

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

ALISON BARTHOLOMEW,

Petitioner,

v.

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

Respondent.

CASE NO.: 2012-CA-8057-O

Writ No.: 12-33

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

Gordon L. Fenderson, Esquire,
for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

BEFORE POWELL, SHEA, JOHNSON, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Alison Bartholomew appeals by way of petition for writ of certiorari an order of a hearing officer after formal hearing affirming the suspension of her drivers license. She challenges the lawfulness of the stop of her vehicle, her detention and arrest. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

The facts established by the sworn statement of Officer Falbo are that at 1:26 a.m. in the morning, he observed Petitioner alone in her vehicle driving through a dirt railroad lot, swerving and crossing into the opposite lane of traffic almost striking a pedestrian, initially failing to stop and then attempting to turn into a railroad crossing and then stop. Dangerous erratic driving is sufficient to establish reasonable suspicion of impaired driving that will justify a DUI stop, and detain the motorist for a trained DUI investigator. *Bailey v. State*, 319 So. 2d 22 (Fla. 1975); *State, Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349 (Fla. 2d DCA 1992).

The duration of the stop was 28 minutes from the first sighting by Officer Falbo and the arrival of DUI investigator Hernandez to take over the investigation, and was not, we think, unreasonable under the totality of the circumstances. Her detention was not overly intrusive: she was not hand-cuffed or placed in the patrol car, but was seated at the curb. Two reported cases have upheld detentions having similar facts. *See Origi v. State*, 912 So. 2d 69 (Fla. 4th DCA 2005) (officer justified in prolonging stop a short time until arrival of DUI task force backup); *Sterbenz v. State*, 12 Fla. L.Weekly Supp. 612a (Fla. 6th Cir. Ct. March 4, 2004) (not unreasonable for officer to detain defendant 25 to 30 minutes for arrival of DUI unit). Petitioner's argument that the length of the stop was unreasonable is without merit.

Upon arrival after talking with Officer Falbo about the reason for the stop, Officer Fernandez noticed the odor of alcohol emitted from appellant's person; she admitted having three drinks; had an obvious sway; her clothes were disheveled' and she performed the field sobriety tests poorly. He then had probable cause to arrest appellant for driving while impaired.

After careful consideration of the record and applicable law, we conclude there is substantial competent evidence in the record to support a finding that the stop of Petitioner's

vehicle, her detention and arrest for DUI were lawful. Consequently, the petition for writ of certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 11th day of January, 2013.

/S/ _____
ROM W. POWELL
Senior Judge

/S/ _____
TIM SHEA
Circuit Judge

/S/ _____
ANTHONY H. JOHNSON
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Gordon L. Fenderson, Esq.**, 644 Cesery Blvd., Ste. 310, Jacksonville, Florida 32211; and **Richard M. Coln, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857 on this 11th day of January, 2013.

/S/ _____
Judicial Assistant