

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

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

**DANIEL JOSHUA SKELTON,
Petitioner,**

**Case No.:19-000057AP-88A
UCN: 522019AP000057XXXXCI**

v.

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

_____ /

Opinion filed: _____

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

Paul A. Gionis, Esq. for Petitioner

Christie S. Utt, Esq.

General Counsel

Mark L. Mason, Esq.

Asst General Counsel for Respondent

PER CURIAM

ORDER AND OPINION

Petitioner challenges a final order of the Department of Highway Safety and Motor Vehicles (“DHSMV”) that sustained his driver license suspension for refusal to submit to a breath test pursuant to § 322.2615, Florida Statutes. On appeal, Petitioner contends that DHSMV’s order

was not supported by competent substantial evidence and did not observe the essential requirements of law because the initial stop was unlawful. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History:

On July 5, 2019, Deputy J. Mullins with PCSO received an anonymous tip through a Tarpon Springs Police Department to be on the lookout for (BOLO) a possibly impaired driver in a black Chevrolet Silverado with a light bar on the roof heading in the direction of Tarpon Avenue. The BOLO indicated a possible drunk driver had just departed Silver King Brewery and was heading in the direction of Tarpon Ave. Deputy Mullins immediately responded to that area and observed the vehicle matching the description. The deputy conducted a registration check on the vehicle showing it was registered to Daniel Skelton. Deputy Mullins pulled in behind the vehicle and immediately saw the vehicle cross over the lane marker. The deputy performed a traffic stop. Upon making contact with Petitioner, observed a strong and distinct odor of an alcoholic beverage. Petitioner fumbled when asked to produce his driver license, registration and proof of insurance. Petitioner could only produce a copy of the vehicle's title. Petitioner performed poorly on field sobriety tests and was arrested for suspicion of driving under the influence. Petitioner refused to submit to a breath test after being read the implied consent warning resulting in a suspension of his driving privileges. Petitioner requested an administrative review hearing, held August 5, 2019, to challenge the lawfulness of his driver license suspension.

Petitioner did not appear at the administrative review hearing but was represented by counsel. The only witness was the arresting officer, Deputy John Mullins. Deputy Mullins testified that he was advised by a Tarpon Springs officer that "a BOLO was coming to Silver King headed towards Pasco County." "He described the vehicle to me, and I got back in my patrol

vehicle.” (T. 8:7-9). The deputy stated that “Petitioner had failed to maintain a single lane.” (T. 5:24-25) and the deputy initiated a traffic stop.

Counsel for Petitioner moved to have the administrative suspension denied based on the lack of reasonable suspicion to stop Petitioner’s vehicle. The hearing officer reserved ruling at the hearing and issued his Findings of Fact, Conclusions of Law and Decision August 12, 2019. The hearing officer found:

“I find that the following facts are supported by a preponderance of the evidence: On July 5, 2019, Deputy J. Mullins received over the dispatch radio a Be On The Look Out (BOLO). The BOLO indicated a possibly impaired driver driving toward Tarpon Avenue in a Black Chevrolet Silverado Truck with a light bar on the roof. Deputy J. Mullins respondent to the intersection of Tarpon Avenue and Huey Avenue. Once there, Deputy Mullins observed a black Chevrolet Silverado truck with a light bar on the roof driving eastbound on Tarpon Avenue. Deputy J. Mullins pulled in behind the vehicle and immediately observed the vehicle cross over the right lane marker. Based on the totality of the circumstances, Deputy J. Mullins initiated a traffic stop.”

“After consideration of the foregoing, I conclude, as a matter of law, that the law enforcement officer had probably cause to believe that Petition was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional office, subsequent to a lawful arrest; and the Petition was told that if her refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

I find that all elements necessary to sustain the suspension for refusal to submit to a breath, blood, or urine test under section 322.2615 of the Florida Statutes are supported by a preponderance of the evidence.”

The hearing officer affirmed the suspension of Petitioner’s driver license and this petition for certiorari was timely filed.

Standard of Review

This Court's standard of review for first-tier review of an administrative decision is limited to: (1) Whether due process was accorded; (2) Whether the essential requirements of law were observed; (3) Whether the administrative findings and judgment were supported by competent, substantial evidence. The Court is not entitled to reweigh the evidence or substitute its judgment for the findings of Department's hearing officer. See *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989)

Discussion

Appellant raises two issue in the Petition, the first that the hearing officer failed to comply with the essential requirements of the law and secondly that the hearing officer's decision to affirm the suspension of the Petitioner's drivers license was not supported by competent substantial evidence.

"The constitutional validity of a traffic stop depends on purely objective criteria." *Hurd v. State*, 958 S0. 2d 600, 602 (Fla. 4th DCA 2007). "The subjective knowledge, motivation or intention of the individual officers involved is irrelevant. Under any other standard, application of the Fourth Amendment would vary from citizen to citizen, depending upon the officer's knowledge or experience. Consequently, the subjective knowledge or intent of an individual officer can never invalidate otherwise objectively justifiable police conduct under the Fourth Amendment," *Whren v. United States*, 517 U.S. 806, 812 (1996). "The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop." *Dobrin v. Dept. of Highway Safety & Motor Vehicles*, 874 So.2d 1171, 1174 (Fla. 2004). The objective test "asks only whether any probable cause for the stop existed."

Holland v. State, 696 So.2d 757, 759 (Fla. 1997). See also *State v. Perez-Garcia*, 917 So.2d 894 (Fla. 3d DCA 2005).

“Whether an officer's suspicion is reasonable is determined by the totality of the circumstances that existed at the time of the investigatory detention.” *Gaffney v. State*, 974 So. 2d 425, 426 (Fla. 2d DCA 2007) (internal quotations omitted). Considering the totality of the circumstances “allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *State v. Marrero*, 890 So. 2d 1278, 1282 (Fla. 2d DCA 2005) (citations omitted). A detention “is reasonable if it is based on specific articulable facts.” *Castella v. State*, 959 So. 2d 1285, 1292 (Fla. 4th DCA 2007). The arresting officer testified that he received a BOLO from the Tarpon Springs Police Department describing Plaintiff’s vehicle which was a black Chevrolet Silverado with a light bar on the roof. The deputy conducted a registration check on the vehicle. The deputy testified that upon pulling in behind Petitioner the deputy immediately saw the vehicle cross over the right lane marker. An officer may conduct an initial stop based upon a reasonable suspicion if the officer has “a legitimate safety concern for the safety of the motoring public”. *Department of Highway Safety and Motor Vehicles v. DeShong*, 603 So.2d 1349 (Fla. 2nd 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 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. *DeShong* at 1352. In *Bailey v. State*, 319 So.2d 22 (Fla. 1975), the Florida Supreme Court upheld the traffic stop of a driver who was observed driving her vehicle at a slow rate of

speed and weaving in her lane of traffic. The court expressly stated that there were no circumstances which would reasonably have led the officer to believe criminal activity was taking place, however the court validated the traffic stop, stating the “[b]ecause of the dangers inherent in to our vehicular mode of life, there may be justification of the stopping of a vehicle by a patrolman to determine the reason for its unusual operation.” *Bailey v. State*, 319 So.2d 22 (Fla. 1975). A stop is permitted even without a traffic violation, so long as the stop is supported by a reasonable suspicion of impairment, unfitness or vehicle defects. *Hurd v. State*, 948 So.2d 600 (Fla. 4th DCA 2007). The community caretaking doctrine addresses those law enforcement functions that are “totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute.” *Cady v. Dombrowski*, 413 U.S 433, 441 (1973). It is also a proper use of the community caretaking doctrine to determine if the driver requires assistance or aid. *Gentles v. State*, 50 So.3d 1192, 1198-1199 (Fla. 4th DCA 2011). The doctrine encompasses the seizure of individuals “in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity.” *Castella v. State*, 959 So.2d 1285, 1292.

An anonymous tip may provide the requisite reasonable suspicion necessary for an officer to lawfully conduct an initial stop if “its reliability [is] established by independent police corroboration.” *Vitale v. State*, 946 So. 2d 1220, 1221 (Fla 4th DCA 2007). In *Genninger v. State*, 26 Fla. L. Weekly Supp. 931a (Fla. 6th Cir. Ct. December 18, 2018) the officer made contact with a driver based on a DUI BOLO that the driver was falling asleep behind the wheel and was swerving. Prior to stopping the driver, the officer received tips from two separate drivers. The officer made contact with the driver after

observing the driver park the vehicle taking up two parking spots, after striking the parking stop twice and readjusting back and forth two times. The anonymous tips were corroborated by the officer's observations of the driving.

Deputy Mullins testified that he received information that a possible drunk driver had departed the Silver King brewery and was driving a black Chevrolet Silverado with light bars on the roof. The officer observed the vehicle in the immediate vicinity. He confirmed that the register owner of the vehicle matched the register owner listed in the BOLO. Immediately after pulling in behind the vehicle, the deputy observed the driver to cross over the right lane marker. Petitioner's driving provided corroboration for the anonymous tip.

For an arrest to be lawful, the initial stop that led to that arrest must also be lawful. See *Dep't of Highway Safety & Motor Vehicles v. Pipkin*, 927 so. 2d 901, 903 (Fla. 3d DCA 2005). Petitioner argues the arrest was unlawful because the initial stop was unlawful. The deputy received information that a possibly drunk driver had departed from a brewery and immediately upon contact with the driver observed the vehicle cross over the lane marker. "If the facts contained in the arrest report provide any objective basis to justify the stop, even if it is not the same basis stated by the officer, the stop is constitutional." *Utley v. Department of Highway Safety and Motor Vehicles*, 930 So.2d 698 (Fla. 1st DCA 2006). The BOLO and the observation of Plaintiff's driving provided the officer with an objective basis for the stop. Based on the totality of circumstances, the deputy had an objective basis to suspect that something was wrong with the driver or the vehicle.

Conclusion

The Court must determine only whether the administrative findings and judgment are supported by competent substantial evidence, and we find that they are. The Hearing Officer found there that the initial stop, based on the totality of the circumstances, was lawful. Petitioner was placed under lawful arrest based upon competent substantial evidence. Procedural due process was accorded, the essential requirements of law have been observed, and the Hearing Officer's findings of fact and decision are supported by competent substantial evidence.

Accordingly, it is

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

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this
13th day of August, 2020.

TRUE COPY

Original Order entered on August 13, 2020, by Circuit Judges Jack R. St. Arnold,
Patricia A. Muscarella, and Keith Meyer.

Copies furnished to:

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