IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

LACOMBE, PIERRE

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
BUREAU OF DRIVER IMPROVEMENT

Respondent.
_____/

CASE NO.: 06-CA-006891
WRIT NO.: 06-69

Petition for Writ of Certiorari

Stuart I. Hyman, Esq., on behalf of Petitioner.

Heather Rose Cramer, Esq., Assistant General Counsel
Florida Department of Highway Safety and Motor Vehicles, on behalf of Respondent.

Before EVANS, MACKINNON and KEST, J.J.

PER CURIAM

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Petitioner, Pierre Lacombe (hereinafter Petitioner), timely appeals his license suspension for refusing to take a breath test after being arrested for driving while under the influence of alcohol, pursuant to section 322.2615, Florida Statues. This Court has appellate jurisdiction pursuant to section 322.2615(13), Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(1)(C).

When reviewing a final order of license suspension pursuant to section 322.2615, Florida Statutes, this Court's standard of review is limited to determining whether the petitioner was accorded due process, the essential requirements of law were observed, and whether the findings of fact and judgment are supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In conducting this review, this Court is not "entitled

to reweigh the evidence or substitute its judgment for that of the" administrative hearing officer. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *Dep't of Highway Safety & Motor Vehicles, Div. of Driver Licenses v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989).

FACTS

On June 28, 2006, Officer Tami Edwards (hereinafter "Officer Edwards") observed Petitioner weaving in his lane while driving his vehicle on Kirkman road. After "pacing" the vehicle, Officer Edwards also determined that Petitioner was exceeding the speed limit by fifteen miles per hour. Based on these observations, Officer Edwards stopped Petitioner at a gas station. After briefly interacting with Petitioner, Officer Edwards smelled "a strong odor of alcoholic impurities" and observed Petitioner's eyes to be "glassed over and blood shot." (Pet'r App. B at 2.) Petitioner's speech was also "slow and slurred." (Pet'r App. B at 2.) Based on these observations, Officer Edwards stated that she believed Petitioner had been drinking and requested he perform some field sobriety exercises in order "to determine if he should have been driving or should drive any furthis [sic]." (Pet'r App. B at 2.) Petitioner performed several exercises, apparently poorly, and was placed under arrest for driving while under the influence of alcohol. Petitioner subsequently refused to submit to a breath test after being read the implied consent warning.

On July 26, 2006, a formal review hearing of Petitioner's license suspension for refusing to submit to the breath test was held. The evidence presented at the hearing, in relevant part, was the testimony of Officer Edwards, the "DUI uniform traffic citation," charging affidavit and refusal affidavit. After reviewing the evidence, the hearing officer concluded that there was probable cause to believe that Petitioner was driving while under the influence of alcohol, that he was lawfully arrested and that he refused to submit to a breath test after being informed that a

refusal would result in a license suspension. As a result, the hearing officer sustained Petitioner's license suspension. This appeal followed.

DISCUSSION

Petitioner's writ only challenges the validity of his stop and arrest. Thus, the only issues before this Court are whether Officer Edwards had a reasonable suspicion that Petitioner was driving while under the influence of alcohol and whether probable cause existed to arrest Petitioner. *See* § 322.2615(7)(b)1, 2, Fla. Stat.

a. Officer Edwards had Probable Cause to Stop Petitioner

Petitioner argues that Officer Edwards did not have probable cause to stop him because his vehicle, "in immediate succession, . . . crossed the dividing lane line by a tire width on only two occasions."[1] (Pet. Writ Cert. 5.) Petitioner also argues that Officer Edwards' representation that she "paced" the vehicle to determine he was speeding is belied by her testimony that she was approximately 750 feet away and was "gaining on the vehicle." (Pet. Writ Cert. 5.) In essence, Petitioner challenges whether there is substantial, competent evidence to support the initial traffic stop.

Contrary to Petitioner's assertion, probable cause is not needed to effectuate a lawful traffic stop. In order "to conduct a lawful investigatory stop or detention, an officer [need only] have an articulable, reasonable suspicion that the [person] detained has committed or is about to commit a crime." *Brown v. State*, 719 So. 2d 1243, 1245 (Fla. 5th DCA 1998); see also *Hilton v. State*, --- So. 2d ---, 2007 WL 1932071 at *8 (Fla. 2007) (stop of a motor vehicle and detention of its occupants is unreasonable under the Fourth Amendment unless there is an articulable and reasonable suspicion that the vehicle or its occupants are subject to seizure for a violation of the

[1] In fact, Officer Edwards observed Petitioner's vehicle touch or cross the dividing lane line on three occasions.

law). In reviewing the lawfulness of Officer Edwards' stop of Petitioner, this Court must determine whether the evidence indicates "an objectively reasonable basis for making the stop." *Dobrin v. Fla. Dep't of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174 (Fla. 2004). If the facts "provide any objective basis to justify the stop . . . the stop is constitutional." *Dep't of Highway Safety & Motor Vehicles v. Utley*, 930 So. 2d 698 (Fla. 1st DCA 2006) (Hawkes, J., concurring).

In the case at bar, the hearing officer apparently determined that Petitioner's stop was lawful based on Officer Edwards' testimony and the charging affidavit. According to this evidence, Officer Edwards observed Petitioner weaving within his lane and speeding. This is a sufficiently objective basis upon which to have stopped Petitioner. *See State v. Carrillo*, 506 So. 2d 495 (Fla. 5th DCA 1987) (reasonable suspicion existed to stop a vehicle where the driver weaved five times within his lane within the span of a quarter of a mile); *Yanes v. State*, 877 So. 2d 25, 26 (Fla. 5th DCA 2004) (traffic stop justified where the driver crossed the "fog line" on three occasions within a mile); *Cantu v. State, Dep't of Highway Safety & Motor Vehicles*, Case No.: CI00-3682, Writ No. 00-25 (Fla. 9th Cir. Ct. Mar. 15, 2002) (an officer's written and testimonial observations that petitioner was speeding and failed "to maintain a single lane," served as a reasonable basis to stop petitioner's vehicle).

Furthermore, Petitioner's challenge to Officer Edwards' pace clock of his vehicle's speed is beyond the scope of this Court's inquiry. As the court in *Cantu*, Case No.: CI00-3682, Writ No. 00-25, stated, "the issue of whether [an] Officer['s] pace clock of Petitioner's speed was improper is beyond the scope of a driver's license suspension hearing and the hearing officer is only required to determine whether [the officer] had reasonable suspicion to stop the vehicle." Assuming arguendo that the pace clock of Petitioner's speed was invalid, Officer Edwards'

observation that Petitioner was weaving within his lane was sufficient to provide the requisite reasonable suspicion. *See id.*

b. Officer Edwards had Probable Cause to Arrest Petitioner for Driving while Under the Influence of Alcohol

Petitioner claims that there was no probable cause to either require him to perform field sobriety tests or to support his arrest. The essence of Petitioner's argument is that he "did not exhibit any signs of impairment" either prior to being asked or after performing the field sobriety tests, distinguishing *State v. Taylor*, 648 So. 2d 701 (Fla. 1995). (Pet. Writ Cert. 14-16.) Petitioner places great emphasis on the fact that "Officer Edwards made no observations that Petitioner had any difficulty standing or walking normally or any problems with his balance prior to requiring him to submit to filed sobriety exercises." (Pet. Writ Cert. 12.) Accordingly, Petitioner concludes that Officer Edwards' "observations of bloodshot eyes and an odor of alcohol . . . were insufficient to require him to submit to field sobriety exercises," citing *A.N.H. v. State*, 832 So. 2d 170 (Fla. 3d DCA 2002). (Pet. Writ Cert. 14.)

Petitioner's argument that probable cause is needed before a person may be asked to submit to field sobriety tests is simply contrary to the caselaw. As Respondent correctly points out, an officer only needs reasonable suspicion to request a person perform field sobriety tests. *State v. Taylor*, 648 So. 2d at 703-04. Once an officer has a reasonable suspicion that a person is driving while under the influence of alcohol, the officer may then conduct an investigation to establish probable cause for an arrest. *State v. Carrillo*, 506 So. 2d at 496.

In *State v. Taylor*, 648 So. 2d at 702, Taylor was stopped for speeding and subsequently asked to step out of the car. After "'staggering out of the vehicle,'" exhibiting a strong order of alcohol, slurred speech and bloodshot, watery eyes, Taylor was asked to perform several field sobriety tests. *Id.* After refusing to take the tests, Taylor was arrested, subsequently refused to

submit to a breath test and was charged with driving while under the influence. *Id.* at 703. The court concluded that Taylor's behavior when coupled with his speeding, "was more than enough to provide . . . reasonable suspicion that a crime was being committed, i.e., DUI . . . . [Thus], the officer was entitled to . . . conduct a reasonable inquiry to confirm or deny that probable cause existed to make an arrest." *Id.*

In the case at bar, Petitioner was stopped for speeding as well as weaving within his lane. Upon engaging Petitioner, Officer Edwards observed a "strong odor of alcoholic impurities" emanating from Petitioner's breath, bloodshot eyes and slow, slurred speech. This evidence was not only sufficient to provide Officer Edwards with a reasonable suspicion that Petitioner was driving while under the influence, but amply sufficient to support Officer Edwards' request that Petitioner submit to field sobriety tests. *See id.*; *State v. Carrillo,* 506 So. 2d 495; *Cantu v. State, Dep't of Highway Safety & Motor Vehicles,* Case No.: CI00-3682, Writ No. 00-25.

Petitioner's final argument that the field sobriety tests did not indicate that his "normal faculties" were impaired and thus, Officer Edwards did not have probable cause to arrest him is contraverted by the record evidence before the hearing officer. The charging affidavit unequivocally sets forth the deficiencies in Petitioner's performance of the field sobriety exercises.[2] The hearing officer was required to consider this document when making the probable cause determination. *See* Fla. Admin. Code R. 15A-6.013(2). Furthermore, Petitioner exhibited a noticeable sway while performing some of the exercises.

Petitioner's citation to *State v. Floyd*, 510 So. 2d 1180 (Fla. 4th DCA 1987), in support of his argument is unavailing. The court in *Floyd*, 510 So. 2d at 1181-82, concluded that probable cause was lacking to arrest Floyd for operating a boat under the influence of alcohol because the

[2] These included failing to properly touch the tip of a pen with his finger, losing balance during the one leg stand and failing to properly perform the tip of the nose exercise.

officers did not ask him to submit to a breath test until learning over two hours later that the victim of the accident in which he was involved had died. *A.N.H. v. State*, 832 So. 2d 170, also does not support Petitioner's argument. The court in *A.N.H. v. State*, 832 So. 2d at 172, found a search of a student was unreasonable where the facts supporting the search were equally consistent with "non-criminal circumstances."

In stark contrast, Petitioner was requested to perform field sobriety exercises after being stopped for weaving within his lane, speeding, emitting a strong odor of alcohol, having bloodshot eyes and slow, slurred speech. Consequently, Officer Edwards asked Petitioner to perform field sobriety exercises in order "to confirm or deny that probable cause existed to make an arrest." *State v. Taylor,* 648 So. 2d 701. Petitioner's poor performance on the field sobriety exercises coupled with a noticeable sway while performing several of the exercises, provides substantial, competent evidence to support the hearing officer's conclusion that there was probable cause to arrest Petitioner for driving while under the influence of alcohol.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Petitioner's Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 12 day of September, 2007.

__/S/_____
ROBERT M. EVANS
Circuit Judge

_/S/_____
CYNTHIA Z. MACKINNON
Circuit Judge

__/S/_____
JOHN M. KEST
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished via U.S. mail or hand delivery to: **Stuart I. Hyman, Esq.**, 1520 E. Amelia St., Orlando, Florida 32803 and **Heather Rose Cramer, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 6801 Lake Worth Road, #230, Lake Worth, Florida 33467 on this 12 day of September, 2007.

__/S/_____
Judicial Assistant