

**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**

**JONATHAN HARRIS,
Petitioner,**

**Case No.: 15-000012AP-88A
UCN: 522015AP000012XXXXCI**

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

Timothy F. Sullivan, Esq.
Attorney for Petitioner

Stephen D. Hurm, Gen. Counsel
Michael C. Greenberg, Asst. Gen. Counsel
Attorneys for Respondent

PER CURIAM.

Jonathan Harris 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 16, 2015. The Decision affirmed the order of suspension of Mr. Harris' driving privileges. The petition is denied.

Statement of Case

The Complaint/Arrest Affidavit states in part as follows:

Reason for stop Defendant was parked, sleeping behind the wheel. Deputies conducted a well being check and observed signs of impairment. Defendant was in actual physical control of his vehicle. . . .

(App. 15). The ACISS PCSO-Offense Report of Pinellas County Sheriff Deputy Blair states in part as follows:

On December 7, 2014 at approximately 0237 hours, Deputy Czop observed a black 2014 Chevrolet bearing Florida Tag #[] illegally parked facing east on Sunset Dr. S. Deputy Czop approached the vehicle and observed a male sleeping in the driver's seat. Deputy Czop made contact with the driver and identified him as, Jonathan Harris, via his Florida driver's license #[]. Deputy Czop observed signs of impairment and requested I respond to further evaluate Jonathan for possible impairment.

When I arrived, Jonathan was leaning up against the rear of his vehicle with Deputy Ribic and Deputy Czop. I made contact with Deputy Czop and he explained that when he made contact with Jonathan he could smell the odor of an alcoholic beverage emanating from inside the vehicle and he observed Jonathan's eyes to be bloodshot and watery. The vehicle was running and the keys were in the ignition. Deputy Czop also told me that Jonathan was very belligerent and disrespectful towards him and Deputy Ribic. Based on Deputy Czop's statements, I determined that Jonathan was in actual physical control of the Chevrolet. (See Deputy Czop's supplement for further details.)

(App. 17-21). The ACISS PCSO-Offense Report of Pinellas County Sheriff Deputy Czop states in part as follows:

On Sunday, December 7, 2014, at 0237 hours, I observed a black Chevrolet Impala parked in front of 6981 Sunset Drive South in Pasadena. I noticed the vehicle earlier in my shift and realized it had been parked there for some time. The vehicle was facing east with its lights on and the engine running. I noticed the driver's seat was reclined and all of the passenger seats were empty.

Without activating my overhead lights I parked behind the vehicle and exited my patrol car. I walked up to the driver's side windows and observed a black male sleeping in the driver's seat. I looked through the windows for any weapons or drugs with negative results. I then pointed my flashlight into the driver's eyes and banged on the roof. The driver did not wake up right away and it approximately one minute for him to finally wake up.

The driver opened his door and I could smell the strong odor [o]f an alcoholic beverage coming from his breath. I asked the driver if he was ok, which he

replied "yes, I just left a party at Raymond James and I was just too drunk to drive, so I stopped to rest". . . .

(App. 26).

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).

Analysis

A formal review of a driver's license suspension is conducted pursuant to section 322.2615(1)(b)3, Florida Statutes (2014). The hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. The Department cannot suspend a driver's license under section 322.2615 for refusal to submit to a breath test under section 316.1932, Florida Statutes (2014), if the refusal is not incident to a lawful arrest. Fla. Dep't of Highway Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070, 1076 (Fla. 2011).

Petitioner raises one argument in the Petition for Writ of Certiorari:

"The hearing officer's finding that the initial detention of the Petitioner was lawful departed from the essential requirements of law and was not supported by substantial competent evidence."

(1) Petitioner was not observed to commit any violation of the law.

Dep. Blair's report indicates that Petitioner's car was observed to be illegally parked facing east on Sunset Drive South.

(2) There was no well-founded suspicion of criminal activity and the officer did not testify he was concerned for Petitioner's wellbeing.

In evaluating the validity of a traffic stop, this Court is to determine if the deputy 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 deputy 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). Thereafter, the probable cause needed to arrest or to suspend a license for DUI may be based upon evidence obtained during the standard procedures following a valid traffic stop. Id. "[A] legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior." Id. at 1352.

As noted above, the sworn report indicates that Petitioner's vehicle was illegally parked. Further, Dep. Czop stated in his report: "I noticed the vehicle earlier in my shift and realized it had been parked there for some time. The vehicle was facing east with its lights on and the engine running. I noticed the driver's seat was reclined and all of the passenger seats were empty." The deputy approached the vehicle, tried to awaken the driver by shining a flashlight in his eyes and pounding on the roof of the vehicle. When Petitioner finally did respond and opened the car door, the deputy inquired if he was "ok" to check on his wellbeing.

The Complaint/Arrest Affidavit states the reason for stop: "Defendant was parked, sleeping behind the wheel. Deputies conducted a well being check and observed signs of impairment."

Conclusion

The Court is not to reweigh the evidence, but is to determine if competent, substantial evidence supports the Hearing Officer's findings and Decision. Stenmark, 941 So. 2d at 1249. This Court concludes that the sworn evidence in the record supports the Hearing Officer's finding that the initial detention of the Petitioner was lawful.

The petition for writ of certiorari is denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this
30th day of March, 2015.

Original Order entered on March 30, 2015, by Circuit Judges Linda R. Allan, Keith Meyer, and Jack R. St. Arnold.

Copies furnished to:

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