

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

CASE NO.: 2022-CA-010657-O

PAUL HULS,

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR  
VEHICLES,

Respondent.

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Petition for Writ of Certiorari  
from the decision of the Department  
of Highway Safety and Motor Vehicles  
Samantha Simpkins, Hearing Officer.

David S. Katz, Esquire, for Petitioner.

Kathy A. Jimenez Morales, Esquire, for Respondent.

Before LAURENT, JORDAN, and CRANER, J.J.

Petitioner seeks review of the “Findings of Fact, Conclusions of Law and Decision” issued by a hearing officer of the Department of Highway Safety and Motor Vehicles (“DHSMV”) which affirmed an order suspending Petitioner’s driving privilege for driving with an unlawful breath or blood alcohol level under section 322.2615, Florida Statutes (2022).

**RELEVANT FACTS**

On August 15, 2022, Petitioner was stopped at approximately 4:30pm by Deputy Sotolongo of the Orange County Sheriff’s Office, for a traffic infraction. Deputy Sotolongo observed Petitioner make an illegal U-turn, followed by a second U-turn and an immediate turn into the left lane which caused Deputy Sotolongo to apply his brakes and swerve into the median

to avoid a collision. Upon commencement of a traffic stop, Deputy Sotolongo made contact with Petitioner and observed him to be slurring his words. After instructing Petitioner to exit the vehicle and stand by the rear, he noticed Petitioner losing his balance and leaning upon the vehicle for the duration of the traffic stop. At this time, Deputy Sotolongo requested a backup unit for officer safety and requested an officer to conduct a DUI investigation. Shortly after backup arrived and Deputy Sotolongo returned to his vehicle and commenced writing a citation for the initial infraction. Approximately twenty minutes after the initial stop, Deputy Sotolongo completed the citation and rejoined the other officers waiting with Petitioner for another officer to arrive for a DUI investigation.

At approximately 5:37pm, Deputy Del Castillo arrived on scene to begin a DUI investigation and immediately noticed Petitioner's slurred speech, the odor of alcohol, and red and glossy eyes. Petitioner agreed to perform field sobriety exercises for Officer Del Castillo and after failing to successfully complete the exercises Petitioner was placed under arrest for DUI. Petitioner agreed to submit to a breath test and his breath test results were .165 and .171. Petitioner was issued a citation for unsafe and improper U-turn, as well as a citation for DUI pursuant to section 316.193, Fla. Stat. (2022).

Petitioner's driver's license was suspended pursuant to section 322.2615, Fla. Stat. (2022), and Petitioner timely requested an administrative hearing to challenge the lawfulness of his driver's license suspension. At the hearing, the hearing officer took into evidence the self-authenticating records including the traffic citation, arrest affidavit, breath-alcohol test affidavit, and incident report, as well as Petitioner's seven (7) provided photographs taken from Deputy Sotolongo's Body Camera Video. Deputy Sotolongo testified regarding the timeline of the stop, detention, investigation, and arrest. Counsel for Petitioner argued that the duration of the detention, of approximately 47 minutes from the time Deputy Sotolongo completed the initial

traffic citation until Deputy Del Castilla initiated the DUI investigation, was unreasonable and warranted reversal of Petitioner's driver's license suspension. The hearing officer concluded that based on the indicators of impairment observed by Deputy Sotolongo, there was sufficient reasonable suspicion to detain Petitioner for further investigation and that a detention of one hour was not an unreasonable amount of time. The hearing officer affirmed Petitioner's driver's license suspension.

### STANDARD OF REVIEW

The Court's certiorari review of the administrative decisions of a DHSMV hearing officer requires a three-prong determination. The Court must determine "whether (1) procedural due process has been accorded; (2) the essential requirements of law have been observed; and (3) the administrative findings and judgment are supported by competent, substantial evidence." *Nader v. Dep't of Highway Safety & Motor Vehicles*, 87 So. 3d 712, 723 (Fla. 2012).

### ANALYSIS

Petitioner presents a single argument in support of his Petition for Writ of Certiorari before this Court. Petitioner argues that the duration of his detention, pending the arrival of another deputy to conduct his DUI investigation, was unreasonably long, and therefore the hearing officer's conclusion otherwise amounts to a failure to observe the essential requirements of the law.<sup>1</sup>

Petitioner does not contest the validity of the initial stop, conceding that Deputy Sotolongo had reasonable suspicion for a traffic violation based on his observations. In addition, Petitioner does not contest the initial twenty minutes of the stop during which time Deputy

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<sup>1</sup> Although Petitioner couches his argument in terms of a lack of competent, substantial evidence, the hearing officer made a ruling finding the detention and arrest to be lawful based on the records and deputy testimony. Petitioner disagrees with this conclusion as a matter of law and this Court will treat Petitioner's argument as one alleging that the decision failed to comply with the essential requirements of the law.

Sotolongo observed indicators of impairment, requested another deputy for a DUI investigation, and completed a traffic citation. Petitioner contends that it is the extension of his detention for another approximately forty-five (45) minutes which transformed his lawful detention into an unlawful one.

Petitioner cites to numerous cases in which courts in this State have held that detentions of lengths varying from ten minutes to as much as forty-five minutes have been deemed unreasonable and illegal. *See State v. Swick*, 24 Fla. L. Weekly 543a (Cty. Ct. 7th Jud. Cir. 2016), *State v. Freeman*, 21 Fla. L. Weekly Supp. 680a (Fla. Volusia Cty. Ct. March 2014), *State v. Townley*, 25 Fla. L. Weekly Supp. 547a, (Orange Cty. Ct. Aug 16, 2017), *Paul McDonald v. State of Florida, Department of Highway Safety and Motor Vehicles*, 23 Fla. L. Weekly Supp. 71a (Fla. 7th Cir. Ct. June 2015).

The *Paul McDonald* case is perhaps the most facially similar. In that case, our sister circuit dealt with a Petition appealing the decision of a DHSMV hearing officer. There the petitioner was stopped by one officer, who completed his initial citation but requested another officer to perform a DUI investigation. The second officer did not arrive for more than an hour and the circuit court determined that this delay was unreasonable in light of (among other cases) the Fifth DCA's decision in *Williams v. State*, 869 So. 2d 750 (Fla. 5th DCA 2004). However, with all due respect to our sister circuit, its reliance on *Williams* was misplaced.

The *Williams* case involved a traffic stop for a window tint and obscured tag, which was impermissibly extended until a K-9 arrived and was able to sniff the vehicle resulting in an arrest for possession of drug paraphernalia and a firearm. In that case, as opposed to in cases such as the instant case where the initial officer noticed indicia of impairment sufficient for reasonable suspicion of DUI, there was no reason to extend the detention for a traffic infraction even a

minute longer than necessary to effect the traffic citation. This case simply is not applicable to the current situation.

Instead, both Petitioner and Respondent cite to the decision of the United States Supreme Court in *Rodriguez v. State*, 135 S. Ct. 1609 (2015). In *Rodriguez*, the Supreme Court found that a driver cannot be detained for any longer than necessary to issue a traffic citation without probable cause or a founded suspicion of criminal activity for a continued detention. Florida appellate courts have also maintained that the duration of a traffic stop should be limited to the preparation of a citation unless an officer “possesses a reasonable or well-founded suspicion of criminal activity so as to justify an investigatory stop.” *State v. Pye*, 551 So. 2d 1237 (Fla. 5th DCA 1989). Unquestionably, Deputy Sotolongo possessed reasonable suspicion of DUI sufficient to warrant extension of his initial stop for the purpose of a DUI investigation, yet the question remains whether a delay of forty-five (45) minutes while waiting for another officer to conduct the DUI investigation is reasonable.


Petitioner argues that the fact that neither Deputy Sotolongo, nor any of the other deputies who responded prior to Deputy Del Castillo, made any steps to conduct a DUI investigation contributed to the unreasonableness of the extended detention. There is no evidence in the record regarding whether Deputy Sotolongo or the other responding deputies were qualified or permitted to undertake a DUI investigation, although Petitioner argues that they could have done so. This fact distinguishes at least one of the cases cited to by Petitioner in which the record showed that the initial officer had conducted numerous DUI investigation and waited for another officer solely because he didn't want to do the investigation himself. *See State v. Swick*, 24 Fla. L. Weekly 543a (Cty. Ct. 7th Jud. Cir. 2016). Accordingly, the fact that Deputy Sotolongo or the other responding deputies did not conduct the official DUI investigation and

instead waited for Deputy Del Castillo does not necessarily mean that the detention was unreasonably extended.

In *Shenuski v. State of Florida, Department of Highway Safety and Motor Vehicles*, 2021-AP-000002,<sup>2</sup> another panel in this Circuit decided earlier this year that the indicia of impairment observed by an initial officer, such as erratic driving, the odor of alcohol, and bloodshot eyes, satisfied the reasonable suspicion requirement to justify a detention extended by approximately fifteen minutes to wait for a secondary officer to conduct a DUI investigation. Although the detention was extended longer in this case, we conclude that, in light of the circumstances, the hearing officer did not depart from the essential requirements of law such that it amounts to a “violation of a clearly established principle of law resulting in a miscarriage of justice.” *Tedder v. Fla. Parole Comm’n*, 842 So. 2d 1022, 1024 (Fla. 1st DCA 2003).

Based on the foregoing, the Court **DENIES** Petitioner’s Petition for Writ of Certiorari, filed November 23, 2022.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 28 day of October 2024.

  
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JAMES CRANER  
Presiding Circuit Judge

J. JORDAN concurs.

J. LAURENT dissents based on *State v. Townley*, 25 Fla. L. Weekly Supp. 547a, (Orange Cty. Ct. Aug 16, 2017) and *Paul McDonald v. State of Florida, Department of Highway Safety and Motor Vehicles*, 23 Fla. L. Weekly Supp. 71a (Fla. 7th Cir. Ct. June 2015).

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<sup>2</sup> This decision was filed with the Ninth Circuit Clerk in Osceola County on February 15, 2024.

CERTIFICATE OF SERVICE

27 I CERTIFY that the foregoing was filed with the Clerk of the Court this day of October 2024, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List via transmission of Notices of Electronic Filing generated by the ePortal System.

  
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Judicial Assistant