



PORT ORANGE CITY COUNCIL

SPECIAL MEETING

Council Chambers

Tuesday, August 27, 2019 @ 6:00 PM

SPECIAL MEETING AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Special Meeting** of the City Council to be held for the following purposes:

OPENING

1. Silent Invocation
2. Pledge of Allegiance
3. Roll Call

DISCUSSION ITEMS

4. Authorization to Appeal to the 5th DCA (Tabled at the August 20, 2019 City Council Meeting)

ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN

UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/27/2019

Consent item: No

SUBJECT: (4) Tabled Item Council Meeting August 20, 2019: Authorization to Appeal to the 5th District Court of Appeal

DEPARTMENT: City Attorney

GOAL:

RECOMMENDED MOTION: Move to approve the appeal to the 5th District Court of Appeals in the case of Thomas Traska v. State of Florida.

SUMMARY: A traffic hearing conviction involving Florida's Move Over Law was recently overturned by the Circuit Court. This law protects law enforcement officers who engage in traffic stops along our roadways everyday. It's my opinion that the conviction was overturned improperly and there are grounds to appeal that decision to the 5th District Court of Appeal by filing a petition for writ of certiorari. The Chief of Police and the City Manager have been briefed and both support the appeal in an effort to preserve officer safety. The City is a proper party to file this appeal.

The original judgment and the opinion on appeal to the circuit court are attached.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Traska Citation Hearing Judgment	Traska Citation Hearing Judgment.pdf
2.	7th Circuit Court Opinion	7th Circuit Court Opinion.pdf

Robin Fenwick
Margaret Roberts
Robin Fenwick

Created/Initiated - 8/26/2019
Approved - 8/26/2019
Final Approval - 8/26/2019

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IN THE COUNTY COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 2018-302256-TRCI

vs.

CITATION NO. A8F5FIE

A8F5FJE

A8F5FKE

THOMAS TRASKA,
Defendant.

JUDGMENT

The Defendant, Thomas Traska, received each of the above citations from Port Orange Police Officer Slease on February 7, 2018 in the late morning hours. Traska entered a plea of not guilty and sought a trial before the Court. That trial occurred on April 13, 2018.

The first witness to testify was Officer Slease. He stated that he had pulled a vehicle over for a traffic violation that had occurred on Ridgewood Avenue and that the offending vehicle pulled onto Bayshore Drive, an intersection with Ridgewood Avenue. Officer Slease parked his motorcycle behind the vehicle he pulled over. Officer Slease testified that as he was returning to his motorcycle a motor vehicle passed him without moving over to the inside lane from the outside lane. Officer Slease testified that his emergency signals were on the entire time. Officer Slease testified that his traffic stop with the other vehicle had not yet concluded as that vehicle had not yet driven away. Officer Slease testified that he pursued the vehicle for violating the "Move Over" statute. Officer Slease testified that once the vehicle was pulled over he realized that it was being driven by Thomas Traska. Officer Slease testified that Traska did not have his license on him, though he did have a valid driver's license; therefore, he was cited for Failure to Display a Driver's License on Demand, in violation of Florida Statute §322.15(1). Traska was

further cited for violating Florida's "Move Over" law, Florida Statute §316.126, and as Officer Slease believed that Traska's vehicle contained an after-market exhaust, he was also cited for violating Florida Statute §316.293.

On cross-examination, Officer Slease was shown a number of photographs and asked if they were a true and accurate representation of the placement of his motorcycle, the vehicle he had stopped, and his placement on top of his motorcycle before Traska had passed him. Officer Slease acknowledged that the photographs were a true and correct representation of what they purported to reflect, including him sitting atop his motorcycle before Traska had passed him.

On cross-examination, Officer Slease testified that as the vehicle passed him, Traska "flipped him the bird" so he turned on his emergency lights and pursued him. When confronted with the conflict in his original statements that his emergency lights were on throughout and this statement, Officer Slease stated that the latter was a misstatement or error on his part. The Court finds that Officer Slease's second statement was in fact a misstatement and therefore not considered.

Officer Slease acknowledged that realizing that it was Traska that he was pulling over, he asked for backup and at least three additional officers arrived. A photograph depicted the number of officers present.

At the conclusion of Officer Slease's testimony, Traska's counsel moved for a directed verdict as to the motor vehicle noise violation in that Officer Slease testified that he possessed no apparatus by which to gauge the noise of the muffler. The Court granted that motion.

As to the alleged violation of Florida Statute §316.126(1)b, which states the following:

"If an authorized emergency vehicle displaying any visual signals is parked on the roadside..., the driver of every other vehicle shall,

as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle... when driving on an interstate highway or other highway with two or more lanes travelling in the direction of the emergency vehicle..."

Through the use of the photographs introduced into evidence, Traska's counsel argued the following:

1. The photographs did not illustrate that the officer's emergency lights were on;
2. That Officer Slease's motorcycle was not "parked on the roadside" as required in the statute, rather, as Bayshore Drive intersects Ridgewood Avenue and the vehicle Officer Slease pulled over was on Bayshore Drive and Officer Slease's motorcycle parked behind it, his vehicle was not "on the roadside", but rather on Bayshore Drive;
3. That the mandate of vacating the lane closest to the emergency vehicle must be done by a vehicle travelling in the direction of the emergency vehicle. Counsel argued that the vehicle Officer Slease pulled over was on Bayshore Drive and that Officer Slease's motorcycle which was off of Ridgewood was itself on Bayshore Drive, and therefore the direction of the motorcycle was on Bayshore Drive; and
4. Lastly, counsel cited Florida Statute §775.021, "Rules of Construction", which states:

"(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible to differing constructions, it shall be construed most favorably to the accused."

This Court finds that Officer Slease's second statement regarding turning on his

emergency lights was in fact a misstatement on his part and therefore not considered. Further, the Court finds that there is no confusion and that:

- (a) Officer Slease's motorcycle was visibly displaying its blue lights as he was seated atop it before Traska passed him;
- (b) That Officer Slease's motorcycle was parked on the roadside; and
- (c) That Traska, in approaching and passing Officer Slease on his motorcycle was travelling in the same direction as the motorcycle.

As a result, the Court denied Traska's Motion to Dismiss.

Traska testified that he has a dash cam mounted in his vehicle as he is often harassed by the Port Orange Police Department and that he recorded the entire incident. Traska testified that the photographs were of his making and that each photograph reflected a second of the events of him approaching, passing, and being pulled over by Officer Slease. Traska testified that as he was approaching the intersection of Bayshore Drive and Ridgewood Avenue, he did notice a motorcycle but not that it was a law enforcement vehicle as there were no emergency lights on. As he got near the motorcycle, he noticed an individual get atop it and begin to turn the vehicle towards Ridgewood Avenue. As he passed, he noticed the motorcycle was occupied by a law enforcement officer. Traska confirmed that he had a valid driver's license, having left it at

MP home. The photographs reflected hand selected snap shots of the dash cam video which showed a blue light faintly visible in the photograph and also showed the officer seated on his motorcycle parked parallel to Ridgewood Avenue. Officer Slease then stated that he too had a recording of the incident but did not bring it.

At the conclusion of all of the evidence, Traska's counsel repeated the above objections and contentions made at the conclusion of Officer Slease's testimony, specifically with regard to Florida Statute §316.126.

Recognizing that the burden of proof is beyond and to the exclusion of a reasonable doubt, the Court finds that Traska violated both Florida Statute §316.126(b)1, adjudged him guilty, ordered that he pay a fine in the amount of ^{MP} \$136.00 ~~\$100.00~~ within 90 days, and also found him to be guilty of not displaying his valid driver's license on demand, adjudged him guilty of that offense and ordered that he pay a ^{MP} \$116 ~~\$100.00~~ fine within 90 days.

DONE AND ORDERED in Open Court this ^{May} 9th day of ^{MP} April, 2018.

Melody Pullen
HEARING OFFICER

NUNC PRO TUNC April 13, 2018

cc: Officer Slease, Port Orange Police Department
Michael H. Lambert, Esquire (Office@LambertLaw.us)
Thomas Traska, Defendant

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

THOMAS TRASKA,

Appellant,

v.

Case No: 2018-10013-APCC
LC No.: 2018-302256-TRCI

STATE OF FLORIDA,

Appellees.

Opinion filed

Appeal from the Traffic Court
of Volusia County,
Melody Pullen, Hearing Officer.

Lambert Law
Michael H. Lambert, Esq.
Bryan G. Lambert, Esq.
For Appellant

Matthew J. Jones, Dep. City Attorney
City of Port Orange
For Appellee

FILED
2019 JUL 31 PM 3:53
CLERK OF THE CIRCUIT
CITY OF PORT ORANGE
CC 48

Thomas Traska, the appellant in this case appeals the judgment of the traffic court hearing officer finding him guilty¹ of violating Florida's "move over law."² This court finds that the manifest weight of the evidence is insufficient competent substantial evidence to support the hearing officer's judgment and findings.

The facts of the case as adduced from the judgment and exhibits in evidence demonstrate that on the day in question Traska was operating a motor vehicle

¹ Traska received two other citations not the subject of this appeal.

² Section 316.126(1)(b)(1) Florida Statutes 2017.

northbound on U.S. Highway 1³ within the city of Port Orange, Florida. Ahead of him, Port Orange Police Officer Slease had stopped a motor vehicle on a side road which connected to U.S. Highway 1. The vehicle that Officer Slease detained had traveled into a side road off of and nearly perpendicular to U.S. Highway 1. Officer Slease pulled his motorcycle behind the stopped vehicle on the side road.

Officer Slease's motorcycle was angled away from U.S. Highway 1 but his rear wheel was close to, but not on U.S. Highway 1.

As Traska approached the stopped vehicles, he testified that he did not see any flashing lights, nor could he determine from the appearance of the vehicles that the motorcycle on the side road was law enforcement. He passed the area but was subsequently detained and cited for failing to move over as required by law⁴.

Contrary to Traska's account, Officer Slease testified that his lights were flashing as he walked back to his motorcycle when he observed Traska's violation and pulled him over.

U.S. Highway 1 in the area in question is a four lane highway separated by a median. The photographs in evidence which ostensibly were taken by a camera on Traska's vehicle show that Officer Slease was on his motorcycle before Traska came upon the area of the motorcycle. Furthermore, the picture shows the officer's motorcycle as being off of the highway; and off of the bicycle travel lane. In other words, no part of the officer's motorcycle sat on U.S. Highway 1.

The pavement beneath the officer's motorcycle is of different color from the highway and the bulk, if not all, of the motorcycle is sitting on the side street facing an angle away from the travel direction of U.S. Highway 1. It appears the rear tire of the motorcycle is partly on what would be considered the swale area of the intersection that leads water to the drainage culvert near the corner of the intersection, but not on any portion of U.S. Highway 1.

When reviewing an administrative agency decision, circuit courts must determine: (i) whether procedural due process was accorded; (ii) whether the essential requirements of law were observed; and (iii) whether the administrative findings and judgment are supported by competent substantial evidence. Haines City Community Development v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982)). The circuit court is not entitled to reweigh the evidence or substitute its judgment for that of the agency. See Dep't of Highway Safety and Motor Vehicles v. Trimble, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002). Section, 318.33, Florida Statutes (2017) prohibits *de novo* review of the decision below.

³ U.S. Highway 1 is a four lane – divide highway for purposes of this opinion.

⁴ There may have been evidence that Traska may have flipped or given the bird to the officer as he drove past.

The court holds that the findings of the hearing officer are not supported by competent substantial evidence. While the "move over law" was meant to provide safety to police officers and first responders who work dangerous roads as a result of speeding traffic while they perform their duty, it was not meant to cover instances wherein by virtue of placement, the officer, and his or her vehicle loses the nexus of protection to be afforded by the law. This case is reversed and remanded to the hearing officer to enter a judgment consistent with the findings of this court.

REVERSED AND REMANDED