

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

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

MINDY GALE SCHNEIDER,  
Petitioner,

v.

CASE NUMBER: 2023-CA-003290-WS

STATE OF FLORIDA, DEPT. OF  
HIGHWAY SAFETY & MOTOR VEHICLES,  
Respondent.

---

Petition for Writ of Certiorari

Randall C. Grantham, Esquire  
Attorney for Petitioner

Linsey Sims-Bohnenstiehl, Esquire  
Attorney for Respondent

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

THIS CAUSE came before the Court on the Petition for Writ of Certiorari, filed April 27, 2023, by Mindy Gale Schneider (“Petitioner”), represented by Randall C. Grantham, Esquire. In response to the Court’s Order to Show Cause, a Response to Petition for Writ of Certiorari was timely filed, on June 14, 2023, by the State of Florida, Dept. of Highway Safety and Motor Vehicles (“Respondent”). After an extension of time was granted, the Petitioner timely filed her Reply on July 18, 2023. Upon review of the briefs, record, and being otherwise fully advised, the Court finds that the Petition for Writ of Certiorari must be denied.

**BACKGROUND FACTS**

Petitioner appeals the Findings of Fact, Conclusions of Law and Decision (“DMV Order”), entered March 29, 2023, by James S. Garbett, Jr., Field Hearing Officer (“Hearing Officer”),

affirming the license suspension imposed by the Respondent after the Petitioner refused to submit to a breath test. The Hearing Officer upheld the Petitioner's one year license suspension, effective February 12, 2023, for driving under the influence after Petitioner failed to submit to a breath test.

The record shows that on February 12, 2023, at approximately 3:05 a.m., Trooper Aziz and Sergeant Howard, both of the Florida Highway Patrol (collectively "FHP"), responded to the area of northbound I-75 and the newly-constructed Overpass Road located at approximately mile marker 282. Trooper Aziz and Sergeant Howard, driving separate vehicles, were dispatched following a 911 call from a male individual traveling north on I-75 who reported seeing what he thought was a Dodge Charger driving "really, really, really fast," then pulling over wherein a lady was observed bolting out of the vehicle and disappearing. The 911 caller stated that the incident "probably" occurred around Mile Marker 283. The 911 dispatcher provided Mile Marker 283.5, on the right shoulder of northbound I-75, to FHP.

FHP came to a stop behind a Jeep Cherokee with their overhead lights on. It was raining. Trooper Aziz and Sergeant Howard each observed a male outside the Jeep on the passenger side and a female, later identified as the Petitioner, sitting in the driver's seat while the vehicle was running. The male stated that he and Petitioner had argued, so he exited the vehicle with the intent to walk home, stating that the Petitioner would drive herself home. The male confirmed that there were only two people in their vehicle and that a third person had not run away. The male showed several signs of impairment to include an odor of alcoholic beverage coming from his breath, bloodshot watery eyes, orbital sway, and constantly repeating statements.

Trooper Aziz and Sergeant Howard then made contact with the Petitioner, who also showed several signs of impairment to include bloodshot eyes, dilated pupils, the strong smell of alcohol coming from her breath, and slurred speech. Trooper Aziz and Sergeant Howard observed

an open bottle of Captain Morgan in the front passenger seat and a Styrofoam cup with what appeared to contain the same brown liquid as Captain Morgan. Petitioner admitted to drinking.

Trooper Aziz and Sergeant Howard then briefly stepped away from the Jeep to talk. Out of his peripheral vision, Sergeant Howard observed Petitioner moving the Captain Morgan bottle (later located under her seat) and dumping the contents of the Styrofoam cup on the ground. Trooper Aziz asked Petitioner to exit the Jeep, and she was observed to have a wet area in the rear from urinating. Petitioner was unsteady on her feet and swayed as she stood. Petitioner subsequently refused to complete field sobriety exercises and was arrested for DUI. Upon arrival at the Pasco County Jail, Petitioner refused twice to submit to a breath test, even after being advised of Florida's implied consent law. Petitioner was booked into the Pasco County Jail and her driving privilege was suspended for a period of one year, effective February 12, 2023.

Petitioner timely requested an administrative hearing before the DMV's Bureau of Administrative Reviews ("BAR") to challenge the lawfulness of her license suspension. An in-person hearing was held at the BAR Tampa office on March 21, 2023. Petitioner was present with her attorney, Mr. Grantham, and testified on her own behalf. The arresting officer, Trooper Aziz, appeared telephonically and also testified.<sup>1</sup> The Hearing Officer admitted fifteen documents received from the FHP into evidence, without objection. The Hearing Officer also admitted three exhibits offered by the Petitioner. As set forth in the transcript of the administrative hearing, the following documents and exhibits were admitted:

DDL1 – Florida DUI Uniform Traffic Citation (A779NME);

DDL2 – Florida Uniform Traffic Citation (AGJW4FE);

DDL3 – Florida Citation Transmittal Form;

---

<sup>1</sup> While Sergeant Howard was lawfully subpoenaed, Petitioner decided against enforcing the subpoena and went forward without his testimony.

DDL4 – FL DL (S536547868700);

DDL5 – FHP Arrest Report;

DDL6 – Breath Alcohol Test Affidavit;

DDL7 – Affidavit of Refusal to Submit to Breath and/or Urine Test;

DDL8 – FHP Incident Report FHP Vehicle Tow Form;

DDL9 – FHP Alcohol and Drug Influence Report;

DDL10- TBRCC Call History Record;

DDL11 – FHP Affidavit of Investigative Costs;

DDL12 – FHP Notification of Driver License Hearing;

DDL13 – FHP DUI Case Report Checklist;

DDL14 – FHP DUI Investigation Case Report Coversheet;

DDL15 – DUI Videos (provided by law enforcement via emailed link);

Driver Exhibit 1 – Photos of Incident Scene (4);

Driver Exhibit 2 – Google Earth Photo (1); and,

Driver Exhibit 3 – 911 Audio (DVD format).

At the conclusion of the hearing, Petitioner's counsel orally motioned to invalidate the license suspension arguing that FHP did not conduct a lawful traffic stop of Petitioner, as her vehicle and location did not meet the description of the 911 call. Further, assuming FHP was conducting a lawful welfare check, Petitioner's counsel argued that such welfare check should have ended upon determining that the Petitioner and her male companion were not in need of assistance and that there was not a third individual that had run from the car. The Hearing Officer reserved ruling on the oral motions and the hearing was concluded. The Hearing Officer entered,

on March 29, 2023, its DMV Order affirming the Petitioner's license suspension, from which she timely sought certiorari review.

### **ISSUE RAISED**

Petitioner has raised only one issue for appellate review: Whether there is competent and substantial evidence to support the Hearing Officer's finding that Petitioner was lawfully stopped for a welfare check?

### **STANDARD OF REVIEW**

The Circuit Court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent substantial evidence. *Haines City v. Heggs*, 658 So.2d 523, 530 (Fla. 1995)(*citations omitted*). The Circuit Court is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and decision. *Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So.2d 1247, 1249 (Fla. 2d DCA 2006)(*citations omitted*). "As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended." *Dusseau v. Metro. Dade Cty. Bd. of Cty. Commrs.*, 794 So.2d 1270, 1276 (Fla. 2001).

### **LAW AND ANALYSIS**

Initially, the Court finds that the Hearing Officer was charged with determining, by a preponderance of the evidence, whether there was sufficient cause to sustain, amend, or invalidate the license suspension, based on three criteria:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended 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.

2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she 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. *See* § 322.2615(7)(b)1.-3., Fla. Stat.

Petitioner takes issue with the first prong, arguing that FHP's welfare check violated the Fourth Amendment leading to Petitioner's unlawful search and search, and subsequent arrest for DUI and license suspension. Petitioner argues that the location of the stop, around Mile Marker 282, did not match that the 911 call that placed a purported Dodge Charger around Mile Marker 283, such that a welfare check at the location of the Jeep was unjustified. Further, assuming the initial welfare check was justified, it should have ended once FHP determined that no one was in distress or in need of assistance. Respondent counters that FHP had justification to conduct a traffic stop as the Jeep was illegally parked or, in the alternative, argues that the community caretaking doctrine, under which a welfare check falls, applies to the facts of this case to justify the traffic stop and Petitioner's subsequent arrest.

Initially, the Court finds that it is undisputed that FHP was responding to a 911 call generated in the middle of the night, while it was raining, and that FHP necessarily had to pass Mile Marker 282 to reach Mile Marker 283. Given the uncertainty of the 911 caller as to the make and model of the vehicle traveling at a very high rate of speed, coupled with the uncertainty as to the Mile Marker where a woman "bolted" from the car on the right side of I-75, it was objectively reasonable for FHP to conduct a welfare check on the Jeep parked along the right shoulder of I-75, with an individual observed standing outside in the rain.

The well-settled law is that welfare checks fall under the community caretaking doctrine and that law enforcement can conduct such checks when necessary without constitutional implications. *Daniels v. State*, 346 So.3d 705, 708 (Fla. 2nd DCA 2022)(*citations omitted*). Once

law enforcement has satisfied their concern for the welfare of the person, a continued detention is not permissible unless there is a reasonable suspicion that the person has committed, or is committing, a crime. *Id.* As held by the Second DCA in *Daniels*, “[w]hen determining whether reasonable suspicion exists, the totality of the circumstances must be considered from the ‘standpoint of an objectively reasonable officer.’” *Id.* at 709 (*citations omitted*); *see also*, *R.A. v. State*, 355 So.3d 1028, 1034 (Fla. 3d DCA 2023)(explaining that any warrantless seizure of an individual by law enforcement, including those involving only a brief detention short of arrest, must be based on a reasonable suspicion that the individual is engaged in wrongdoing)(*citations omitted*).

Under the facts of this case, FHP had an objectively reasonable basis to conduct a welfare check on the Petitioner and her male companion. Next, immediately upon contact, both individuals showed several signs of impairment which was reinforced by the observation of the open Captain Morgan bottle. Once FHP observed signs of criminal activity, impairment and an unlawful open container, FHP was justified in requesting Petitioner to exit the Jeep. *State v. Bodrato*, 346 So.3d 65, 66-67 (Fla. 4th DCA 2022)(explaining that officer was justified in asking defendant to exit his vehicle because he was observed committing a traffic infraction)(*citations omitted*); *see also*, *Daniels*, 346 So.3d at 708. FHP then lawfully continued its investigation resulting in Petitioner’s arrest for DUI.

Lastly, the Court finds that FHP’s use of its emergency lights was appropriate and did not result in an unlawful detention. *See, e.g., Baxter v. State*, 2023 WL 7096645 (Fla. 5th DCA Oct. 2023)(finding that defendant was not initially detained without reasonable suspicion, even though sheriff activated his emergency lights). As in *Baxter*, by the time the interaction between FHP and

Petitioner became a detention, there was a factual basis to establish an objective, reasonable suspicion that a crime had occurred.

Hence, the Court finds that the DMV Order is supported by competent substantial evidence and that there is no basis to grant certiorari relief under the facts of this case. *Dusseau*, 794 So.2d at 1276 (explaining the test for competent substantial evidence is whether there exists any competent substantial evidence to support the decision maker's conclusions, and any evidence which would support a contrary conclusion is irrelevant; *Stenmark*, 941 So.2d at 1249 (same)).

**WHEREFORE**, it is hereby, **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby DENIED.

**DONE AND ORDERED** in Chambers at New Port Richey, Pasco County, Florida on this 20 day of December, 2023.

Original Order entered on December 20, 2023 by Circuit Judges Linda Babb, Kimberly Byrd, and Joshua Riba.



*Copies furnished to:*

**Randall C. Grantham, Esquire**

LutzLaw@aol.com

**Linsey Sims-Bohnenstiehl, Asst. Gen. Counsel**

LinseySims-Bohnenstiehl@flhsmv.gov

VirginiaCroft@flhsmv.gov