Online Reference: FLWSUPP 3009DESO

Licensing -- Driver's license -- Suspension -- Driving with unlawful blood or breath alcohol level -- Lawfulness of stop -- Where licensee swerved within his lane and into center turn lane multiple times, deputy had reasonable basis for traffic stop irrespective of whether anyone was endangered -- Further, stop was warranted to determine reason for erratic driving under community caretaking doctrine

SANDOLO DESOUZA, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 18th Judicial Circuit (Appellate) in and for Seminole County. Case No. 22-03-AP. October 18, 2022. Counsel: Mark Mason, Former Assistant General Counsel, DHSMV, Tallahassee, for Respondent.

ORDER DENYING WRIT OF CERTIORARI

(SUSAN STACY, J.) Petitioner seeks certiorari review of the Department of Highway Safety and Motor Vehicles' final order sustaining the suspension of his driver's license for driving or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages. This Court has jurisdiction pursuant to section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

BACKGROUND

On January 1, 2021, at approximately 1:30 a.m., Deputy Zachary Gilroy of the Monroe County Sheriff's Office was on patrol when he observed Petitioner driving northbound on US 1, swerving within his lane of travel and leaving his lane of travel multiple times swerving into the center turn lane. Deputy Gilroy conducted a traffic stop and Petitioner stopped in the right turn lane. When he made contact with Petitioner, Gilroy asked if there was anything mechanically wrong with the vehicle that would cause it to swerve all over the road, and asked if Petitioner had any medical issues that would cause him to swerve the vehicle. Petitioner responded “no” to both questions. Gilroy relocated the traffic stop to a parking lot.

When Petitioner got out of his vehicle, he was uneasy on his feet and had to grab onto the vehicle to steady himself. Deputy Gilroy observed that Petitioner had bloodshot, watery, glossy eyes, slowed and slurred speech, the odor of alcohol emitting from his breath, and he swayed while standing. After Petitioner performed poorly on field sobriety exercises, Gilroy arrested him for driving under the influence and transported him to the Key West DUI room where he provided two breath samples. The results were 0.094 and 0.099. He was issued citations for failing to maintain a single lane in violation of section 316.089(1), Florida Statutes, and driving under the influence in violation of section 316.193(1), Florida Statutes. His license was suspended pursuant to section 322.2615, and he sought formal review of the suspension.

The Department conducted a formal review hearing on February 2, 2022. The following documents were submitted into the record: Florida DUI Uniform Traffic Citation No. A1TXOWE; a copy of Petitioner's commercial driver's license; Arrest Report; Breath Alcohol Test Affidavit; Agency Inspection Report; Field Sobriety and DUI Check Sheet; FIBRS Incident Report; and Florida Uniform Traffic Citation No. AFJ8LXE. No witnesses were subpoenaed for the hearing. Counsel for Petitioner moved to invalidate the suspension arguing that there was no probable cause for the traffic stop because there was no evidence to indicate that Petitioner drove in a way to affect other traffic, relying on the case of *Crooks v. State.* The hearing officer reserved ruling.

On February 10, 2022, the hearing officer issued her Findings of Fact, Conclusions of Law and Decision, finding that the following facts were supported by a preponderance of the evidence: Deputy Gilroy observed Petitioner driving northbound swerving within his lane and leaving his lane of travel on multiple occasions by swerving into the center lane of travel; Gilroy detected an odor of an unknown alcoholic beverage emitting from Petitioner's breath; Petitioner had bloodshot, watery, glossy eyes, slow and slurred speech, and was unsteady on his feet; Petitioner did not perform field sobriety exercises to standard; Petitioner was placed under lawful arrest for DUI; and his breath test results were 0.094 and 0.099. The hearing officer concluded that all elements necessary to sustain the suspension and disqualification for driving with an unlawful breath alcohol level were supported by a preponderance of the evidence, and affirmed the suspension of Petitioner's driver's license.

STANDARD OF REVIEW

The Court's review of the hearing officer's order is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of law had been observed, and whether the administrative order was supported by competent substantial evidence." *Dep't of Highway Safety & Motor Vehicles v. Luttrell,* 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008) [33 Fla. L. Weekly D1625a]. "The competent, substantial evidence standard requires the circuit court to defer to the hearing officer's findings of fact, unless there is no competent evidence of any substance, in light of the record as a whole, that supports the findings." *Dep't of Highway Safety & Motor Vehicles v. Hirtzel,* 163 So. 3d 527, 529 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D1107a] (internal citation omitted).

ANALYSIS

In a formal review hearing for suspension of a driver's license for driving with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, the hearing officer's scope of review is limited to the following issues:

> 1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
>
> 2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in section 316.193.

§ 322.2615(7)(a), Fla. Stat. (2021).

The only issue presented in the Petition is the lawfulness of the traffic stop. Specifically, Petitioner argues that the sole basis for the stop was that he "changed lanes or moved out of lanes, without any evidence of any impact or effect on traffic -- and nothing more." Petitioner contends that *Crooks v. State,* 710 So. 2d 1041 (Fla. 2d DCA 1998) [23 Fla. L. Weekly D1323b], mandates that the suspension be invalidated on the record presented because there was no substantial competent evidence that any vehicle was affected by his movement and, therefore, no traffic violation occurred.

The Department argues that the evidence established a sufficient basis to conduct a traffic stop upon Petitioner's failure to maintain a single lane and also to conduct a welfare check pursuant to the community caretaking function of law enforcement.

"The constitutional validity of a traffic stop depends on purely objective criteria." *Dep't of Highway Safety & Motor Vehicles v. Jones,* 935 So. 2d 532, 534 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D1518a]. "This objective test 'asks only whether any probable cause for the stop existed' making the subjective knowledge, motivation, or intention of the individual officer involved wholly irrelevant." *Id.* (quoting *Holland v. State,* 696 So. 2d 757, 759 (Fla. 1997) [22 Fla. L. Weekly S387a]). "If, therefore, 'the facts contained in the arrest report provide any objective basis to justify the stop, even if it is not the same basis stated by the officer, the stop is constitutional.' " *Id.* (quoting *Dep't of Highway Safety & Motor Vehicles v. Utley,* 930 So. 2d 698 (Fla. 1st DCA 2006) [31 Fla. L. Weekly D1135a]).

"[A] stop of a motorist is permissible when an officer has probable cause to believe that the motorist has violated a traffic law, even if a reasonable officer would not have detained the motorist for such a violation." *State v. Girard,* 694 So. 2d 131, 131 (Fla. 5th DCA 1997) [22 Fla. L. Weekly D1363a] (citing *Whren v. U.S.,* 517 U.S. 806 (1996)). "All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute." *Davis v. State,* 788 So. 2d 308, 309 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D1215a].

Section 316.089(1), Florida Statutes (2021), provides that "[w]henever any roadway has been divided into two or more clearly marked lanes for traffic, . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can

be made with safety." Some Florida appellate courts have refused to find a violation of this statute where a driver's failure to maintain a single lane did not endanger himself or herself or anyone else. *See Peterson v. State,* 264 So. 3d 1183, 1188 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D641a] (holding that because there was no evidence that appellant's crossing the white line on two occasions created a reasonable safety concern, the deputy did not have probable cause to believe that he violated section 316.089(1)). However, the Fifth District Court of Appeal has held that failure to maintain a single lane, where a driver "deviated from his lane by more than what was practicable," is a violation of section 316.089(1) "irrespective of whether anyone is endangered." *Yanes v. State,* 877 So. 2d 25, 26-27 (Fla. 5th DCA 2004) [29 Fla. L. Weekly D1282a]; *see also Jones,* 935 So. 2d at 535 ("failure to maintain a single lane alone, can under appropriate circumstances, establish probable cause").

Furthermore, Florida courts have recognized that "a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior." *Dep't of Highway Safety & Motor Vehicles v. DeShong,* 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992) (finding the deputy had a founded suspicion to stop respondent to determine the cause of his erratic driving); *Bailey v. State,* 319 So. 2d 22, 26 (Fla. 1975) ("Because of the dangers inherent to our modern vehicular mode of life, there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its unusual operation."). "Under the community caretaking doctrine, an officer may stop a vehicle without reasonable suspicion of criminal activity if the stop is necessary for public safety and welfare." *State v. Rodriguez,* 18 Fla. L. Weekly Supp. 940a (Fla. 11th Cir. Ct. July 15, 2011). "The purpose of such a stop is to ascertain whether the driver of the vehicle is in need of assistance due to illness, tiredness, or impairment and to protect the motoring public from harm." *Id.*

Here, the record clearly shows that Deputy Gilroy had an objectively reasonable basis for making the traffic stop. Petitioner swerved within his lane of travel and left his lane of travel multiple times, swerving into the center turn lane. Deputy Gilroy asked Petitioner if there was anything mechanically wrong with his vehicle and if he had any medical issues that would cause him to swerve the way he did. Petitioner's driving pattern violated section 316.089(1), and was also consistent with someone who was potentially ill, tired, or impaired. Thus, the hearing officer's finding regarding the validity of the traffic stop is supported by competent substantial evidence.

Based upon the foregoing, it is hereby **ORDERED** and **ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**. (RUDISILL and RECKSIEDLER, JJ., concur.)

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