

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA  
CIRCUIT CIVIL DIVISION

DAVID COFFEE,  
Petitioner,

CASE NO.:21-CA-4479

v.

DIVISION: I

STATE DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
Respondent.

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AMENDED ORDER DENYING PETITION FOR WRIT OF CERTIORARI<sup>1</sup>

This matter is before the Court on Petition for Writ of Certiorari filed May 28, 2021. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat.; Rules 9.100(c)(2), and 9.030(c)(3), Fla. R. App. P. Petitioner seeks review of the Department's final order upholding the suspension of his driving privilege for his refusal to submit to a breath test to determine his breath-alcohol level. Petitioner contends that the Department lacked the competent, substantial evidence necessary to find that Petitioner was lawfully arrested because the hearing officer relied solely upon the arrest report, which did not articulate the arresting officer's subjective purpose in initiating the traffic stop that gave rise to Petitioner's arrest. Upon review of the petition, response, reply, appendices, and relevant case law, the Court finds that where law enforcement documented a consistent account of their observations leading up to the traffic stop, the hearing officer did not err in relying on that documentation as competent, substantial evidence of a lawful traffic stop.

JURISDICTION AND STANDARD OF REVIEW

A decision by the Department to uphold or invalidate a suspension may be reviewed by a petition for writ of certiorari to the circuit court in the county in which formal or informal review was conducted. §§ 322.31; 322.2615(13),

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<sup>1</sup> This order is amended to correct a scrivener's error. The result is unchanged and does not extend the time to seek review.

Fla. Stat. This Court, therefore, has jurisdiction to review the Department's decision in this case. This review is not de novo. §322.2615(13), Fla. Stat. Rather, the Court reviews the administrative decision to determine whether Petitioner received procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court may not reweigh the evidence contained in the record. *Dep't of Highway Safety & Motor Vehicles v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012).

## FACTS AND PROCEDURAL HISTORY

On March 19, 2021, Officer Baar of the Tampa Police Department observed Petitioner's vehicle weaving within its lane, touching the lines that divide the lanes, and continuing to do so for a distance of several blocks. He initiated a traffic stop and asked Petitioner the reason for the vehicle's weaving. During the encounter, Officer Baar observed several indicators of alcohol consumption, including watery and bloodshot eyes, slurred speech, a strong odor of alcohol, and an unsteady walk. Officer Baar then requested that Petitioner participate in Field Sobriety Exercises (FSEs). Petitioner complied but performed them poorly. Petitioner was arrested and transported to Central Breath Testing where he was asked to submit to a breath test to determine his blood alcohol level. He refused. As a result of his refusal, Petitioner's driving privilege was administratively suspended.

A formal review hearing of the administrative suspension was held April 22, 2021. When reviewing a suspension that is the result of a driver's refusal to submit to testing, the hearing officer is to determine whether law enforcement had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of drugs or alcohol, whether Petitioner refused to submit to any such test after being requested to do so by law enforcement, and whether Petitioner was told that if he refused to submit to such test his privilege to drive a vehicle would be suspended for a period of one year or, in the case of a second or subsequent refusal, for a period of 18 months. §322.2615(7)(b), Fla. Stat. In addition, the Department may not suspend a driver's license for refusal to submit to a breath test if the refusal is not incident to a lawful arrest. *Dep't of Highway*

*Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2011); *Arenas v. Dep't of Highway Safety & Motor Vehicles*, 90 So. 3d 828, 832 (Fla. 2d DCA 2012).

## DISCUSSION

Petitioner contends that no competent, substantial evidence supports the Department's finding that Petitioner was lawfully stopped by law enforcement, relying primarily upon *Dobrin v. Dep't of Highway Safety & Motor Vehicles*, 874 So. 2d 1171 (Fla. 2004). Specifically, Petitioner argues that, when there is no allegation of a traffic infraction, law enforcement is required to articulate a belief or suspicion that Petitioner was ill, tired, or impaired in order to effect a lawful traffic stop.

*Dobrin* is distinguishable. In *Dobrin*, the driver was stopped and ticketed for failure to maintain a single lane, but there was no evidence of his car actually going beyond one lane. *Dobrin*, 874 So. 2d at 1172. The Department in *Dobrin* argued before the circuit court that the officer *would have been* justified in stopping the petitioner for speeding, or alternatively to determine the petitioner's state of wellbeing, because the officer observed the vehicle driving above the speed limit and weaving within the lane, despite the fact that neither speeding nor the petitioner's wellbeing were given as reasons for the stop in the arrest report. *Id.* The circuit court rejected these alternative arguments because failure to maintain a single lane was the only reason for stopping Dobrin's vehicle given in the arrest report. *Id.* at 1174. The Florida Supreme Court reinstated the circuit court's decision to quash the suspension, because where there was no evidence that the car went beyond its lane of travel, no facts provided an objective basis to stop the vehicle for failure to maintain a single lane. That rendered the stop unlawful. *Id.* at 1172, 1175.

In contrast, here, the articulated basis for the stop was that Petitioner was weaving within the travel lane and that Petitioner's vehicle was "touching the lane dividers" for a distance of several blocks. Erratic driving can form the basis for a valid traffic stop where law enforcement seeks to determine the cause of the vehicle's unusual operation. *Bailey v. State*, 319 So. 2d 22, 26 (Fla. 1975); *Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603

So. 2d 1349, 1352 (Fla. 2d DCA 1992) (citing *State v. Carrillo*, 506 So. 2d 495 (Fla. 5th DCA 1987) (where driver was weaving within the lane)). It need not rise to the level of a traffic violation. *DeShong*, 603 So. 2d at 1352. The facts articulated for the stop here provide specific support for the conclusion that Petitioner's vehicle was weaving, and the hearing officer could properly rely on them. *Dobrin* does not require law enforcement to articulate a suspicion that the driver was ill, tired, or impaired to effect a lawful traffic stop in the absence of an infraction. *Dobrin*, 874 So. 2d at 1174. It simply requires that objective evidence support the articulated basis for the stop. *Id.*; see also *Patel v. Dep't of Highway Safety & Motor Vehicles*, 12 Fla. L Weekly Supp. 997a (Fla. 3d Jud. Cir., Aug 18, 2005).

It is therefore ORDERED that the petition is DENIED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 3/8/2022

Paul Huey

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**PAUL L. HUEY**, Circuit Court Judge

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