

**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**

**CHARLES ZORDANI,**  
**Petitioner,**

**Case No. 15-000030AP-88A**  
**UCN522015AP000030XXXXCV**

**v.**

**STATE OF FLORIDA, DEPARTMENT**  
**OF HIGHWAY SAFETY AND MOTOR**  
**VEHICLES, DIVISION OF DRIVER**  
**LICENSES,**  
**Respondent.**

\_\_\_\_\_  
Opinion Filed \_\_\_\_\_

Petition for Writ of Certiorari from  
Decision of Hearing Officer  
Bureau of Administrative Reviews  
Department of Highway Safety  
and Motor Vehicles

N. Anthony Palumbo, III, Esq.  
Attorney for Petitioner

Stephen D. Hurm, Gen. Counsel  
Michael Greenberg, Asst. Gen. Counsel  
Attorneys for Respondent

**PER CURIAM.**

Charles Zordani seeks certiorari review of the "Findings of Fact, Conclusions of Law and Decision" of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles, entered on April 16, 2015. The Decision affirmed the administrative suspension of Mr. Zordani's driving privileges. The petition for writ of certiorari is denied.

### **Statement of Case**

In March 2015, Mr. Zordani was driving on a public road in Pinellas County when a Pinellas County Sheriff Deputy Foster stopped his vehicle. In the Complaint/Arrest Affidavit the deputy stated that the reason for the stop was because Mr. Zordani "was unable to maintain a single lane" and "nearly drifted into oncoming traffic." The Supplemental Report prepared by Dep. Foster states in part:

On March 13, 2015, at approximately 2240 hours, I was leaving 1 Collany Road (Billy's Stone Crab restaurant) in Tierra Verde. I was preparing to cross the Pinellas Bayway South from the west side over to the east side of the road so that I could head north toward St. Pete Beach.

While I was waiting to cross Pinellas Bayway South, there were two vehicles just north of me at a different exit, preparing to cross Pinellas Bayway South as well. The first vehicle crossed Pinellas Bayway South without issue. The second vehicle, a silver 2014 Cadillac CTS, crossed Pinellas Bayway South at a high rate of speed into the outside northbound lane. The Cadillac crossed over into the bike lane when it began to drive north on Pinellas Bayway South. I began following the Cadillac north on Pinellas Bayway South. I observed the Cadillac swerve from side to side within the lane approximately every 15 seconds. I continued to follow the Cadillac over the Pinellas Bayway Bridge connecting Tierra Verde to St. Petersburg.

From the Pinellas Bayway Bridge until approximately Baha Del Mar Boulevard, the Cadillac did not swerve within its lane. The Cadillac did drive on the outer most part of its lane from the bridge to Baha Del Mar. The Cadillac crossed the yellow line on the outside of its lane twice after passing Baha Del Mar Boulevard.

I initiated the lights on my cruiser while I was behind the Cadillac on Pinellas Bayway. The Cadillac began to yield to my lights by indicating that it was pulling over into the opposite lane of traffic. The Cadillac stopped in the middle of its lane and put on the driver's side turn signal indicating a left hand turn. The Cadillac eventually pulled over to the proper side of the road. I followed the Cadillac for approximately three (3) miles from the time that I first observed the vehicle until the time that I stopped the vehicle.

The deputy called for a DUI Investigator to come to the scene of the stop for a possible Driving Under the Influence ("DUI") violation. DUI Investigator, Deputy Persaud requested that Mr. Zordani perform field sobriety tests. Mr. Zordani refused to perform the tests. Based on Dep. Persaud's observations he placed Mr. Zordani under arrest for DUI.

Dep. Persaud transported Mr. Zordani to the Central Breath Testing facility where he was observed for a twenty-minute time period. Dep. Persaud read the Implied Consent Warning and asked Mr. Zordani to submit a breath-alcohol test. Mr. Zordani refused. Due to his refusal, Mr. Zordani's driver's license was administratively suspended.

### **Standard of Review**

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process is 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. See Haines

City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995). This Court is not to reweigh the evidence or substitute its judgment for that of the Hearing Officer. Id.

**Arguments raised in Petition for Writ of Certiorari**

Mr. Zordani raises two arguments in his petition:

**1. "Whether the Respondent departed from the essential requirements of law in upholding the suspension because the record lacks competent and substantial evidence that a lawful traffic stop occurred?"**

Mr. Zordani asserts that the record lacks competent, substantial evidence of a lawful stop because the documentary evidence consists solely of conclusory statements. Further, Mr. Zordani notes that the Supplemental Report states that Mr. Zordani was observed driving at a "high rate of speed" and that he crossed the yellow line on the outside of his lane twice. Section 316.089, Florida Statutes (2015), requires a driver to maintain a single lane as nearly as practicable. It is asserted that in order to be lawfully stopped for violating section 316.089 the vehicle's failure to stay within its lane must affect other vehicles. See Crooks v. State, 710 So. 2d 1041, 1042-43 (Fla. 2d DCA 1998). Mr. Zordani claims there is no record evidence that he interfered with other traffic, hindered the flow of traffic, or that the deputy stopping the vehicle was concerned that Mr. Zordani was ill, tired, or impaired.

In Crooks the Second District Court of Appeal stated that a violation of section 316.089 "does not occur in isolation, but requires evidence that the driver's conduct created a reasonable safety concern." Id. at 1043. The appellate court concluded in that the arresting deputy in that case had no objective basis to stop Mr. Crooks' vehicle. Id.

In evaluating the validity of a traffic stop, this Court is to determine if the law enforcement officer had an objectively reasonable basis to effectuate the initial stop. See Dobrin v. Fla. Dep't of Highway Safety & Motor Vehicles, 874 So. 2d 1171 (Fla. 2004). We note that the evidence before the hearing officer demonstrates that in addition to witnessing Mr. Zordani failing to maintain a single lane, Dep. Foster also documented in the Supplemental Report, set forth above, that he observed the vehicle for approximately three miles and saw it swerve from side to side within the lane approximately every fifteen seconds. Further, the deputy reported that when he

activated the emergency lights on the cruiser, Mr. Zordani attempted to pull over into the opposite lane of traffic, stopped his vehicle in the middle of the lane, and put on his left turn signal before pulling over to the proper side of the road.

A law enforcement officer does not have to have probable cause to believe that a driver is intoxicated in order to make an investigatory stop; a founded suspicion is all that is required. As explained in State, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So. 2d 1349, 1351 (Fla. 2d DCA 1992):

In order to effect a valid stop for DUI, the officer need only have a "founded suspicion" of criminal activity. Thereafter, the probable cause needed to arrest or to suspend a license for DUI may be based upon evidence obtained during the standard procedures following a valid traffic stop . . . . The courts of this state 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.

See also Dep't of Highway Safety and Motor Vehicles v. Ivey, 73 So. 3d 877, 881 (Fla. 5th DCA 2011).

The appellate court in Florida Department of Highway Safety and Motor Vehicles v. Jones, 935 So. 2d 532, 535 (Fla. 3d DCA 2006), held that the wrong law was applied by the circuit court acting in its appellate capacity when it looked at the officer's subjective reason for stopping Mr. Jones. The Third District Court of Appeal stated that "failure to maintain a single lane alone, can under appropriate circumstances, establish probable cause." Jones, 935 So. 2d at 535 (emphasis added).

### **Conclusion**

As in Jones, this Court has reviewed all the evidence presented to the hearing officer including the deputy's documented observations. We conclude that Mr. Zordani's actions were sufficient to provide the deputy with a "founded suspicion" of criminal activity. The deputy had an objectively reasonable basis for the initial stop. This Court concludes that the Hearing Officer's Decision that the traffic stop was lawful is supported by competent, substantial evidence. There was no departure from the essential requirements of law.

**2. "Whether the Respondent departed from the essential requirements of the law in upholding the suspension because the record lacks competent and substantial evidence as to the time and date of the Petitioner's stop, arrest, and refusal to provide a breath sample due to irreconcilable inconsistencies in the documentary evidence."**

**Decision by Hearing Officer**

The "Findings of Fact, Conclusions of Law and Decision" of the Hearing Officer states:

I find that the following facts are supported by a preponderance of the evidence:

On March 12, 2015 at approximately 10:40 p.m. Deputy Foster of the Pinellas County Sheriff's Office observed the Petitioner's silver Cadillac CTS traveling at a high rate of speed. . . .

. . . . Deputy Foster conducted a traffic stop on March 12, 2015 at approximately 10:46 p.m.

. . . . Deputy Persaud was notified on March 12, 2015 at approximately 10:46 p.m. He was requested to respond to conduct a DUI investigation.

. . . . Deputy Persaud placed the Petitioner under arrest for DUI at approximately 10:54 p.m. March 12, 2015.

Deputy Persaud transported the Petitioner to CBT and requested a breath test. He began his 20 minute observation period at 11:35 p.m. hours March 12, 2015. At the conclusion of the 20 minute observation the Petitioner refused to submit to a breath test, he was read implied consent at approximately 11:55 p.m. hours March 12, 2015.

The Hearing Officer denied Mr. Zordani's motions to invalidate the suspension without comment, findings, or explanation. There was no error by the Hearing Officer as he is not required to include findings of fact. See State, Dep't of Highway Safety and Motor Vehicles v. Porter, 791 So. 2d 32, 35 (Fla. 2d DCA 2001).

Mr. Zordani's Appendix demonstrates that the following documentary evidence was placed into evidence at the Final Hearing:

DDL1: Florida DUI citation indicates that the offense was committed on March 12, 2015, at 11:49 p.m.

DDL3: Complaint/Arrest Affidavit states that Mr. Zordani did drive his vehicle under the influence on March 12, 2015, at 10:46 p.m. and was arrested on March 12, 2015, at 10:54 p.m.

DDL4: (App. 5-20) The "Primary Information" in the Supplemental Report prepared by Dep. Foster: "Occurrence From 03/12/2015 22:40" "Occurrence To: 03/12/2015 22:40." The first sentence of the "Narrative" of the same report by Dep. Foster indicates that the deputy observed Mr. Zordani on March 13, 2015, at 2240 hours. (App. 6)

The "Primary Information" in the Supplemental Report prepared by Dep. Persaud states: "Occurrence From 03/12/2015 22:46" "Occurrence To: 03/12/2015 22:46." (App. 9). The "Narrative" of the same report indicates that Dep. Persaud was notified on March 12, 2015, at 2246 hours that a traffic stop had been performed and the driver might be impaired. (App. 13)

The Pinellas County Standardized Field Sobriety Test Form states that the stop occurred on March 12, 2015, at 2246. (App. 15).

The Implied Consent for DUI in a Motor Vehicle form indicates that Mr. Zordani was read the warning on March 12, 2015, at 23:36. (App. 16).

DDL5: The Breath Alcohol Test Affidavit states that the date of the test was March 13, 2015. This statement is correct as the test was completed with the Air Blank at 00:00 a.m. on March 13, 2015. The test results are listed as follows:

Test	g/210L	Time
Diagnostics Check	OK	23:55
Air Blank	0.000	23:56
Control Test	0.080	23:56
Air Blank	0.000	23:57
Subject Sample #1	REF*	23:58
Air Blank	0.000	23:59
Control Test	0.081	23:59
Air Blank	0.000	00:00
Diagnostics Check	OK	00:00

\*Subject Test Refused

(App. 21)

DDL6: Affidavit of Refusal to Submit to Breath, Urine, or Blood Test states that on March 12, 2015, at 2359, Mr. Zordani refused to take a breath-alcohol test. (App. 22)

Mr. Zordani cites to Department of Highway Safety and Motor Vehicles v. Trimble, 821 So. 2d 1084 (Fla. 1st DCA 2002), to support his argument that due to the

inconsistencies in the evidence, the Hearing Officer's affirmance of the suspension of his driver's license should be quashed.

In Trimble, the circuit court acting in its appellate capacity found that competent, substantial evidence did not support the Hearing Officer's determination that inconsistencies between the timing of events in the various documents submitted by the Department were the result of "clerical errors." In affirming the circuit appellate court, the First District Court of Appeal concluded that the circuit court had not impermissibly reweighed the evidence when it granted Trimble's petition for writ of certiorari.

The issue in Trimble was whether Trimble was given the Implied Consent Warning prior to her refusal to submit to the breath/blood/urine test. In that case, clearly the evidence was in conflict. The "Affidavit of Refusal to Submit to Breath, Urine or Blood Test" recited that Trimble was arrested on the evening of September 27, 2000, at 11:40 p.m. The same document recounted that the warning, request to submit to the breath test, and refusal to submit were made on the early morning hours of September 27, 2000, at 12:45 a.m. The printout from the Breathalyzer machine reflected that Trimble's refusal occurred on September 27, 2000, at 12:47 a.m. But, contradicting the statements in both documents was the arresting officer's narrative report indicating that the Implied Consent Warning was given on September 27, 2000, at 12:50 a.m.

The First District Court of Appeal concluded, "The hearing officer's finding that Trimble was given a consent warning before her refusal could have rested as much on a flip of a coin as on the documentary evidence submitted." Id. at 1087. The circuit appellate court's decision to set aside the suspension of Trimble's driver's license was affirmed by the First District Court of Appeal when it denied the second-tier certiorari petition.

### **Conclusion**

In reviewing all the evidence of record as detailed above, this Court concludes that reliable, competent, substantial evidence supports the Hearing Officer's decision and recitation of facts as to the date and time of the traffic stop, the date and time of the arrest, and the date and time of Mr. Zordani's refusal to take the breath-alcohol test. The evidence in the record is such that "a reasonable mind would accept [it] as adequate" to support the suspension of Mr. Zordani's driver's license. See De Groot v.

Sheffield, 95 So. 2d 912, 916 (Fla. 1957); see also Fla. Rate Conference v. Fla. R.R. & Pub. Util. Comm'n, 108 So. 2d 601, 607 (Fla. 1959); Leverence v. Dep't of Hwy. Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 313a (Fla. 7th Cir. App. Ct. Nov. 3, 2009).

Petition for Writ of Certiorari Denied.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this  
17 day of December, 2015.

Original Order entered on December 17, 2015, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Keith Meyer.

Copies furnished to:

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