

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502016CA012220XXXXMB

JAMES SAVNIK,
Petitioner,

v.

THE STATE OF FLORIDA
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Opinion filed: JUN 01 2017

Petition for Writ of Certiorari from the Department of Highway Safety and Motor Vehicles.
Hearing Officer Louise Nicholson

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For Respondent: Natalia Costea, Esq.
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PER CURIAM.

Petitioner, James Savnik ("Savnik"), filed a timely Petition for Writ of Certiorari ("The Petition") seeking review of an order of the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") suspending his driver license for one (1) year for refusal to submit to a breath alcohol test. We find that the DHSMV erred by suspending Savnik's license because the hearing officer failed to rely on competent, substantial evidence to prove that the arresting officer

had reasonable suspicion to detain Savnik for a DUI investigation when the arresting officer did not witness all of the elements of a DUI.

On August 26, 2016, Trooper R.A. Sayih ("Trooper Sayih") responded to a 9-1-1 call regarding a domestic violence incident involving a vehicle driving northbound on Interstate 95 in Palm Beach County, Florida. When Trooper Sayih arrived on the scene, the vehicle was parked on the emergency shoulder, and there were no occupants inside. The two backseat passengers informed Trooper Sayih that Savnik had been driving the vehicle, and that a physical altercation had taken place between Savnik and the front seat passenger, Ashlyanna Ore ("Ore"). Following the physical altercation, Savnik pulled the vehicle over to the shoulder of the interstate, placed it in park, and got out of the vehicle. Ore threw Savnik's car keys in the grass, and then walked one half mile north on the interstate away from the vehicle. Ore told Trooper Sayih that she threw the keys into the grass because she felt it was the safe thing to do in response to Savnik swerving and failing to maintain a single lane.

Trooper Sayih observed that Savnik's eyes were glassy and red, and there was a strong odor of an unknown alcoholic beverage coming from his breath. Savnik denied driving the vehicle, and refused to perform roadside tasks. Nevertheless, Trooper Sayih arrested Savnik for driving under the influence in violation of section 316.193(1), Florida Statutes (2016). After being arrested, Savnik refused to provide a breath sample, and his license was suspended.

On September 29, 2016, an evidentiary hearing was held before a DHSMV hearing officer on Savnik's request for a formal review of his license suspension pursuant to section 322.2615, Florida Statutes (2016). On October 3, 2016, the hearing officer determined, by a preponderance of the evidence, that sufficient cause existed to sustain Savnik's license suspension and entered an order affirming Savnik's license suspension.

The DHSMV cannot suspend a driver license under section 322.2615, Florida Statutes, for refusal to submit to a breath test if the refusal is not incident to a lawful arrest. *Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011). In evaluating a hearing officer's determination that the arrest was lawful or that an officer had probable cause to believe that a person was driving under the influence, a circuit court's review is limited to whether DHSMV's finding is supported by competent substantial evidence. *Deerfield Beach v. Valliant*, 419 So. 2d 624, 625 (Fla. 1982).

We agree with Savnik that Trooper Sayih did not observe Savnik driving and no exceptions to the misdemeanor warrant requirement were present. DHSMV argues, however, that Ore conducted a valid citizen's arrest of Savnik, from which Trooper Sayih subsequently developed probable cause based on statements by the other passengers. We reject this argument, and find that the arrest was unlawful.

"In order to effectuate a citizen's arrest, a misdemeanor must not only be committed in the presence of the private citizen, but there must also be an arrest – that is a deprivation of the suspect's right to leave." *Steiner v. State*, 690 So. 2d 706, 708 (Fla. 4th DCA 1997). The Thirteenth Circuit, acting in its appellate capacity, has held that "[w]hile confiscation of another's keys can demonstrate intent to deprive that person of his or her right to leave, this fact alone is not dispositive of the issue" reasoning that "[i]t seems axiomatic that if [the citizen] did not intend to arrest [the suspect] that he did not in fact arrest him." *Boormeester v. State*, 15 Fla. L. Weekly Supp. 576a (Fla. 13th Cir. Ct. Jan. 23, 2008).

There is no competent substantial evidence to support a finding that Ore effectuated a citizen's arrest because Ore stated that she threw the keys away for safety reasons and then walked a half mile away. Although Savnik could not find his keys in the grass, Ore's leaving the scene was insufficient to detain Savnik for the purposes of a citizen's arrest. Therefore, we find

that there was no competent substantial evidence to support a finding of a lawful arrest. Accordingly, the Petition for Writ of Certiorari is **GRANTED** and the order affirming the suspension is **QUASHED**.

ROWE, BLANC, and BARKDULL, JJ., concur.

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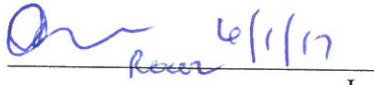
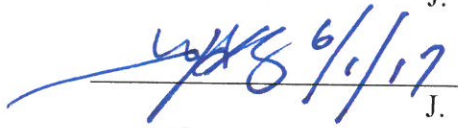

Petition filed: November 1, 2016

_____/_____
DATE OF PANEL: MAY 15, 2017

PANEL JUDGES: ROWE, BLANC, BARKDULL

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
 6/1/17)))
J.))	J.))	J.))
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