

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

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

KEVIN MACIUBA,

Petitioner,

vs.

Ref. No.: 15-0061AP-88B

UCN: 522015AP000061XXXXCI

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

Respondent.

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ORDER AND OPINION

Petitioner, Kevin Maciuba, challenges a final order by the Department of Highway Safety and Motor Vehicles (“DHSMV”) affirming the suspension of his driving privilege. Petitioner asserts the order was entered in error since the officer did not have probable cause for the traffic stop and because the officer was outside his jurisdiction. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

Officer J. Rolleston, of the Pinellas Park Police Department, conducted a traffic stop of Petitioner in the area of U.S. 19 North, “just west” of Tampa Road, well outside his territorial jurisdiction. Officer Rolleston stopped Petitioner for “failure to maintain a single lane” and for being “passed out” at a green light. Believing Petitioner to be intoxicated, he called Deputy Wagner, a deputy within his jurisdiction, to perform a DUI investigation. After Petitioner performed several field sobriety exercises, Deputy Wagner concluded he was impaired and placed him under arrest for suspected DUI. Petitioner refused to provide a breath sample, and, as a result, his driver’s license was suspended. Following an administrative hearing, the hearing officer upheld Petitioner’s license suspension, and Petitioner filed this Petition for Writ of Certiorari.

Standard of Review

“Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine [1] whether procedural due process is accorded, [2] whether the essential requirements of the law have been observed, and [3] whether the administrative findings and judgment are supported by competent substantial evidence.” *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm’rs*, 794 So. 2d 1270, 1274 (Fla. 2001).

Discussion

The two issues in this case are whether there was a lawful basis for Petitioner’s traffic stop and whether Officer Rolleston could lawfully stop Petitioner outside of his jurisdiction. Although adequate grounds for a traffic stop existed based on Petitioner’s pattern of unusual driving behavior, Officer Rolleston was outside of his jurisdiction. While an officer outside of his jurisdiction has no official authority, he has a common law right as a citizen to make a citizen’s arrest. *Phoenix v. State*, 455 So. 2d 1024, 1025 (Fla. 1984); *State v. Price*, 74 So. 3d 528, 530 (Fla. 2d DCA 2011). A citizen’s arrest may be based on observing either a felony or a breach of the peace. *Edwards v. State*, 462 So. 2d 581, 582 (Fla. 4th DCA 1985). Thus, “an officer outside his jurisdiction could make a legal stop and arrest as a private citizen for a breach of the peace based on [a party’s] erratic and unsafe driving.” *Roberts v. Dep’t of Highway Safety & Motor Vehicles*, 976 So. 2d 1241, 1241 (Fla. 2d DCA 2008).

There is no statute in Florida defining a breach of the peace. Thus, the existence of a breach of the peace depends on common law. *Edwards*, 462 So. 2d at 583. Jurisdictions following the common law breach of the peace rule for a citizen’s arrest have reached conclusions similar to those of *State v. Furr*, 723 So. 2d 842, 844 (Fla. 1st DCA 1998). In *Furr*, an officer acting outside of his jurisdiction observed the defendant cross the center dividing line of the road several times. *Id.* at 843. The defendant argued that the mere act of drunk driving without endangering motorists or pedestrians was not a breach of the peace. *Id.* at 844. The court rejected the idea that to be a breach of the peace, the driver’s action must go beyond merely scaring other drivers to actually killing them. *Id.*

This Court has similarly found that an officer acting outside of his jurisdiction does not need to wait until vehicles are forced off the road or someone is injured to conduct a lawful citizen’s arrest. *Whitney v. Dep’t of Highway Safety & Motor Vehicles*, 14 Fla. L. Weekly Supp.

531a (Fla. 6th Cir. Ct. Mar. 30, 2007). In *Whitney*, the officer, who was outside of his jurisdiction, drove up to a vehicle stopped in the roadway with the driver passed out behind the wheel. *Id.* This Court found that the officer made a valid citizen's arrest because reasonable grounds existed for the officer to believe Petitioner was breaching the peace by threatening public safety and committing a DUI, as recognized in *Furr. Id.*

In this case, as in *Furr*, the driver was observed failing to maintain a single lane and, as in *Whitney*, was found passed out at a traffic light. Such observations led to the conclusion that Petitioner was breaching the peace. Thus, following the meaning of breach of the peace under common law, there was competent substantial evidence to support the hearing officer's decision to uphold the suspension of Petitioner's driver's license.

Conclusion

Because the hearing officer's final order affirming the suspension of Petitioner's license was supported by competent substantial evidence, it is

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

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this

8th day of March 2016.

Original Order entered on March 8, 2016, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

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