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

WILLIAM KEVIN DELANEY,
Petitioner,
vs.

Ref. No.: 15-0047AP-88B
UCN: 522015AP000047XXXXCI

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Respondent.
_____/

ORDER AND OPINION

Petitioner challenges a final order by the Department of Highway Safety and Motor Vehicles ("DHSMV") affirming the suspension of his driving privilege. Petitioner asserts that the order was entered in error since the deputy did not have probable cause for the traffic stop because the deputy pulled him over on the mistaken belief that driving with a flat tire is illegal. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

On May 28, 2015, Lieutenant Bordner was in his car with the windows rolled down when he observed Petitioner driving with a flat tire, heard flopping noises, and smelled burning rubber. He testified that he stopped Petitioner because it was against the law to drive on a flat tire. After Bordner pulled Petitioner over, he observed several signs of impairment and called Deputy Griffin to investigate for DUI. When Petitioner performed poorly on the field sobriety exercises, he was arrested for DUI and his driver's license was suspended. After an administrative hearing, the suspension was upheld. Petitioner filed the instant Petition for Writ of Certiorari.

Standard of Review

Orders from the DHSMV are examined "under a three-part standard of review: (1) whether procedural due process is 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." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Discussion

Driving with a flat tire that is "not causing more damage than the average wear and tear" to the road is not against the law in Florida. *Baker v. Hayes*, 3 So. 2d 590, 591 (Fla. 1941).[1] However, it is against the law to drive a vehicle "in such unsafe condition as to endanger any person or property." § 316.610, Fla. Stat. A police officer may stop a vehicle "at any time, upon reasonable cause to believe that a vehicle is unsafe." § 316.610(1). Therefore, if the flat tire "as it existed and as it was observed by the officers would have created an objectively reasonable suspicion that [the] vehicle was unsafe," then the stop is valid. *See Hilton v. State*, 961 So. 2d 284, 295 (Fla. 2007). This objective test "mak[es] the subjective knowledge, motivation, or intention of the individual officer involved wholly irrelevant." *State, Dep't of Highway Safety & Motor Vehicles v. Jones*, 935 So. 2d 532, 534 (Fla. 4th DCA 2006).

Here, Lieutenant Bordner's mistaken belief that driving on a flat tire violates the law does not invalidate the stop since an objectively reasonable suspicion that Petitioner's vehicle was unsafe existed. *See Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997) (requiring courts to use a "strict objective test which asks only whether any probable cause for the stop existed"). In his testimony, Lieutenant Bordner stated that he could hear a flopping sound and "could smell the very strong odor of burnt rubber." He further testified that the tire appeared "[a]ll the way down." In the arrest affidavit, Deputy Griffin stated the reason for the stop was an "unsafe vehicle/driving with a flat tire on roadway" and that "Lieutenant Bordner advised that he had stopped [Petitioner's vehicle] for driving on Main Street with a flat tire which was causing a safety hazard." Furthermore, the police report narrative indicates that "[t]he defendant was stopped by Lt. Bordner for driving on the roadway with his vehicle in an unsafe state with a flat tire."

The hearing officer determined that there was sufficient evidence to provide an objective basis to suspect that the flat tire rendered the vehicle unsafe. This Court must review the hearing officer's decision only "to determine whether it was *supported* by competent substantial evidence."

---

[1] The only statute that even remotely pertains to flat tires, section 316.2051, Florida Statutes, states:

> It is unlawful to operate upon any hard-surfaced road in this state any log cart, tractor, or well machine; any steel-tired vehicle other than the ordinary farm wagon or buggy; or any other vehicle or machine that is likely to damage a hard-surfaced road except to cause ordinary wear and tear on the same.

See Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs, 794 So. 2d 1270, 1275-1276 (Fla. 2001) (emphasis in original) ("As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended."). Based on the testimony and the police report, competent substantial evidence supports the hearing officer's finding that Petitioner was lawfully stopped for "driving with a flat tire which was causing a safety hazard."

Conclusion

Because the hearing officer's final order affirming the suspension of Petitioner's license was supported by competent substantial evidence, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this 6th day of January 2016.

Original Order entered on January 6, 2016, by Circuit Judges Pamela A.M. Campbell, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

LARRY SANDEFER, ESQ.
4625 E. BAY DR. #203
CLEARWATER, FL 33764

JASON HELFANT
DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES
P.O. BOX 540609
LAKE WORTH, FL 33454