

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

**CASE NO.: 2008-CA-31150
WRIT NO.: 08-68**

AMANDA RE,
Petitioner,

vs.

**STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,**
Respondent.

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

Stuart I. Hyman, Esquire,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,
for Respondent.

Before POWELL, WHITEHEAD, THORPE, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Amanda Re timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (Department) Final Order of License Suspension, sustaining the suspension of her driver's license pursuant to section 322.2615, Florida Statutes. This Court has jurisdiction pursuant to sections 322.2615 and 322.31, Florida

Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(C). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

On Sunday, September 7, 2008, at approximately 4:00 a.m., Officer Anderson of the Winter Park Police Department responded to a call in reference to a traffic stop conducted by Sergeant Biles of the Winter Park Police Department. Sergeant Biles conducted a traffic stop after observing a vehicle drifting in and out of the gutter and crossing over the centerline into another travel lane. Upon stopping the vehicle, Sergeant Biles made contact with the driver, who was later identified as Petitioner, and observed that Petitioner's pupils were enlarged, her speech was slurred, and she was emitting a strong odor of alcohol. After making contact with Petitioner, Officer Anderson also observed that Petitioner's eyes were red and glassy, her speech was thick and slurred, and there was a strong odor of alcohol emitting from Petitioner and the vehicle. Petitioner stated that she had one drink and was coming from a bar, which happened to be in the opposite direction of where she was driving. Based on Petitioner's poor performance on the field sobriety exercises, she was placed under arrest and transported to the breath testing center. After being read the implied consent warnings, Petitioner refused to submit to a breath-alcohol test. As a result of Petitioner's refusal, the Department suspended her driving privileges. Petitioner requested and was granted a formal review hearing pursuant to section 322.2615, Florida Statutes.

The hearing officer held formal review hearings on October 2, 2008, and October 28, 2008. Petitioner moved to invalidate the license suspension on four grounds: (1) there was no probable cause of the stop; (2) Sergeant Biles detained Petitioner longer than necessary to issue a traffic citation; (3) the breath test operator did not have authority to conduct Petitioner's breath test; and (4) there was no probable cause for the field sobriety exercises or the arrest. Petitioner

also moved to strike the horizontal gaze nystagmus exercise on the basis that it is scientifically unreliable. The hearing officer granted Petitioner's motion to strike. On October 28, 2008, the hearing officer entered an order denying Petitioner's motions and sustaining the suspension of her driver's license finding that the law enforcement officer had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; that Petitioner refused to submit to a breath-alcohol test after being requested to do so; and that Petitioner was told that if she refused to submit to such test 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. Petitioner timely seeks certiorari review by this Court.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

After carefully reviewing the petition and appendix, the response, the reply, the cited legal authorities, the record and the transcript, this Court rejects Petitioner's contentions.

Petitioner contends that Sergeant Biles neither had probable cause to stop her vehicle nor to detain her longer than necessary to issue a traffic citation. Petitioner also contends that Officer Anderson did not have probable cause to require Petitioner to submit to field sobriety exercises or to arrest her for driving while under the influence.

The stopping of a motorist is reasonable where the officer has probable cause to believe that a traffic violation has occurred. *Hurd v. State*, 958 So. 2d 600, 602 (Fla. 4th DCA 2007). The failure to maintain a single lane may, under appropriate circumstances, establish probable cause. *Id.* at 603 (citing *Roberts v. State*, 732 So. 2d 1127, 1128 (Fla. 4th DCA 1999)(weaving several times within a single lane held sufficient to justify stop even though no endangerment to others and no traffic violation occurred)). If an officer observes a vehicle operating in an unusual manner, there may be reasonable suspicion for a stop to determine if the driver is ill, tired, or under the influence of alcohol or drugs. *Ndow v. State*, 864 So. 2d 1248, 1250 (Fla. 5th DCA 2004). Where the officer has probable cause to believe that the driver had committed a traffic infraction and reasonable suspicion that he or she was driving while under the influence of alcohol or drugs, the officer has the right to temporarily detain the driver, conduct a reasonable inquiry, including field sobriety exercises, to confirm or deny that probable cause exists to arrest the driver for driving while under the influence of alcohol or drugs. *See* § 901.151(2), Fla. Stat.; *State v. Taylor*, 648 So. 2d 701 (Fla. 1995). A court must look to the totality of the circumstances. Factors to consider include, but are not limited to, the time of day, the day of the week, the location, the physical appearance of the motorist, and the behavior of the vehicle. *State v. Pye*, 551 So. 2d 1237, 1238 (Fla. 1st DCA 1989).

Based on the foregoing, this Court concludes that the stop, detention, field sobriety exercises, traffic citation, and arrest for driving while under the influence of alcoholic beverages were lawful. Additionally, Petitioner was afforded due process, the hearing officer did not depart from the essential requirements of the law, and the hearing officer's findings and decision were based on competent substantial evidence.

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

DONE AND ORDERED at Orlando, Florida this __17__ day _____ March _____, 2010.

_____/S/_____
ROM W. POWELL
Senior Judge

_____/S/_____
REGINALD WHITEHEAD
Circuit Judge

_____/S/_____
JANET C. THORPE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 18 day of March, 2010, to the following: **Stuart I. Hyman, Esquire**, 1520 East Amelia Street, Orlando, Florida 32803 and **Kimberly A. Gibbs, DHSMV**, 133 South Semoran Blvd., Suite A, Orlando, Florida 32807.

_____/S/_____
Judicial Assistant