

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

RYAN PATRICK GEYER,
Petitioner,

Case No.: 14-000014AP-88A
UCN: 522014AP000014XXXXCI

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

Anne Morris, Esq.
Attorney for Petitioner

Stephen D. Hurm, Gen. Counsel
Kimberly A. Gibbs, Sr. Asst. Gen. Counsel
Attorneys for Respondent

PER CURIAM.

Petitioner, Ryan Patrick Geyer, 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 January 17, 2014. The Decision affirmed the order of suspension of Mr. Geyer's driving privileges. The petition is denied.

Statement of Case

The Hearing Officer admitted into evidence the "Incident/Investigation Report" of St. Petersburg Police Department Officer Arkovich, including the "Supplemental Report" of St. Petersburg Police Department Officer Filipponi. (App. 1, DDL 5). Off. Filipponi's supplemental report includes a narrative that states in part:

On Thursday 12/05/2013 at approximately 0055 hours, I was working in uniform and in a marked police cruiser. I was located in the 7-11 parking lot located at 3956 Elkcarn Blvd SE preparing to make a westbound turn when I observed a light green Ford F-150 driving eastbound on Elkcarn Blvd SE at a high rate of speed which I visually estimated to be 65 70 MPH. The speed limit for this residential area is 25 MPH. I made and [sic] eastbound turn and positioned my cruiser behind the pick up truck and initiated a traffic stop. The light green, Ford F-150 pick up truck bearing FL Tag JC3AH finally pulled over making our final stop the intersection of Elkcarn Blvd SE and Lewis Blvd SE.

....

It should be noted that I issued a the [sic] arrested subject a Uniform Traffic Citation for Driving to [sic] Fast for Conditions in a residential area.

(App. 1, DDL 5, p. 5). After stopping Petitioner's vehicle, based on the officer's observations of Petitioner, Off. Filipponi asked for a Driving Under the Influence ("DUI") unit to respond to the location. Off. Arkovich responded to the scene and took over the investigation. Thereafter, Petitioner was arrested for DUI. Petitioner refused to submit to breath-alcohol testing.

The "Complaint/Arrest Affidavit" prepared by Off. Arkovich states that Petitioner "was stopped for driving at an excessive rate of speed, way too fast for conditions." (App. 1, DDL 4).

At the January 10, 2014, final hearing, counsel for Petitioner presented a motion to invalidate the suspension due to lack of competent, substantial evidence that there had been a lawful stop of the Petitioner's vehicle. In the "Findings of Fact, Conclusions of Law and Decision" the Hearing Officer made findings of fact stating:

On December 5, 2013 Officer Filipponi was stopped preparing to make a westbound turn onto Elkcarn Boulevard and observed a light green Ford F-150 driving eastbound on Elkcarn Boulevard at a high rate of speed. Officer Filipponi visually estimated that the vehicle [sic] to be traveling at 65 to 70 miles per hour. The speed limit in this residential area is 25 miles per hour.

....

Based on the forgoing I find that the Petitioner was placed under lawful arrest for DUI. The Petition was also issued a citation for driving too fast for conditions in a residential area.

(App. 4). The motion to invalidate the suspension was denied.

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 Hwy. 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 Hwy. Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006).

Analysis

A formal review of a driver's license suspension is conducted pursuant to section 322.2615(1)(b)3, Florida Statutes (2013). The Department cannot suspend a driver's license under section 322.2615, Florida Statutes (2013), for refusal to submit to a breath test under section 316.1932, Florida Statutes (2013), if the refusal is not incident to a lawful arrest. Fla. Dep't of Hwy. Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070, 1076 (Fla. 2011). The only issue raised in the Petition is whether the initial stop of Petitioner's vehicle was pursuant to a legal stop.

The Hearing Officer is required to determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. "The preponderance of the evidence standard [is] evidence which as a whole shows that the fact sought to be proved is more probable than not Substantial evidence has been defined as evidence 'which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.'" State v. Edwards, 536 So. 2d 288, 292 (Fla. 1st DCA 1988).

In evaluating the validity of a traffic stop, this Court is to determine if the police officer had an objectively reasonable basis to effectuate the initial stop. See Dobrin v. Fla. Dep't of Hwy. Safety & Motor Vehicles, 874 So. 2d 1171 (Fla. 2004). In order to effectuate a valid stop, the officer need only have a "founded suspicion" of criminal activity. State, Dep't of Hwy. Safety and Motor Vehicles v. DeShong, 603 So. 2d 1349, 1351 (Fla. 2d DCA 1992).

Petitioner directs this Court to Department of Highway Safety and Motor Vehicles v. Roberts, 938 So. 2d 513 (Fla. 5th DCA 2006), to support his argument that the evidence in the record fails to establish how Off. Filipponi came to the conclusion Petitioner was speeding. In Roberts, the Department relied solely on the Trooper's charging affidavit that stated in part, "Observe [sic] the above name [sic] defendant violate F.S.S. 316.187(1) by traveling at 71 mph in a 45 mph speed limit area. When I pulled up behind the defendant and attempted to pull him over he traveled for approximately another tenth of a mile before pulling over." Id. at 514. The Fifth District Court of Appeal upheld the circuit court acting in its appellate capacity when it determined "these facts were insufficient to establish an objective basis upon which to conclude that the officer's suspicions were reasonable." Id.

In the petition, counsel for Petitioner states, "There is no indication that Officer Filipponi based his estimation of speed on visual or aural perceptions." (Initial Br., p. 11). Counsel for Petitioner also states, "There is no indication as to how the officer's vehicle was positioned or from what vantage point he allegedly determined that the Petitioner was traveling 65-70 mph." (Initial Br., p. 12).

Contrary to the statement of counsel for Petitioner, in the Supplemental Report, quoted above, Off. Filliponi set out his location and vantage point when he observed the Petitioner's vehicle. Further, the officer stated that he visually estimated the speed Petitioner's vehicle was traveling. The estimated speed was determined by the officer to greatly exceed the residential speed limit of twenty-five mile per hour. Petitioner was cited for driving too fast for conditions in a residential area. The Roberts case is factually distinguishable from the present case.

In State v. Allen, 978 So. 2d 254 (Fla. 2d DCA 2008), the Second District Court of Appeal agreed with the prior decisions of the Third District Court of Appeal, and with

the decisions of appellate courts from other jurisdictions, that a law enforcement officer "may stop a vehicle for a speeding violation based on the officers visual or aural perceptions and that verification of actual speed by the use of radar equipment or clocking is not necessary to justify the stop." Id. at 255-56.

This Court may not reweigh the evidence; it may only review the evidence to determine whether it supports the Hearing Officer's findings and Decision. Stenmark, 941 So. 2d at 1249. This Court concludes that by a preponderance of the evidence competent, substantial evidence supports the Hearing Officer's decision that the initial stop of Petitioner's vehicle was lawful. The Hearing Officer did not depart from the essential requirements of law.

The petition for writ of certiorari is denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 5th day of January, 2015.

Original Order entered on January 5, 2015, by Circuit Judges Linda R. Allan, John A. Schaefer, and Keith Meyer.

Copies furnished to:

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