</sup> The Fourth Amendment requires only reasonable assessment of the facts by the officer, not a perfectly accurate one. *Hilton*, 901 So.2d 155. The officer’s motivations for making a stop for the traffic violation are irrelevant. *Whren*, 517 U.S. 806. A proper stop for a traffic violation is valid regardless of whether a “reasonable officer” would have been motivated to stop the particular vehicle and enforce the traffic law. *Id.*

Consequently, the order appealed from is reversed, and this case is remanded for further proceedings.

**REVERSED and REMANDED.**

**DONE AND ORDERED** at Orlando, Florida this 6th day of October, 2011.

/S/  
**ROM W. POWELL**  
**Senior Judge**

/S/  
**DANIEL P. DAWSON**  
**Circuit Judge**

/S/  
**JANET C. THORPE**  
**Circuit Judge**

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<sup>2</sup> Although no cases precisely on point were found in Florida, courts of other jurisdictions have uniformly upheld stops for driving with no headlights during hours of darkness contrary to statute. *See State v. Rea*, 2010 WL 4226714 (Neb. Ct. App. 2010); *State v. Tournoux*, 2010 WL 1948321 (Ohio 2010); *State v. King*, 2010 WL 1440277 (Minn. Ct. App. 2010).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **David Margolis, Assistant State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; **Jason A. Cameron, Esq.**, P.O. Box 622753, Oviedo, Florida 32762; and **Honorable Deborah B. Ansbro**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 6th day of October, 2011.

/S/ \_\_\_\_\_  
Judicial Assistant