

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

RANDALL ARTHUR,
Petitioner,

v.

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

Respondent,

Ref. No.: 15-000007AP-88B
UCN: 522015AP000007XXXCI

ORDER AND OPINION

Petitioner challenges a final order by the Department of Highway Safety and Motor Vehicles suspending his license under Fla. Stat. § 322.2615. Petitioner alleges that the deputies performed an illegal investigatory stop by blocking his car and asking him to unlock his door without requisite suspicion that he was, or was about to be, involved in a crime. For the reasons set forth below, Petitioner is mistaken, and the petition for writ of certiorari is denied.

Facts and Procedural History

On November 5, 2014, at approximately 7:30 p.m., deputies of the Pinellas County Sheriff's Office investigated two 911 calls.¹ A 911 hang-up call was traced to Petitioner's business and then to a residence in Oldsmar. When the deputies arrived, Deputy Darrow noticed a car with the engine running parked in the driveway with Petitioner apparently passed out in the driver's seat. The deputies were concerned about Petitioner's well-being. Deputy Traynor parked behind Petitioner's car and Darrow knocked on the car window. Petitioner woke and yelled, "What?" It took several requests to unlock the door before Petitioner complied. Once the car door was opened, Darrow could tell that Petitioner was not suffering from a medical condition but was intoxicated. Darrow noted that Petitioner smelled of alcohol, had slurred speech, and had bloodshot and glassy eyes. A bottle of wine was on the floor of the car. Darrow called Deputy Blair to perform a DUI investigation. Petitioner refused to participate in the DUI investigation. The DHSMV hearing officer found that probable cause existed for the

¹ Deputy Darrow testified that he was unaware of the content, if any, of the second call.

investigation and that Petitioner was in actual physical control of a motor vehicle while under the influence. As a result, Petitioner's driving privileges were suspended for 18 months, and he filed the instant petition for writ of certiorari.

Discussion

Two types of police-citizen encounters are relevant in this case. The first is a consensual encounter that involves only minimal police contact. During a consensual encounter, a citizen may either voluntarily comply with a police officer's requests or choose to ignore them. Since the citizen is free to leave during the consensual encounter, constitutional safeguards are not invoked. The second level of police-citizen encounters is an investigatory stop. "In order to justify an investigative stop, the officer must have a well-founded suspicion that the subject of the stop is or is about to become involved in criminal activity." *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993).

In other circumstances, Petitioner would have been involved in an investigatory stop as soon as the deputy blocked his only means of exit with his police car, because a reasonable person would not believe he was free to leave, under those circumstances. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). However, Petitioner was not conscious of his surroundings when the deputies arrived, and an investigatory stop cannot be said to occur until the person in the car is aware of the police presence. *See Dermio v. State*, 112 So. 3d 551, 556 (Fla. 2d DCA 2013). Therefore, Petitioner was not detained until he awoke and became aware of the police presence.

Petitioner contends that if he was not involved in an investigatory stop when the deputy blocked his only means of exit, then he was involved in an investigatory stop when he awoke and was commanded to unlock his door. As a general rule, an investigatory stop begins when a police officer asks a suspect to roll down the window or exit the vehicle. *See Greider v. State*, 977 So. 2d 789 (Fla. 2d DCA 2008); *Danielewicz v. State*, 730 So. 2d 363 (Fla. 2d DCA 1999). However, the rule does not apply in this case because Darrow was not asking Petitioner to unlock the door to perform an investigatory stop; he was asking Petitioner to do so because he was concerned for Petitioner's well-being and was therefore performing a welfare check.

"It is well recognized that police officers may conduct welfare checks and that such checks are considered consensual encounters that do not involve constitutional implications."

Dermio, 112 So. 3d at 555. In the instant case, the deputies were led to the scene by two 911 calls. Upon arrival, the deputies found Petitioner apparently passed out behind the wheel of a car with the engine running. Because of the 911 calls and the appearance of Petitioner, it was reasonable for the deputies to proceed under the impression that Petitioner was suffering from an adverse medical condition. Therefore, the stop was a welfare check until they dispelled concerns that Petitioner was suffering from a medical condition. The signs of impairment were displayed as the welfare check was concluding, constituting sufficient cause for the deputy to commence an investigatory stop.

Conclusion

Because the deputies were performing a welfare check, they did not require reasonable suspicion before asking Petitioner to unlock the vehicle, and by the time they confirmed that Petitioner was not suffering from a medical condition, they had requisite cause to conduct an investigatory stop. Accordingly, it is

ORDER AND ADJUDGED that the above-styled petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this 3 day of AUG 2015.

Original Order entered on August 3, 2015, by Circuit Judges Jack Day, Peter Ramsberger, and Thomas M. Ramsberger.

Copies furnished to:

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