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

Eric Sinns,

Petitioner,
v.

State of Florida, Department of Highway Safety and Motor Vehicles, Bureau of Driver Improvement,

Respondent.
_____/

CASE NO.: 2016-CA-977-O

Petition for Writ of Certiorari from the Department of Highway Safety and Motor Vehicles, R. Newton, Hearing Officer.

Stuart I. Hyman, Esq., for Petitioner.

Stephen D. Hurm, General Counsel, and Jason Helfant, Senior Assistant General Counsel, for Respondent.

Before DOHERTY, STROWBRIDGE, and LUBET, J.J.

PER CURIAM.

**FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

Petitioner Eric Sinns seeks certiorari review of his driver's license suspension for refusing to take a breath test. We have jurisdiction. § 322.2615(13), Fla. Stat. (2015); Fla. R. App. P. 9.030(c)(3). Because the statutory requirements regarding admissibility of radar results are inapplicable to license suspension proceedings, there was competent substantial evidence that the officer had probable cause to stop Sinns for speeding. None of Sinns's arguments regarding the officer stopping him outside of the officer's jurisdiction have merit. Finally, binding law

dictates that this Court reject Sinns's argument that it is illegal to require him to submit to a breath test without a search warrant. Thus, the Petition is denied, and the Court declines to order the Department of Highway Safety and Motor Vehicles to respond to it. *See Fine v. City of Coral Gables*, 958 So. 2d 433, 434 (Fla. 3d DCA 2007) (trial court did not err in denying petition for writ of certiorari without ordering response when petitioners failed to "demonstrate a preliminary basis for relief.").

On October 2, 2015, a Maitland police officer was operating stationary radar when Sinns drove past him. According to the officer, Sinns was driving sixty-two miles per hour in a thirty-five-mile-per-hour zone. The officer followed Sinns for less than one minute after seeing him before activating his lights. The officer does not know if his lights were activated when both he and Sinns were outside of Maitland's city limits, but it was close to the city limits.

After both cars stopped, the officer and Sinns talked for about ninety seconds before Sinns exited his car. During those ninety seconds, the officer observed signs that Sinns was impaired by alcohol. The officer asked Sinns to perform field sobriety exercises, and, less than six minutes after Sinns got out of his car, he began the exercises. After watching Sinns perform the exercises, the officer arrested him for DUI. He asked Sinns to take a breath test, and Sinns refused. Sinns's license was suspended, and he requested a formal review of the suspension.

At the formal review hearing, Sinns questioned the police officer regarding the tests done on the radar device, and the officer stated that the device passed the internal check. The hearing officer ultimately affirmed the license suspension, and Sinns now seeks certiorari review.

### A. Standard of Review

In a certiorari proceeding, the circuit court is limited to determining whether the lower tribunal's decision was supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Dep't of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008).

### B. Probable cause regarding speeding

Sinns argues that there was no reasonable objective basis to establish probable cause that he was speeding. One of Sinns's arguments is that the hearing officer erred in allowing introduction of his speed as exhibited by the officer's radar device because there was no evidence that the device complied with the calibration requirements of Florida Statute section 316.1905 or Florida Administrative Code Rule 15B-2.009.

In *Department of Highway Safety & Motor Vehicles v. Nelson*, 823 So. 2d 828, 829 (Fla. 1st DCA 2002), the circuit court quashed the order affirming the license suspension because the hearing officer did not allow the driver to question the officer about the radar's validity. "[T]he circuit judge was under the impression that the arresting officer should not have been allowed to testify concerning Nelson's speed 'unless the proper predicate [was] laid pursuant to § 316.1905 and § 316.1906, Florida Statutes.'" *Id.* (quoting the circuit court). The First District quashed the circuit court's order, holding that "the prohibitions concerning admissibility of certain radar speed measuring devices are [not] applicable" in license suspension proceedings. *Id.* The court relied on section 316.1906(2), which states that the prohibitions apply "'in any proceeding with respect to an alleged violation of provisions of law regulating the lawful speed of vehicles . . . .'"

*Id.* (quoting § 316.1906(2), Fla. Stat. (2000)). The license suspension proceeding was not based on speeding, and so the prohibitions on admissibility did not apply.[1] *Id.*

Under *Nelson*, the officer's testimony regarding how fast Sinns was driving based on the radar was admissible. Thus, his statement that Sinns was driving sixty-two miles per hour in a thirty-five-mile-per-hour zone was competent substantial evidence that probable cause existed to believe that Sinns was speeding.

### C. Jurisdiction

Sinns makes numerous arguments that the Petition should be granted because the officer stopped him outside of his jurisdiction. First, Sinns argues that there was no appropriate effort to stop him before he left Maitland. The video of Sinns driving and then being stopped shows that the officer activated his lights less than one minute after Sinns passed him in Maitland. This short time period between when the officer first observed Sinns and when he activated his lights contradicts Sinns's argument that the officer failed to make an appropriate effort to stop him within Maitland.

Second, Sinns argues that the officer detained him longer than necessary to issue a traffic citation. The same video shows that about ninety seconds occurred from when the cars stopped to when Sinns exited his car, and that less than six minutes transpired between Sinns getting out of his car and beginning the field sobriety exercises. This is competent substantial evidence that the officer did not detain Sinns longer than necessary. *See Sands v. State*, 753 So. 2d 630, 632

[1] Although the circuit court based its order on both sections 316.1905 and 316.1906, the appellate court did not discuss the language in section 316.1905(3)(a) that states, "A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the motor vehicle laws of this state . . . upon showing that the speed calculating device which was used had been tested." *Nelson*, 823 So. 2d at 829.

(Fla. 5th DCA 2000) (upholding trial court's conclusion that fifteen-minute period from stop to when drug dog appeared was not too lengthy).

Sinns's third argument regarding being detained outside of his jurisdiction is that the fresh pursuit doctrine does not allow an officer to stop a person suspected of violating chapter 316. Section 901.25(1), the fresh pursuit statute, states that an officer may stop a person he suspects of committing a felony, but it does not include that same suspicion language regarding a misdemeanor. Instead, the statute states, "It shall also include the pursuit of a person who has *violated* . . . chapter 316 or has committed a misdemeanor." § 901.25(1), Fla. Stat. (2015) (emphasis added). Sinns argues that therefore, the legislature did not intend for the fresh pursuit doctrine to apply when the person is only suspected of violating Chapter 316.

Under *State v. Joy*, 637 So. 2d 946, 948 (Fla. 3d DCA 1994), an officer's reasonable suspicion that the driver was violating a section of Chapter 316 "justifie[d] the extraterritorial stop under a fresh pursuit theory." In *Joy*, the court held that the police officer developed a reasonable suspicion that the truck driver was speeding within his jurisdiction. *Id.* at 947. In pursuing the truck driver, the officer left his jurisdiction. *Id.* The court interpreted section 901.25 as permitting fresh pursuit even when the officer only suspects that Chapter 316 was violated. *Id.* at 948.

*Joy* applied the 1991 version of section 901.25, which contained the same language as the 2015 version. *Id.* at 947. Section 901.25 was amended in 1997 and 2004. If the Legislature amends a statute that the courts previously interpreted, and did not alter the pertinent language, then it is presumed that the Legislature adopted the prior court interpretations. *Zommer v. State*, 31 So. 3d 733, 754 (Fla. 2010). As *Joy* permitted application of the fresh pursuit doctrine to a suspicion of speeding, then the doctrine can be applied here as well, as the officer's perceptions

that occurred when he and Sinns were in Maitland gave the officer a suspicion that Sinns was speeding.

Sinns's fourth argument regarding the officer stopping him outside of his jurisdiction is that the fresh pursuit doctrine does not apply because the officer did not act without unnecessary delay, as he followed Sinns outside of the city limits without attempting to stop him. Under *State v. Gelin*, 844 So. 2d 659, 661 (Fla. 3d DCA 2003), for fresh pursuit to apply, the officer must act without unnecessary delay, the pursuit must be continuous and uninterrupted, and there must be a close temporal relationship between when the offense was committed and when the pursuit began and the suspect was apprehended. As the officer pursued Sinns for less than one minute, without any interruption, and within this time saw Sinns speeding, the fresh pursuit doctrine permits the stop and arrest outside of the officer's jurisdiction.

Sinns's fifth argument is that the officer could not conduct an investigation outside of his jurisdiction. Because the subject matter of the investigation (Sinns's driving) originated in Maitland, the officer could investigate and gather evidence at the stop, even though the stop occurred outside of Maitland. *Dep't of Highway Safety & Motor Vehicles v. McClane*, 891 So. 2d 596, 598 (Fla. 5th DCA 2004) (because crime of driving while under the influence occurred within officer's city, license suspension should be upheld, even though officer gathered facts regarding the DUI and arrested the driver outside of the city, as officer was "investigat[ing] a crime that occurred in his city.").

Sinns's final argument is that because he was not taken before a Seminole County judge as the fresh pursuit statute dictates, there was no authority to place him under arrest.

The fresh pursuit statute states that if the person is arrested outside of the officer's jurisdiction, the officer in charge of that jurisdiction shall take the person to that county's trial

court judge without unnecessary delay. § 901.25(3), Fla. Stat. (2015). In *Espin v. State*, 953 So. 2d 781, 781 (Fla. 4th DCA 2007), the defendant moved to suppress evidence because he had not been taken before a judge as required by the fresh pursuit statute. The circuit court determined that this provision was "to ensure that defendants are not held for an unreasonable time after arrest . . . [and] the violation of the statute did not affect the validity of the arrest." *Id.* at 782. The Fourth District agreed with the circuit court's interpretation of the statute, noting that "the defendant does not argue that the violation of the statute resulted in a delay or any other type of prejudice." *Id.*

Sinns does not state any delay or prejudice suffered from not seeing a Seminole County judge. Thus, under *Espin*, the failure to see a judge does not affect the validity of Sinns's arrest.

None of Sinns's arguments regarding jurisdiction have merit. There was no unlawful delay in stopping Sinns or detaining him. The fresh pursuit statute does apply to a suspicion of violating Chapter 316. The officer was investigating a crime that occurred within his jurisdiction, and the alleged failure to bring Sinns to a Seminole county judge did not affect the validity of his arrest. Therefore, the Court denies Sinns's arguments regarding jurisdiction.

**D. Request to submit to breath test without a search warrant**

Sinns argues that it is illegal to require him to submit to a breath test without a search warrant, and thus, he did not willfully refuse to take the breath test. He contends that *Williams v. State*, 167 So. 3d 483, 490 (Fla. 5th DCA 2015), *reh'g denied* (July 1, 2015), *review granted*, 2015 WL 9594290, Case No. SC15-1417 (Fla. Dec. 30, 2015), which held that warrantless breath-alcohol tests are reasonable under the Fourth Amendment, and thus do not require a

warrant, was wrongly decided. As *Williams* is binding on this Court, the Court may not grant the Petition on this basis.

Because the statutory requirements regarding admissibility of radar results are not applicable in license suspension proceedings, there was competent substantial evidence that the officer had probable cause to stop Sinns for speeding. None of Sinns's arguments regarding the officer stopping him outside of the officer's jurisdiction have merit. Finally, binding law dictates that this Court reject Sinns's argument that it is illegal to require him to submit to a breath test without a search warrant.

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, on this 7th day of March, 2016.

/S/
**PATRICIA A. DOHERTY**
**Presiding Circuit Judge**

STROWBRIDGE and LUBET, J.J., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Stuart I. Hyman, Esq.**, Stuart I. Hyman, P.A., 1520 E. Amelia St., Orlando, FL 32803; and **Stephen D. Hurm, General Counsel, and Jason Helfant, Senior Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 540609, Lake Worth, FL 33454, on this 8th day of March, 2016.

/S/
Judicial Assistant