

IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR MARTIN COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 16-AP-8
Petition for Writ of Certiorari

JACKIE JOHNSON,

Petitioner,

v.

Not final until time expires for filing motion
for rehearing, and if filed, disposed of.

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

Respondent.

_____/

Decision filed October 27, 2016.

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

Mitchel Beers, Palm Beach Gardens, for petitioner.

Jason Helfant, Senior Assistant General Counsel, Lake Worth, for respondent.

PER CURIAM.

Petitioner Jackie L. Johnson, seeks a writ of certiorari to quash the final order of the Department of Highway Safety and Motor Vehicles suspending her Florida driver's license for refusal to submit to a breath test incident to a lawful arrest. The Petitioner argues that there was not competent substantial evidence to support a finding that the deputy had reasonable suspicion that a crime was being committed. We agree and grant the writ to quash the order.

On May 13, 2016 at approximately 3:00am, a deputy with the Martin County Sheriff's Office was driving north on U.S. 1 in Stuart near Indian Street when she noticed a vehicle in the southbound lane traveling with its high beams on. She flashed her lights multiple times in quick succession in an attempt to get the driver, Ms. Johnson, to dim them. When she failed to dim her

headlights, the deputy made a U-turn and began following her. She initiated a traffic stop just south of Pomeroy Street, and a DUI arrest followed.

At the administrative hearing to contest the suspension of the Petitioner's driver's license for refusal to submit to a breath test, the deputy testified that she stopped the Petitioner for failure to dim her headlights; it is also the reason written in the arrest affidavit.

The First and Second District Courts of Appeal have directly addressed the issue of a driver failing to dim his headlights when the road is separated by a median. In *State v. Shumaker*, the Second District found that the trial court was correct in finding that the officer did not have reasonable suspicion to stop the vehicle for failing to dim the headlights within 500 feet of an oncoming vehicle because he was traveling on a divided highway. 846 So. 2d 1199 (Fla. 2d DCA 2003). The Second District cited a First District opinion called *State v. Clark*, where the District Court looked at §316.238 and §316.003(64) and found that the driver did not have to dim his headlights when the interstate's lanes were separated by a grassy median. 511 So. 2d 726 (Fla. 1st DCA 1987).

Here, the dash camera video clearly shows the Petitioner driving with high beams on in Stuart on U.S. 1 just north of Indian Street where U.S. 1 has six lanes and is separated by a median. Therefore, the deputy could not have reasonable suspicion to initiate a traffic stop based on failure to dim the headlights.

The petition for writ of certiorari is granted, and the hearing officer's order is quashed.

METZGER, CJ., MCMANUS, J., and STEELE, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.