

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

HOLLY WINFIELD,

Petitioner,

v.

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

Respondent.

CASE NO.: 2010-CA-7277-O

WRIT NO.: 10-14

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles.

William R. Ponall, Esq.
Warren W. Lindsey, Esq.,
for Petitioner.

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

Before POWELL, LEBLANC, and J. KEST, J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Holly Winfield appeals by Petition for Writ of Certiorari the decision of a hearing officer after a formal review hearing affirming the suspension of her driver license for refusal to submit to a breath alcohol test. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and after careful review of the Petition and Appendix, Response and applicable legal authorities, we deny.

Petitioner argues that Officer Fairbank's tapping on her rolled up window and asking her to roll it down or open her locked door so he could speak with her constituted an investigatory

stop, and that there was insufficient reasonable suspicion to justify the stop and detention for the DUI investigation which followed. She cites two cases, *Wilson v. Dep't of Highway Safety & Motor Vehicles*, 12 Fla. L. Weekly Supp. 281b (Fla. 9th Cir. Ct. Oct. 12, 2004) and Order Grant Def.'s Mot. Suppress, *State v. Follman*, No. 2005-CT-953-A-O (Fla. Orange Cty. Ct. Apr. 1, 2005), both of which are inapposite and do not support her argument.

The facts are as follows: When Officer Fairbanks arrived on the scene at 2:28 A.M. on a Saturday morning he was told by a fellow officer that he had observed Winfield's car with its lights on and engine running parked in a closed church parking lot for the previous ten minutes. As Fairbanks approached the car thinking the driver may be in need of medical assistance, he noticed Winfield slumped over behind the wheel with saliva dripping from her mouth. After much tapping at her window, Winfield failed to get her window rolled down but did manage to open her locked door. The officer then observed obvious signs of impairment: odor of alcohol; sluggish movements; inability to produce her license, registration and insurance; slurred speech; and flushed face; red, glassy eyes. He heard her admit "I had too much to drink." At that point, Officer Fairbanks directed Winfield to exit her vehicle. She refused to perform field sobriety exercises, was generally uncooperative and was arrested for DUI after which she refused a blood alcohol test after being given the implied consent warning.

We conclude that all of Officer Fairbanks' actions up to the point where he directed Winfield to exit her vehicle constituted a consensual citizen encounter. It was only *after* he directed her to exit her vehicle that an investigatory stop occurred. *See Popple v. State*, 626 So. 2d 185 (Fla. 1993). Officer Fairbanks had ample reasonable suspicion to stop and detain Winfield and conduct a DUI investigation, and had sufficient probable cause to arrest her for DUI. *See Dep't of Highway Safety & Motor Vehicles v. Deshong*, 603 So. 2d 1349 (Fla. 2d DCA

1992) (officer's legitimate concern for public safety can warrant a brief investigatory stop to determine whether driver ill, tired or impaired): *State v. Jimoh*, 67 So. 3d 240 (Fla. 2d DCA 2010) (case factually on point upholding stop and detention); *Sweetman v. State*, 13 Fla. L. Weekly Supp. 865a (Fla. 17th Cir. Ct. May 31, 2006) (same); *State v. Lunga*, 7 Fla. L. Weekly Supp. 410a (17th Cir. Ct. Mar. 7, 2000) (same).

Accordingly, the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 24th day of
February, 2012.

/S/
ROM W. POWELL
Senior Judge

/S/
BOB LEBLANC
Circuit Judge

/S/
JOHN MARSHALL KEST
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 24th day of February, 2012, to the following: **William R. Ponall, Esq. and Warren W. Lindsey**, Kirkconnell, Lindsey, Snure, and Yates, P.O. Box 2728, Winter Park, Florida 32790; and **Kimberly A. Gibbs, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857.

/S/
Judicial Assistant