

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSES—Suspension— Competent, substantial evidence supports conclusion that encounter between police officer and Petitioner was consensual and finding that there was no improper seizure of Petitioner. Petition denied. *Maxwell Miller v. Florida, Department of Highway Safety and Motor Vehicles*, No. 12-000037AP-88A (Fla. 6th Cir. App. Ct. July 31, 2013).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

MAXWELL SKYLER MILLER,
Petitioner,

**Case No.: 12-000037AP-88A
UCN: 522012AP000037XXXXCV**

v.

**FLORIDA DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES**
Respondent.

_____ /
Opinion Filed _____

Petition for Writ of Certiorari from
Decision of Hearing Officer
Bureau of Administrative Reviews
Department of Highway Safety
and Motor Vehicles

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PER CURIAM.

Maxwell Sklyer Miller seeks certiorari review of the "Findings of Fact, Conclusions of Law and Decision" of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles entered on July 31, 2012. The Decision affirmed the order of suspension of Mr. Maxwell's driving privileges. The petition is denied.

Statement of Case

The Incident/Investigation Report of St. Petersburg Police Officer Arkovich (App. 1, DDL #5) indicates that on May 5, 2012, the officer was dispatched to a report of a crash at the intersection of Fourth Avenue North and Eighth Street in St. Petersburg, Florida. When he arrived at the intersection he did not see a crash, but approximately a block south of the intersection he observed a car parked "halfway in the roadway and halfway in the driveway" of a residence. The officer approached the vehicle and observed two individuals inside with the engine running and the driver's window was down. The driver, Mr. Miller, supplied the officer with his driver's license and the officer asked if he had been involved in a crash. The Report continues:

[Mr. Miller] said he was [involved in a crash] but there was not much damage and he and the other driver decided not to call the police. Miller began to get out of the vehicle on his own accord and I noted he was very unsteady as he did. He walked to the front of the vehicle and I noted he staggered as he walked. He started pointing out the damage to the front of his vehicle which appeared to be spider webbing of the paint on the front right side of the bumper. He then pointed out the damage to the left rear quarter panel of the other vehicle.

I asked Miller how the crash happened. He said he was driving northbound on 8 St when the other vehicle turned in front of him into this driveway. He said the other person, a woman, said the damage did not matter to her and she did not want to report it. Miller said the woman told him she was drunk and did not want the police called. He said they decided not to report the crash and she went into her apartment.

(App. 1, DDL #5, p. 3 of 5). Mr. Miller was informed by the officer that he was not at fault in the crash and confirmed that Mr. Miller did not want a crash report prepared. The officer attempted to contact the driver of the other vehicle, but did not gain access to the apartment.

The Report notes that Mr. Miller was "significantly" intoxicated. His breath had a strong odor of alcohol, his speech was slurred, his eyes were watery and bloodshot,

and his face was flushed. Mr. Miller staggered when he walked and swayed when he stood. According to the Report, the officer explained to Mr. Miller that even though no crash investigation was conducted, a separate investigation into whether he was driving under the influence ("DUI") was now commencing. The Report states, "I read Miranda to Miller from my issued State Attorney Miranda card. He said he understood his rights and would answer my questions." (App. 1, DDL #5, p. 4 of 5).

As a result of the officer's continued observations of Mr. Miller, standard field sobriety tests administered, and the totality of the circumstances, the officer placed Mr. Miller under arrest for DUI. Mr. Miller submitted to a breath-alcohol test. The Intoxilyzer 8000 test results of the first sample on May 5, 2012, at 2:30 a.m. was 0.166 and the second sample at 2:33 a.m. was 0.185. (App. 1, DDL #6).

Standard of Review

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process has been accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent, substantial evidence. State, Dep't of Highway Safety & Motor Vehicles v. Sarmiento, 989 So. 2d 692, 693 (Fla. 4th DCA 2008). This Court is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and Decision. Dep't of Highway Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006).

A formal review of a driver's license suspension is conducted pursuant to section 322.2615(1)(b)3, Florida Statutes (2012). The hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. Scope of the review is limited to a determination of (1) whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; (2) whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in section 316.193. See § 322.2615(7)(a).

Analysis

In the Amended Petition for Writ of Certiorari Mr. Miller raises only one issue: "Whether the Department departed from the essential requirements of law by failing to invalidate the Petitioner's suspension because the police unlawfully seized him in violation of the 4th Amendment?"

It is argued that the officer was dispatched to the scene of a reported crash between unidentified vehicles. Mr. Miller asserts that the officer did not see any evidence of an accident, but acknowledges that the officer did observe his vehicle parked approximately one block away that was "partly in the roadway and a driveway." It is asserted that the officer's observations were not sufficient to give the officer reasonable suspicion that the person had committed, was about to commit, or was committing a crime in order to detain the individual. It is also argued that the officer did not have probable cause to believe a traffic infraction had occurred that would permit him to conduct a traffic stop.

Mr. Miller claims that when the officer took possession of his driver's license without having observed a traffic infraction or without having a reasonable suspicion that he was ill, tired, or impaired it was a "show of authority" that would make a reasonable person believe he was not free to leave. Allegedly, because Mr. Miller was inside his vehicle when the officer approached, he had a greater expectation of privacy than if he had been on foot. The officer did not have a basis for seizing Mr. Miller by taking his driver's license and asking him questions.

Conclusion

The officer was in an unmarked vehicle. The Court concludes that it was a consensual encounter when the officer approached Mr. Miller's vehicle that was idling but was halfway on the roadway and halfway in a driveway. The Incident/Investigation Report states, "I suspected that [the vehicle] was one of the vehicles reported to be in the crash." (App. 1, DDL5, p. 3 of 5). The officer made contact with Mr. Miller through an open window on the driver's side. The officer identified Mr. Miller through his driver's license. There is no evidence of record that the officer kept Mr. Miller's driver's license for any period of time after using it to identify the driver of the vehicle. There is nothing in the record to indicate that Mr. Miller's act of supplying the driver's license to the officer

was not voluntary. In fact, while the officer asked Mr. Miller about the vehicle accident, Mr. Miller voluntarily exited the vehicle to show the officer the damage to the bumper of his own vehicle and the damage to the vehicle parked in the driveway.

The encounter was consensual. See Dep't of Hwy. Safety and Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217-18 (Fla. 5th DCA 2008) (involving idling vehicle in parking lot of bank; holding officer not required to negate each and every possible act or circumstance that might transform consensual encounter into investigatory stop); see also Dermio v. State, 112 So. 3d 551, 555-56 (Fla. 2d DCA 2013). There is competent, substantial evidence in the record to support the hearing officer's conclusion that there had been no improper seizure of Mr. Miller.

The Incident/Investigation Report states that after being informed by Mr. Miller that he did not want a crash report made, the officer explained that although no actual crash investigation was conducted, a separate investigation into the possibility that Mr. Miller had been driving while impaired was beginning. Miranda¹ warnings were given and the officer conducted field sobriety testing which Mr. Miller did not pass. The arrest for DUI was based on the observations of Mr. Miller after he had been informed that the DUI investigation had commenced.

The hearing officer was required to determine by a preponderance of the evidence whether the law enforcement officer had probable cause to believe that Mr. Miller was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances. See § 322.2615(7)(a)1. "Sufficient probable cause to justify an arrest exists where the facts and circumstances allow a reasonable officer to conclude that an offense has been committed." Mathis v. Coats, 24 So. 3d 1284, 1288 (Fla. 2d DCA 2010). The existence of probable cause to arrest for DUI requires an examination of the totality of the circumstances. Id. The facts are to be analyzed from the officer's knowledge, practical experience, special training, and other trustworthy information. Id. The probability, and not a prima facie showing, of criminal activity, such as DUI, is the standard of probable cause. See City of Clearwater v. Williamson, 938 So. 2d 985, 989 (Fla. 2d DCA 2006).

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

In the present case, there is competent, substantial evidence to support a finding that the arrest for DUI was legal and there was no improper seizure of Mr. Miller. The hearing officer properly denied Mr. Miller's motion "[t]o invalidate the suspension due to lack of competent, substantial evidence for the traffic stop and seizure."

The petition for writ of certiorari is denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this ____ day of _____, 2013.

Original order entered on July 31, 2013 by Circuit Judges Linda R. Allan, John A. Schaefer, and Keith Meyer.

Copies furnished to:

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