

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

RUSSELL GALLAHER,

CASE NO. 2013-CA-9865-O

Writ No. 13-66

Petitioner,

v.

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

Respondent.

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

William R. Ponall, Esq.
Attorney for Petitioner.

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

BEFORE HIGBEE, DAVIS, BLACKWELL, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner seeks certiorari review of the Department of Highway Safety and Motor Vehicles' final order sustaining the suspension of his driver's license for refusing to submit to a breath test following a lawful arrest. This Court has jurisdiction pursuant to section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). The Court's review of the hearing officer's order is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of law had been observed, and whether the administrative order was supported by competent substantial evidence." *Dep't of*

Highway Safety & Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008). Where a driver's license has been suspended for refusal to submit to a breath alcohol test, the hearing officer must make a finding that the traffic stop resulting in the request for a breath test was a lawful stop. *Florida Dept. of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011).

Lawfulness of the Traffic Stop

The only issue raised in the petition for writ of certiorari is Petitioner's contention that the hearing officer did not have a record basis for determining that the traffic stop resulting in his license suspension was lawful. There was no live testimony at the hearing and the hearing officer relied exclusively on the documents submitted by law enforcement.

The arresting officer's report stated that he observed that Petitioner's car:

Made a slow, wide turn and drifted from the inside lane to the middle lane, back to the inside lane, touching the lines on each side. I began following the vehicle northbound. . . I noticed that the Florida license plate was obscured by a bicycle rack. I also observed the vehicle drift from the median lane and back to the middle. The vehicle then changed lanes and came to a complete stop in the median lane.

Probable cause is not required for a traffic stop, only reasonable suspicion, a less demanding standard. *Dep't of Highway Safety & Motor Vehicles v. Ivey*, 73 So. 3d 877, 880 (Fla. 5th DCA 2011). Even absent a traffic infraction, an officer may conduct a stop where he observes a vehicle being operated in an unusual manner, regardless of whether other traffic is interfered with. *State v. Rodriguez*, 904 So. 2d 594, 598 (Fla. 5th DCA 2005); *Ndow v. State*, 864 So. 2d 1248 (Fla. 5th DCA 2004). "Unusual operation" may include drifting and weaving. *State v. Proctor*, 39 Fla. L. Weekly D415, n. 2 (Fla. 5th DCA 2014). "Case law is clear that a person's continual drifting across the line and erratic driving can establish reasonable suspicion for an investigatory stop." *Duke v. State*, 82 So. 3d 1155, 1158 (Fla. 2d DCA 2012). See, also,

Harrington v. Dep't of Highway Safety & Motor Vehicles, 39 Fla. L. Weekly D273 (Fla. 2d DCA 2014), concurring opinion by Judge Alterbrand:

Even when a vehicle manages to stay within a single lane, there are patterns of driving that an experienced officer may rely upon to establish reasonable suspicion that the driver is impaired. That suspicion allows the officer to conduct a brief traffic stop to determine whether the officer has probable cause to arrest the driver for DUI.

Based on *Harris v. State*, 11 So. 3d 462 (Fla. 2d DCA 2009) (which held that a trailer hitch blocking a license plate was not a violation of the statute prohibiting drivers from obscuring their tags), Petitioner is probably correct that the bike rack obscuring the license plate is not a traffic infraction and thus not basis for a stop. The wide, slow turn also would not be a traffic infraction, at least given the barebones description provided by the officer. However, the officer's description of the drifting from lane to lane, touching lane lines, and the car coming to a complete stop on the roadway is sufficient for the hearing officer to find that there was an objective, articulable basis for the stop because the vehicle was being operated in an unusual manner.

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

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 1st day of July, 2014.

/S/ _____
HEATHER L. HIGBEE
Presiding Circuit Judge

DAVIS and BLACKWELL, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **William R. Ponall, Esq.**, 425 W. New England Avenue, Winter Park, Florida 32789; and **Richard M. Coln, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857 on this 1st day of July, 2014.

/S/ _____

Judicial Assistant