

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**

HANIF BHATIA,
Petitioner,

v.

Ref. No. 18-000028AP-88B
UCN: 522018AP000028XXXXCI

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

_____/

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) upholding the suspension of his driving privilege for refusing to submit to a breath test pursuant to § 322.2615, Florida Statutes. Petitioner contends that the DHSMV’s final order finding that the stop was lawful was not supported by competent, substantial evidence. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

In the DHSMV’s final order, the Hearing Officer found the following facts to be supported by a preponderance of the evidence:

On February 9, 2018, Officer Grassia and Officer UpChurch were parked in a parking lot on East Bay Drive when they heard a loud disturbance/domestic argument coming from a blue Kia Optima Florida tag K757HQ as it was pulling out of a parking space.

Concerned for the individuals inside of the vehicle due to the loud argument, the officers conducted an investigative/welfare check to determine if a crime had been or was about to be committed.

Upon making contact with the people in the vehicle, the driver of the vehicle, identified as Hanif Bhatia by his Florida driver’s license[,] attempted to drive away. While speaking with the Petitioner[,] the officers observed signs of impairment and requested a DUI unit.

Officer Silverstein arrived on scene and made contact with the officers who advised her of the situation and their observations.

Officer Silverstein asked the Petitioner to perform Field Sobriety Exercises roadside, however, he was uncooperative and would not listen. He was arrested for DUI.

Once at the police station[,] the Petitioner advised Officer Silverstein he would perform the Field Sobriety Exercises. He exhibited further clues of impairment during the exercises.

Officer Silverstein requested a breath test and [the Petitioner] refused. He was read implied consent.

Based on Petitioner's refusal to provide a breath sample, his license was suspended. After a hearing, the license suspension was upheld. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

"[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence." *Wiggins v. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017).

Discussion

Petitioner asserts that the Hearing Officer's final order was not supported by competent, substantial evidence. Specifically, Petitioner maintains that the evidence at the hearing failed to establish that the officers had the requisite reasonable suspicion to believe that a crime was occurring or about to occur. *See Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993) (holding that in an investigatory stop, "a police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime"). We agree. However, this does not end our analysis.

“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.” *Majors v. State*, 70 So. 3d 655, 661–62 (Fla. 1st DCA 2011) (citations omitted); *see also Gentles v. State*, 50 So. 3d 1192, 1198–99 (Fla. 4th DCA 2010) (“In keeping with such community caretaking responsibilities, [an officer] could properly check the [driver’s] status and condition to determine whether he needed any assistance or aid. This type of limited contact has been deemed a reasonable and prudent exercise of an officer’s duty to protect the safety of citizens.”); *State, Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992) (“The courts of this state have recognized that a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop . . . in situations less suspicious than that required for other types of criminal behavior.”). “In determining whether an officer acted reasonably under the circumstances, courts must give due weight to the specific reasonable inferences which officers are entitled to draw from the facts in light of their experience and ask whether a ‘reasonably prudent [person] in the circumstances would [have been] warranted in the belief that his safety or that of others was in danger.’” *Gentles*, 50 So. 3d at 1198 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)).

Here, the Arrest Affidavit and the DUI Supplement both identify the reason for the stop as an “Investigative stop/welfare check.” The Arrest Affidavit states that the officers “heard a loud disturbance and domestic argument” coming from the Petitioner’s vehicle, so the “officers made contact with [Petitioner] to check the subject’s welfare and ascertain if the domestic had become physical.” The DUI Supplement indicates that “[t]he subject was observed operating his motor vehicle while having a loud domestic disturbance with his wife inside of the vehicle.

Officers made contact with the subject to ascertain if everything was okay and if the domestic had become physical.” The Reporting Officer Narrative states:

Officers Grassia and Officer UpChurch were parked in the parking lot . . . when they heard loud disturbance coming from a blue Kia Optima . . . which was pulling out of the parking space. Concerned for the individuals inside of the vehicle due to the loud argument, the officers made contact with the subjects to check on their welfare and determine if a crime had been or was about to be committed.¹

Thus, competent, substantial evidence supports the Hearing Officer’s finding that Petitioner was lawfully stopped based on the officers’ legitimate concern for the safety of everyone involved.

Conclusion

Because the DHSMV’s final order finding that the stop of Petitioner’s vehicle was lawful is 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 _____ day of _____, 2018.

Original Order entered on December 18, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies furnished to:

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¹ Although the officers seemingly conflate an investigative stop for a crime and a stop for a welfare check, this Court is not constrained by the officers’ classifications. *See Dermio v. State*, 112 So. 3d 551, 556 (Fla. 2d DCA 2013) (“The deputy’s classification of the stop as “investigatory” in nature does not control our disposition because it is clear the deputy was initially conducting a welfare check.”); *Dep’t of Highway Safety & Motor Vehicles v. Utley*, 930 So. 2d 698, 699–700 (Fla. 1st DCA 2006) (holding that the circuit court erred by “us[ing] a subjective, rather than an objective standard to determine the constitutional reasonableness of the stop”).