

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

Circuit Case No. 18-AP-239  
Petition for Writ of Certiorari

KENNETH SCHAEFFER,

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.

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Decision filed December 20, 2018.

Petition for writ of certiorari to the Department of Highway Safety and Motor Vehicles.

Brian Balaguera, West Palm Beach, for petitioner.

Lori Huskisson, Assistant General Counsel, Tallahassee, for respondent.

WILD, Acting Circuit Judge.

Deputy Grumbling of the Okeechobee County Sheriff's Office was assigned to patrol a county park known as Lock 7. Reports had been received of damage to the park grounds caused by the operation of motor vehicles. While at the park, the deputy observed the Petitioner spin a "donut" in the shell rock near a pump station. The deputy observed the vehicle's movement displacing dirt, sand, and shell rock from the area where the spinning was occurring. The deputy stopped the vehicle, detained the Petitioner, and subsequently arrested him for DUI.

The analysis of this detention does not turn on the question of whether a traffic infraction was committed, or whether the driving was erratic. The deputy detained the Petitioner due to the deputy's observation of possible destruction of the grounds of the park by the use of the Petitioner's automobile. The deputy believed that the Petitioner was driving carelessly. The context of the

deputy's presence at the park was to prevent the possible degradation of park property by use of a motor vehicle. Therefore, it is apparent that the deputy's detention of the Petitioner was not so much concerned with the Petitioner executing a "donut" as his concern with the "donut's" impact on the park property.

The Petitioner could just as well have been using a shovel to throw the shell rock, dirt, and sand around the park. A reasonable law officer would assume that the actions of the Petitioner could have resulted, or did result, in some degree of damage to the park property. The deputy was certainly justified in detaining the individual to determine the extent, if any, of damage to the park property. §901.151, Fla. Stat. (2018). After the lawful stop of the Petitioner, Deputy Grumbling found further facts sufficient to support the Petitioner's lawful arrest for DUI. Those facts flowed properly from the initial lawful detention.

Therefore, the petition for writ of certiorari is denied.

GRIFFIN, J. concurs.

PEGG, J. dissents with an opinion.

PEGG, J.

The sum total of bad behavior giving rise to the officer's objective basis for making a traffic stop is the defendant doing a "donut". There is no evidence that a traffic infraction was committed. Therefore, the only other legal justification for the stop is when the vehicle is being operated in an unusual manner. *State v. Rodriguez*, 904 So.2d 594 (Fla. 5th DCA 2005). In that case, the "unusual behavior" was failing to stop when emerging from a business district when entering a roadway and driving in the wrong lane.

In this case, no evidence was presented regarding destruction of park property or any other violation of law. The deputy stopped him for Careless Driving. *See* 316.1925(1), Fla. Stat. 2018. Only later did Deputy Grumbling admit that such a violation was not possible because the driving was not on a road, street, or highway, nor was anyone or anything endangered.

Florida law certainly permits a traffic stop if the vehicle is operated in an unusual manner.

*Bailey v. State*, 319 So.2d 22, 26 (Fla. 1975). The case of *Ndow v. State*, 864 So.2d 1248 (Fla. 5th DCA 2004) is instructive. In that case, no traffic infraction was observed. However, the vehicle sat through an entire green light and did not move during the entire cycle. Finally, upon moving, the driver and passenger changed seats in the vehicle. Such behavior would appear to be highly indicative of impaired driving.

The driving in our case does not reach such a level. A single “donut” with no damage to persons or property does not qualify for a non-traffic infraction behavior that justifies a stop. It is not careless driving. It is not destruction of property. No persons were endangered. The deputy had insufficient grounds to make such a stop. I would grant the petition for writ of certiorari; therefore, I dissent.

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