IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO: 16-2024-AP-1

DIVISION: AP-A

ISABELLA LOUISE WEBB,
Petitioner,

v.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Respondent.
_____/

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

December 13, 2024

PER CURIAM.

Petitioner seeks certiorari review of the Department's decision to uphold the suspension of her driving privileges. On certiorari review of an administrative action, this Court's standard of review is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of the law had been observed, and whether the administrative order was supported by competent, substantial evidence." *Dep't of Highway Safety and Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008); *see also Dep't of Highway Safety and Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002). Petitioner mainly challenges the sufficiency of the evidence supporting the Hearing Officer's factual and legal determinations that

Petitioner was properly detained following the collision and the legality of her blood draw at the scene.

In reviewing whether there is competent, substantial evidence to support a Hearing Officer's factual determinations, "[i]t involves a purely legal question: whether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and reweigh that evidence (e.g., where there may be conflicts in the evidence), or to substitute its judgment about what should be done for that of the administrative agency." *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993) (citing *Bell v. City of Sarasota,* 371 So. 2d 525 (Fla. 2d DCA 1979)). Here, the Department submitted evidence at the hearing that supported the Hearing Officer's findings in his thirty-one page order that (1) Petitioner's detention amounted to an investigatory stop or detention requiring only reasonable, articulable suspicion to justify it; (2) the investigating officers had reasonable suspicion to detain her; and (3) Petitioner consented to having her blood drawn at the scene which later revealed a blood alcohol level of .132 in the aftermath of the crash.

First, it is undisputed that law enforcement officers detained Petitioner after her vehicle collided with another killing two of its occupants, kept Petitioner at the scene for several hours before letting her leave with her commanding officer, and placed her in the back of a law enforcement vehicle during the detention. However, the Department presented evidence that the officers never handcuffed Petitioner, left the windows rolled down so she could get air, allowed Petitioner to freely call and text using her cell phone while waiting to be interviewed, and could only provide comfortable seating for Petitioner in a law enforcement vehicle after she complained of injuries sustained in the accident. Petitioner even texted her commanding officer to let him know

she would be released soon. A reasonable person under such circumstances would not believe his or her freedom had been curtailed to the degree of a formal arrest. *See Ramirez v. State*, 739 So. 2d 568, 573 (Fla. 1999) ("A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest") The totality of this evidence amounts to no more than a second-level police-citizen encounter that consists of an investigative detention requiring only reasonable, articulable suspicion that a person has committed, is committing, or is about to commit a crime. *See Popple v. State*, 626 So. 2d 185, 186-87 (Fla. 1993).

Petitioner points to the undisputed facts that she was held for a lengthy period of time and placed in the back seat of a law enforcement vehicle as proof that her detention was a *de facto* arrest. Placement in a law enforcement vehicle during a stop, by itself, does not automatically elevate a stop to an arrest. *See Schoenwetter v. State*, 931 So. 2d 857, 867 (Fla. 2006). Likewise, the length of the detention and inquiry were "reasonably related in scope to the justification for their initiation." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 811 (1975) and *Terry v. Ohio*, 392 U.S. 1, 29 (1968)). Law enforcement officers were required to investigate and determine what happened in a vehicle collision causing the deaths of two individuals on an interstate highway. This investigation was necessarily going to take a tremendous amount of time to secure the scene, handle traffic, and get the appropriate personnel trained in accident investigation to the scene to document everything and interview the witnesses. Moreover, Petitioner disregards the additional evidence provided by the Department that demonstrates, when combined with the length of detention and her placement in the back of a law enforcement vehicle, Petitioner's encounter with law enforcement never rose above the level of an

investigative detention.

The Department's evidence also supported the Hearing Officer's determination that the law enforcement officers investigating the accident had reasonable suspicion to detain Petitioner. The Department's evidence included (1) Petitioner's car veered from the lane of travel into a vehicle parked on the shoulder; (2) two people were killed almost instantly as a result of the collision; (3) the crash was not explained by inclement weather or any road condition; (4) the accident occurred in the early morning hours when traffic on Interstate 95 was light; (5) the collision occurred in a well-lit area; (6) the decedents' vehicle had its emergency lights on at the time; and (7) an officer smelled a faint odor of alcohol on Petitioner's breath in his initial interaction with Petitioner. Based on this evidence, law enforcement officers had a reasonable, particularized suspicion that Petitioner committed a traffic offense such as vehicular homicide or DUI that legally authorized them to detain her to conduct their investigation.

Petitioner points to evidence from other witnesses indicating they did not smell an odor of alcohol on Petitioner's person and she did not display any signs of impairment. However, a reviewing court on certiorari review cannot reach the conclusion there was no evidentiary basis for a Hearing Officer's decision simply because there is contradictory evidence in the record. In light of all the record evidence, the Hearing Officer below was free to accept, reject, and give the weight he thought the Department's evidence and any contradictory evidence deserved. Petitioner's argument amounts to an improper request for this Court to reweigh the evidence in this case.

Finally, the Hearing Officer determined Petitioner voluntarily submitted to a blood draw at the scene that yielded a blood alcohol level at .132. This finding obviated the need for the

Department to demonstrate that the investigating law enforcement officers had probable cause to believe Petitioner committed a crime and that exigent circumstances existed to avoid obtaining a search warrant. Whether consent is voluntary is a question of fact determined by the totality of the circumstances. *United States v. Mendenhall*, 446 U.S. 544, 557 (1980). The Florida Supreme Court has noted a list of non-exclusive factors to judge voluntary consent.

> (1) the time and place of the encounter; (2) the number of officers present; (3) the officers' words and actions; (4) the age and maturity of the defendant; (5) the defendant's prior contacts with the police; (6) whether the defendant executed a written consent form; (7) whether the defendant was informed that he or she could refuse to give consent; and (8) the length of time the defendant was interrogated before consent was given.

Montes-Valeton v. State, 216 So. 3d 475, 480 (Fla. 2017).

Similar to the finding of reasonable suspicion, the Department provided sufficient evidence to support the Hearing Officer's factual determination that Petitioner voluntarily consented to the blood draw. The record demonstrates Petitioner, a college graduate serving in the Navy, would have understood the nature of the police investigation. The officers did not threaten Petitioner with suspension of her driver's license; they did not handcuff Petitioner; they permitted Petitioner to talk and to text on her phone; and they did not interrogate Petitioner prior to asking her to provide a sample. Moreover, Petitioner provided written consent to the blood draw. Furthermore, the record is devoid of evidence the officers were anything other than polite to Petitioner as they made no threats or promises to obtain her consent. The evidence is susceptible to the view that the officers, during a lawful detention, simply asked Petitioner to provide a blood sample and she agreed without any further discussion or efforts on the part of law enforcement to convince her. The fact that Petitioner can point to contradictory evidence, again, is not sufficient grounds to

quash the Hearing Officer's decision.

Because the Hearing Officer's findings of fact and conclusions of law were amply supported by the record evidence, this Court finds no basis for reversal. Accordingly, the Petition is **DENIED**.

DEES, DANIEL, AND HUTTON, JJ., concur.

Curtis S. Fallgatter, counsel for Petitioner.

Linsey Sims-Bohnenstiehl, counsel for Respondent.