

IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA
APPELLATE DIVISION

HAMILTON SAMUEL CONNELL,
Appellant,

v.

Case No.: 01-2017-AP-0010
LT No.: 01-2016-TR-29383

STATE OF FLORIDA,
Appellee.

ORDER ON APPEAL

HON. MARK W. MOSELEY, Circuit Judge
HON. STANLEY H. GRIFFIS, III, Circuit Judge

*HON. SUSANNE WILSON BULLARD, Circuit Judge, did not participate in the deliberation or decision.

An Appeal from the Alachua County Court, Judge Susanne Wilson Bullard
For Appellant: David M. Robbins, Esq. and Susan Z. Cohen, Esq.
For Appellee: Nathaniel D. Sebastian, Esq., Dept. of Highway Safety and Motor Vehicles

HON. MARK W. MOSELEY, Circuit Judge

Appellant seeks review of a final order. Appellant asserts that the trial court erred by finding him guilty of a citation for failing to drive in a single lane. See § 316.089(1), Florida Statutes (2016). “[A] violation [of § 316.089(1)] does not occur in isolation, but requires evidence that the driver’s conduct created a reasonable safety concern.” *Crooks v. State*, 710 So.2d 1041, 1043 (Fla. 2d DCA 1998). It is uncontroverted that Appellant crossed into another lane of traffic to avoid an obstruction in the roadway before safely returning to his original lane of travel. Therefore, the trial court’s ruling that Appellant failed to drive as nearly practicable within a single lane and moved from such lane without first ascertaining that such movement could be made with safety is not supported by competent, substantial evidence in the record.

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CLERK OF COURTS
ALACHUA COUNTY, FL



It is also uncontroverted that Appellant lost control of his vehicle after returning to his original lane, resulting in a collision with oncoming traffic. However, failure to maintain control of a vehicle was not contemplated by the citation issued. See § 316.1925, Florida Statutes (2016); *Willard v. State*, 386 So.2d 869 (Fla. 1st DCA 1980) (fundamental error to adjudicate guilty on an offense not charged or a lesser included offense).

Accordingly, the final order is **REVERSED** and the case is **REMANDED** for proceedings consistent with this opinion.

HON. STANLEY H. GRIFFIS, III, Circuit Judge, concurs.

DONE AND ORDERED in Alachua County, Florida, on October ^{4th} ~~3~~, 2017.


MARK W. MOSELEY, CIRCUIT JUDGE


STANLEY H. GRIFFIS, III, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing was furnished on October 4, 2017 to:

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