

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

MARY LOUISE MEADE,

CASE NO.: 2013-CA-007430-O

Petitioner,

WRIT NO.: 13-49

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER LICENSES,**

Respondent.

Petition for Writ of Certiorari from the Florida
Department of Highway Safety and Motor Vehicles,
Isabel Gibson, Hearing Officer.

Matthew P. Ferry, Esquire, for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

BEFORE J. RODRIGUEZ, SHEA, and LATIMORE, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Mary Louise Meade (“Meade”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the order sustained the suspension of her driver’s license. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

Findings of Fact

As gathered from the Hearing Officer's findings, the Charging Affidavit and Statement, and other related documents presented at the formal review hearing on April 29, 2013, the facts are summarized as follows: On March 24, 2013, Sergeant E. D. Furnas with the University of Central Florida Police Department received a call via radio to be on the lookout for a possible drunk driver and was provided a description of the vehicle. The Sergeant located the vehicle that matched the description. The driver of the subject vehicle was later identified as Meade. The Sergeant observed the vehicle swerve over the right lane marker over four times as it drove south. The vehicle was in the far left lane as it stopped in the intersection of University Boulevard at a red light almost two car lengths past the stop line and he also observed the vehicle make a right turn from the left lane going westbound on University Boulevard. The Sergeant then observed the vehicle travel over the lane markers that divided the southbound left through lane and the southbound right through lane and swerve within its lane several times. The Sergeant then conducted a traffic stop.

Upon making contact with Meade, the Sergeant observed that Meade had heavy lidded and glassy eyes, her speech was slurred, and her movements were slow and lethargic. Also he observed that Meade had difficulty retrieving her driver license taking almost over a minute to do so and fumbling with it several times before she was able to extract it.

Trooper M. W. Castleberry with the Florida Highway Patrol arrived at the scene to assist Sergeant Furnas with the traffic stop. The Sergeant informed the trooper of the traffic stop and of his observations and contact with Meade. The trooper then made contact with Meade and detected an odor of alcoholic beverages emanating from her breath and observed that Meade had hooded eye lids and dilated pupils. The trooper then requested Meade to exit

the vehicle and she ignored the request and instead requested to remain in the vehicle. The trooper informed Meade that she must exit her vehicle and shortly thereafter she complied. The trooper observed that Meade's movements were slow and she had an orbital sway while standing. Meade admitted that she consumed alcoholic beverages prior to driving and informed the trooper that she had been prescribed Xanax.

Meade then consented to perform the field sobriety exercises and performed them poorly by not following instructions. Meade was then arrested for DUI. Meade's mood changed while in the back seat of the patrol car in route to the Orange County breath test facility going from sad to very talkative and repetitively asking questions about her cellular phone, phone numbers, her ability to make a phone call, and the bail process. The trooper observed that her speech was slurred and thick. At the breath testing facility, Meade was observed for twenty minutes and during the observation period she asked repetitive questions, including whether her prescribed Xanax medications would be provided to her at the jail.

Meade then stated that she would not be taking the breath test. The trooper then read her the Implied Consent Warning and requested that she submit to the breath test. Meade refused to submit to the breath test and her privilege to operate a motor vehicle was suspended.

Standard of Review

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver's license was suspended for refusing to submit to a breath-alcohol test, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

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.

§ 322.2615(7)(b), Fla. Stat. (2013).

Arguments

Meade argues: 1) She was deprived of her right to due process to a meaningful formal review hearing because the Hearing Officer refused to issue subpoenas for the arresting officer, stopping officer, the breath technician, the custodians of records for the State Attorney's Office and the Florida Highway Patrol and 2) The Hearing Officer's decision to sustain her license suspension was not supported by competent substantial evidence that her vehicle was lawfully stopped.

Conversely, the Department argues: 1) Any error in the issuance of the subpoenas was Meade's own making and Meade's counsel failed to preserve this error when he refused to submit the new subpoenas and stated that he did not want the witnesses at the hearing; 2) The Hearing Officer's finding that Sergeant Furnas was within his jurisdiction and therefore

lawfully stopped is supported by competent substantial evidence; 3) the Hearing Officer's findings are supported by competent substantial evidence that Meade was not operating her vehicle in a careful and prudent manner; and 4) Meade was provided procedural due process and the essential requirements of law were followed.

Analysis

Due Process

Meade first argues that she was denied due process because certain subpoenas were not issued for the formal review hearing. From review of the hearing transcript, Meade's counsel moved to invalidate the suspension based on the denial of due process because the Hearing Officer did not issue subpoenas for Sergeant Furnas, Trooper M. W. Castleberry, the breath technician, William L. Harden, and the Custodians of Records for the State Attorney's Office and the Florida Highway Patrol. The Hearing Officer denied the motion stating:

I contacted your office on April 8th, requesting the subpoena to be resubmitted because of the verbiage. And if you look at the subpoenas, I crossed off the areas where it needed to be changed. You failed to do so. I contacted your office again on April 24th and on April 25th, and you failed to correct the verbiage on the subpoenas. So, motion denied.

Also, in the Hearing Officer's Final Order of License Suspension, she provided the reasons for denying this motion stating:

Counsel submitted subpoenas in a [sic] improper format. This Hearing Officer contacted Counsel's [sic] office several times indicating the needed corrections, however; this Hearing Officer was not provided subpoenas for signature. Furthermore, this Hearing Officer spoke with Counsel's staff: "Renee" on April 25, 2013, and indicated that a continuance would be required if Counsel wanted the witnesses at the hearing. This Hearing Officer was informed by "Renee" that apparently Counsel did not want the witnesses at the hearing because of the time line of issuing subpoenas. This Hearing Officer did not review or consider the quoted case law by counsel as this motion was denied during the hearing.

Further, from review of the record, neither Meade nor her counsel provided any response, clarification, etc. as to the Hearing Officer's reasons for not issuing the subpoenas. Accordingly, this Court finds that Meade was not denied due process as the record reflects that the Hearing Officer provided her ample opportunity to provide corrected subpoenas, but instead she did not do so.

The Traffic Stop

Second, Meade argues that the Hearing Officer's decision to sustain her license suspension was not supported by competent substantial evidence that her vehicle was lawfully stopped. Specifically, she argues that the Hearing Officer's findings of fact and the record evidence establish that Sergeant Furnas was outside of his jurisdiction when he stopped her vehicle and detained her. At the Hearing, Meade's counsel moved to invalidate the license suspension based on the jurisdictional issue and in support of this motion he provided the Hearing Officer with a certified map of the University of Central Florida. The Hearing Officer denied the motion finding:

The University of Central Florida has jurisdiction up to one thousand feet of every property owned by the University. The petitioner's exhibit #1, which is a certified map of the University of Central Florida and its surrounding areas, reflects the area where the petitioner was traveling which was within one thousand feet from the University and its properties and therefore the Sergeant was within his jurisdiction to stop the petitioner.

Upon review of the record, including the Charging Affidavit, Sergeant Furnas' Statement, and the certified map, this Court finds that the Hearing Officer's finding that Sergeant Furnas was within his jurisdiction when he stopped Meade's vehicle is supported by competent substantial evidence.

Lastly, Meade argues that the evidence before the Hearing Officer was insufficient to establish that her vehicle was lawfully stopped for the traffic infraction for failure to maintain a single lane under section 316.089(1), Florida Statutes. Meade further argues that Sergeant Furnas' witness statement does not indicate how far on any of the four occasions her vehicle drove outside the "practicable lane" and even if her vehicle was outside this margin of error, there is no objective evidence suggesting that the her vehicle movements were not done safely.

Per the Charging Affidavit and Sergeant Furnas' Statement, the Sergeant's observations of Meade's driving pattern leading up to the traffic stop included: 1) The vehicle swerved over the right lane marker over four times as it drove south; 2) The vehicle was in the far left lane as it stopped in the intersection of University Boulevard at a red light almost two car lengths past the stop line; 3) The vehicle made a right turn from the left lane going westbound on University Boulevard; and 4) The vehicle traveled over the lane markers that divided the southbound left through lane and the southbound right through lane and swerved within its lane several times.

First, this Court finds that Sergeant Furnas' observations of Meade's erratic driving pattern provided competent substantial evidence for the Hearing Officer to find that the Sergeant was justified in initiating the traffic stop having reasonable suspicion that Meade's erratic driving pattern sufficiently constituted a violation for failure to maintain driving in a single lane. Further, "the construction given a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight, and the court generally will not depart therefrom except for the most cogent reasons and unless clearly erroneous." *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585, 587 (Fla. 1968).

Second, notwithstanding whether sufficient evidence existed to establish a traffic infraction, there is ample legal authority that addresses the requirements for a valid stop for driving under the influence and provides that a person's driving pattern does not have to rise to the level of a traffic infraction to justify a stop. "An officer must possess a well-founded, reasonable suspicion based upon objective, specific, articulable facts that those detained in the stop of a vehicle have committed, are committing, or are about to commit a violation of the law." *Weems v. State*, 492 So. 2d 1139, 1139-1140 (Fla. 1st DCA 1986); *see also Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Carrillo*, 506 So. 2d 495 (Fla. 5th DCA 1987).

Lastly, due to Meade's driving pattern, Sergeant Furnas, in the interest of public safety, had the legal authority to initiate the stop to determine whether Meade was ill, tired, or driving under the influence. "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." *Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992); *Ndow v. State*, 864 So. 2d 1248, 1250 (Fla. 5th DCA 2004) (citing *DeShong* at 1352); *see Worley v. Dep't of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 758b (Fla. 9th Cir. Ct. 2013).

Conclusion

Upon review of the record, this Court finds that Meade was provided due process and the Hearing Officer's decision to sustain her license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Further, because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this

Court's review cannot go further to reweigh the evidence presented. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines that there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end as the issue is not whether the hearing officer made the best, right, or wise decision, instead, the issue is whether the hearing officer made a lawful decision).

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Mary Louise Meade's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 31st day of January, 2014.

/S/

JOSE R. RODRIGUEZ
Presiding Circuit Judge

SHEA and LATIMORE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Matthew P. Ferry, Esquire**, Law Office of Warren W. Lindsey, P.A., P.O. Box 505, Winter Park, FL 32790, matt@warrenlindseylaw.com and **Richard M. Coln, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, FL 32857, richardcoln@flhsmv.gov, marianneallen@flhsmv.gov, on this 31st day of January, 2014.

/S/

Judicial Assistant