

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSES – Suspension – There was competent substantial evidence to support a finding of probable cause that a traffic infraction had occurred where the sworn offense report stated that Petitioner's vehicle failed to maintain its lane, and this failure impacted another vehicle. By failing to object to the length of the suspension at the administrative hearing, Petitioner waived her right to raise the issue for the first time on appeal. Petition denied. *Vitola v. Dep't of Highway Safety and Motor Vehicles*, No. 11-000040AP-88B (Fla. 6th Cir. App. Ct. April 13, 2012).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

GEORGINE VITOLA,

Petitioner,

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,**

Respondent.

Ref. No.: 11-000040AP-88B

UCN: 522011AP000036XXXXCV

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on a Petition for Writ of Certiorari filed by the Petitioner, Georgine Vitola, on August 5, 2011. The Respondent, the Department of Highway Safety and Motor Vehicles ("Department"), filed a response in opposition, to which Petitioner filed a reply. For the reasons set forth below, the Petition is hereby denied.

On April 29, 2011, Petitioner's vehicle was observed by Officer Giordano of the Clearwater Police Department repeatedly swerving outside its lane. When this swerving began to impact other vehicles, Officer Giordano initiated a traffic stop for Petitioner's violation of Florida Statute 316.089, failure to maintain lane. Petitioner refused to perform Standardized Field Sobriety Tests, and she was taken into custody for DUI. Petitioner subsequently refused to provide a breath sample, and her license was suspended for 18 months based on a prior refusal noted in Officer Giordano's offense report. Specifically, Officer Giordano's Offense Report stated:

Vitola has a prior suspension for refusing to submit to a breath sample on 9/19/07 in Hillsborough County, and a DUI conviction from the same date. Vitola was also charged with refusing to submit to testing because of this.

Petitioner challenged the suspension, and an administrative hearing was held on June 29, 2011. At this hearing, Petitioner challenged the lawfulness of the stop, arguing that there was no probable cause for the stop. The hearing officer sustained Petitioner's driver's license suspension, and Petitioner now brings the instant Petition for Writ of Certiorari challenging the hearing officer's decision sustaining the suspension of Petitioner's driver's license for 18 months.

In reviewing the Department's Order, this Court is limited to determining (1) whether procedural due process has been accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Vichich v. Department of Highway Safety and Motor Vehicles*, 799 So.2d 1069, 1073 (Fla. 2d DCA 2001). On review, the Circuit Appellate Court is not entitled to reweigh the evidence; it may only determine whether competent substantial evidence supports the hearing officer's findings. *Dep't of Highway Safety & Motor Vehicles v. Stenmark*, 941 So.2d 1247, 1249 (Fla. 2d DCA 2006).

In this Petition for Writ of Certiorari, the Petitioner argues that there was not competent substantial evidence to support the hearing officer's finding that Officer Giordano had probable cause to believe that a traffic infraction had occurred. Petitioner argues that the facts in the officer's sworn offense report do not amount to a sufficient showing of probable cause for the stop of Petitioner's vehicle. Petitioner argues that the offense report is devoid of sufficient explanation and details surrounding the stop necessary to a finding of probable cause. Petitioner also argues, for the first time in this Petition, that there was not competent substantial evidence of a prior refusal to submit to a breath test that would warrant an enhanced suspension of 18 months.

For a driver to be lawfully stopped for violating Florida Statute 316.089, which provides, "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," case law provides that the vehicle's failure to stay within its own lane must affect other vehicles. *Crooks v. State*, 710 So.2d 1041, 1042 (Fla.2d DCA 1998) (probable cause not found when "No evidence was presented describing how far he drove over the line on these occasions, but it is clear that no other cars or pedestrians were near him on either occasion."); *Hurd v. State*, 958 So.2d at 603 (Fla. 4th DCA 2007) (probable cause not found where the record did not provide any facts showing that the actions by appellant were not done safely). On the other hand, when a driver fails to maintain her vehicle within a single lane as nearly as practicable, and this failure causes other vehicles to be impacted, probable cause exists for a stop of the vehicle for a violation of F.S. 316.089. See *Souza v. State of Florida, DHSMV*, 12 Fla. L. Weekly Supp. 731 (Fla. 6th Cir. App. Ct. 2005); *Williamson v. Dep't of Highway Safety & Motor Vehicles*, 933 So. 2d 665, 667 (Fla. 1st DCA 2006); *Rodriguez v. State of Florida, DHSMV*, No. 05-

0097AP-88B (Fla. 6th Cir. App. Ct. March 7, 2006). In the present case, the sworn offense report that the hearing officer relied upon states that Petitioner's vehicle failed to maintain its own lane, and that this failure impacted another vehicle. The hearing officer was permitted to consider this evidence in finding that probable cause existed for the stop. Scritchfield v. State, Dep't of Highway Safety & Motor Vehicles, 648 So.2d 1246 (Fla. 2d DCA 1995) ("The deputy's traffic citation and arrest report were automatically entered into evidence pursuant to Florida Administrative Code rule 15A-6.013 without objection. The determination that the arrest was lawful can be made based on these written documents without witnesses testifying on behalf of the state.").

Petitioner's argument that the Department departed from the essential requirements of law by suspending Petitioner's driver's license for 18 months rather than 1 year also fails. Since Petitioner did not raise the issue of the enhanced driver's license suspension based on a prior refusal at the administrative hearing, Petitioner has waived this objection. Petitioner's argument would have merit if she had raised the objection at the administrative hearing, giving the Hearing Officer the opportunity to consider and rule upon the matter. See Kelsey v. Department of Highway Safety and Motor Vehicles, No. 11-000026AP-88B (Fla. 6th Cir. App. Ct. October 31, 2011). However, by failing to object to the length of suspension at the administrative hearing, this Court cannot consider it for the first time now. See Lloyd v. State, 876 So.2d 1227, 1228 (Fla. 4th DCA 2004); Rosenzweig v. Dep't of Transp., 979 So.2d 1050, 1056 (Fla. 1st DCA 2008) ("It is well established that a claim of error, even in the administrative context, cannot be raised for the first time on appeal."); Scritchfield v. State, Dep't of Highway Safety & Motor Vehicles, 648 So.2d 1246 (Fla. 2d DCA 1995) ("[Petitioner] concedes that there was no objection to the deputy's absence at the suspension hearing. Without such an objection, the argument has been waived.").

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida, on April_____, 2012.

Original order entered on April 13, 2012 by Circuit Judges Amy M. Williams, Peter Ramsberger, and Pamela A.M. Campbell.

Copies furnished to:

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