

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

Circuit Case No. 16-AP-10  
Petition for Writ of Certiorari

PAMELA RUDD,

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 VEHICLE,

Respondent.

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Decision filed December 20, 2016.

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

Jeff Gorman, Stuart, for petitioner.

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

PER CURIAM.

On May 5, 2016 at approximately 1:45am, Sergeant Bowdoin of the Martin County Sheriff's Office was on routine patrol and spotted the Petitioner's vehicle parked in the parking lot of a closed business with her lights on. As he approached the vehicle and turned on his emergency lights, the Petitioner exited the parking lot. Sergeant Bowdoin followed her with his lights on and eventually added his siren before she pulled over. When he approached the Petitioner, he smelled an odor of alcoholic beverage, heard her slurred words, and observed her bloodshot eyes. He requested a traffic unit, and Deputy Polizzi arrived to conduct a DUI investigation.

The Petitioner performed field sobriety exercises, and based on her poor performance, she was arrested for DUI and transported to the Martin County jail. Deputy Polizzi requested that the Petitioner submit to a breath test, but she refused. The Petitioner's driver's license was suspended

as a result of the refusal, and she requested administrative review of the suspension. On June 6, 2016 and June 28, 2016, the hearing officer conducted the administrative hearing and affirmed the suspension.

The standard of review applicable to circuit court review is whether procedural due process was afforded, whether the essential requirements of the law were observed, and whether the findings and judgment were supported by competent substantial evidence. *State of Florida, Department of Highway Safety and Motor Vehicles v. Sarmiento*, 989 So. 2d 692, 693 (Fla. 4th DCA 2008) (quoting *Haines City Community Development v. Heggs*, 658 So.2d 523, 530 (Fla. 1995)).

The Petitioner argues that the hearing officer incorrectly found that the traffic stop between law enforcement and the Petitioner was a consensual encounter under *Popple v. State* (626 So. 2d 185 (Fla. 1993)). By following the car from the parking lot and engaging his lights and later siren, the stop required probable cause for which no evidence was provided at the administrative hearing. We agree.

In *Popple*, the defendant was sitting in a legally parked vehicle when the deputy approached him to ask him about a stolen vehicle a few blocks away. *Id.* at 186. The deputy asked the defendant to exit the car, and as he complied, the deputy saw a cocaine pipe on the floor of the car. *Id.* The Court discussed the distinction between a consensual encounter and a seizure, and it held that the defendant was seized when the deputy asked him to exit the vehicle because he was no longer free to leave. *Id.* at 188. Because the deputy did not have reasonable suspicion to conduct an investigatory stop, the seizure was illegal, and the trial court erred in denying the motion to suppress. *Id.* In the instant case, Sergeant Bowdoin approached the Petitioner's car while still in his patrol car and turned on his lights. The record is devoid of evidence that he had reasonable suspicion to believe that the Petitioner had committed, was committing, or was about to commit a crime at the time he activated his lights and followed the Petitioner's vehicle out of the parking lot with his emergency lights engaged. Sergeant Bowdoin did not testify at the hearing, so no additional information beyond his arrest affidavit is available. The Fourth District has routinely held that an officer's use of emergency lights evidences an investigatory stop, not a consensual encounter, because the lights lead a citizen to believe that he is not free to leave. *See Ray v. State*, 40 So. 3d 95, 99 (Fla. 4th DCA 2010) (citing *Errickson v. State*, 855 So. 2d 700, 702 (Fla. 4th DCA 2003)). Nothing in the record supports the hearing officer's conclusion that the encounter

between the Petitioner and Sergeant Bowdoin was consensual; therefore, the petition for writ of certiorari is granted, and the hearing officer's order is quashed.

BAUER, SCHWAB, JJ., and NELSON, Acting Circuit Judge, concur.

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