

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

TERRIL IVES GOUDIE,
Petitioner,

Case No.: 15-000064AP-88A
UCN: 522015AP000064XXXXCI

v.

STATE OF 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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Attorney for Respondent

PER CURIAM.

Terril Ives Goudie seeks certiorari review of the "Findings of Fact, Conclusions of Law and Decision" ("Decision") of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles ("DHSMV") entered on October 15, 2015. The Decision affirmed the order of suspension of Mr. Goudie's driving privileges. The Petition is granted.

Statement of Case

In August 2015, Deputy Bassous observed Mr. Goudie making an improper right turn out of a fast food restaurant by turning wide into the far left lane, and failing to use a

turn signal.¹ Deputy Bassous made contact with Mr. Goudie and noticed signs of impairment. He then called Deputy Ashcom to perform a DUI investigation. When Deputy Ashcom arrived, she performed field sobriety exercises on Mr. Goudie and subsequently arrested him for DUI. At the end of the DUI investigation, Deputy Bassous issued a verbal warning to Mr. Goudie for the traffic infractions upon which Deputy Bassous based the initial stop. Mr. Goudie refused to take a breath test and his license was suspended. He requested a DHSMV formal review, at which the Hearing Officer affirmed the suspension. Mr. Goudie then filed the instant Petition.

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. 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 refused to submit to any such test after being requested to do so by a law enforcement officer; and (3) whether the person whose license was suspended was told that if he or she refused

¹ In the Offense Report, Deputy Ashcom states that Deputy Bassous also indicated that Petitioner made a U-turn before being stopped. Deputy Bassous does not indicate this as a basis for the initial stop in his Supplement Report. There is no other record evidence regarding a U-turn.

to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of one year or, in the case of a second or subsequent refusal, for a period of eighteen months. § 322.2615(7)(b), Fla. Stat. DHSMV cannot suspend a driver's license under section 322.2615 for refusal to submit to a breath test under section 316.1932, 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).

Mr. Goudie raises two arguments in the instant Petition for Writ of Certiorari:

A. "The DHSMV's reliance on an unsworn report departed from the essential requirements of law and violated the Petitioner's due process rights."

Mr. Goudie argues that the Hearing Officer erred when he overruled his objection to Deputy Bassous's supplemental narrative report contained in the ACISS-Offense Report # SO15-347051. The "Affidavit of True Copy" states that the "attached Offense Report # SO15-347051 and Arrest Affidavit are true and correct." The notary block indicates that the affidavit was signed and sworn by Deputy Ashcom before the attesting officer (App., p. 5; DDL#3). Mr. Goudie argued to the Hearing Officer, and restates in the Petition, that Deputy Ashcom swears to not seeing or being part of the initial stop. Therefore, he asserts that Deputy Bassous's supplemental narrative report # SO15-347051/3 (App., p. 25; DDL#3) was not properly sworn because it is impossible for Deputy Ashcom to swear to the truth of events she did not witness.

Allegedly, it was not harmless error for the Hearing Officer to consider the events detailed in Deputy Bassous's supplemental narrative report. Mr. Goudie argues that the narration of facts was used by the Hearing Officer to determine the legality of the initial stop and asserts that without the supplemental narrative report, no admissible proof existed to demonstrate the lawfulness of Deputy Bassous's initial stop.

Section 322.2615(2), Florida Statutes, provides that after the issuance of a notice of suspension of driver's license, materials properly submitted to DHSMV by a law enforcement agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer. Furthermore, it requires that "the law enforcement officer shall forward to the department, within 5 days after issuing the notice of suspension . . . an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the

influence of alcoholic beverages.” § 322.2615(2), Fla. Stat. Mr. Goudie argues that Deputy Bassous's supplemental narrative report violated section 322.2615(2).

Contrary to Mr. Goudie's assertion, pursuant to section 322.2615(2), the only documents required to be in affidavit form are an officer's statement of grounds for belief that the person was driving under the influence of alcoholic beverages or chemical or controlled substances, not supplemental reports regarding the initial stop. See State Dept. of Highway Safety v. Edgell-Gallowhur, 114 So. 3d 1081, 1087 (Fla. 3d DCA 2013) (holding that a hearing officer in a breath test refusal case could properly consider and rely on a speeding ticket to establish reasonable suspicion for an initial traffic stop).

Furthermore, “[m]aterials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer.” § 322.2615(2)(b). Similarly, under Rule 15A-6.013(2), “[n]o extrinsic evidence of authenticity as a condition precedent to admissibility is required.” Fla. Admin. Code R. 15A-6.013(2). “The hearing officer may consider any report or photocopies of such report submitted by a law enforcement officer . . . relating to the suspension of the driver.” Id. “Neither [322.2615] nor [15A-6.013(2)] prohibits the admission of hearsay evidence. Nor do these provisions require non-hearsay evidence to corroborate any hearsay evidence admitted at the hearing.” State Dep't of Highway Safety & Motor Vehicles v. Saxlehner, 96 So. 3d 1002, 1007 (Fla. 3d DCA 2012).

Here, Deputy Ashcom's arrest affidavit and Offense Report satisfy section 322.2615(2). Other reports submitted by law enforcement, regardless of whether they were sworn and/or hearsay documents, were within the purview of the Hearing Officer to properly consider to determine the lawfulness of the initial traffic stop. See § Fla. Admin. Code R. 15A-6.013(2); 322.2615(2)(b); Edgell-Gallowhur, 114 So. 3d at 1087. Thus, even if Deputy Bassous's supplemental narrative report was not properly sworn, as Mr. Goudie alleges, the Hearing Officer could still consider it. The Hearing Officer could also properly consider Deputy Ashcom's statement of the reasons for the initial stop, since hearsay evidence is not prohibited at DHSMV hearings. This is directly contrary to Mr. Goudie's contention that no evidence of the initial stop existed outside of Deputy Bassous's supplemental narrative report.

Therefore, this Court concludes that the Hearing Officer's consideration of Deputy Bassous's supplemental narrative report did not depart from the essential requirements of law or violate Mr. Goudie's due process rights. This Court also finds that admissible proof existed to determine the lawfulness of Deputy Bassous's initial stop outside of the supplemental narrative report in the form of Deputy Ashcom's arrest affidavit and Offense Report.

B. "In the alternative, the Hearing Officer should have found that there was no probable cause for the unlawful stop."

"The constitutional validity of a traffic stop depends on purely objective criteria. . . . The objective test asks only whether any probable cause for the stop existed." Hurd v. State, 958 So. 2d 600, 602 (Fla. 4th DCA 2007) (internal citations omitted). "Such probable cause exists where the police officer believes a traffic violation has occurred." Id.; see Whren v. United States, 517 U.S. 806, 810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

In contrast, when an initial traffic stop is based on safety-related concerns, it is valid if an officer had reasonable suspicion to justify the stop. State, Dept. of Highway Safety & Motor Vehicles v. DeShong, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992) (opining that 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"). "Whether an officer's suspicion is reasonable is determined by the totality of the circumstances that existed at the time of the investigatory detention." Gaffney v. State, 974 So. 2d 425, 426 (Fla. 2d DCA 2007) (internal quotations omitted). "Reasonable" or "well-founded" suspicion must be supported by articulable facts and "is something less than probable cause, but more than an inchoate and unparticularized suspicion." Majors v. State, 70 So. 3d 655, 659 (Fla. 1st DCA 2011). Articulable facts must be specific and sufficient to show that the "stop was necessary for the protection of the public." Id. at 661.

However, if there is no evidence that the initial stop was based on safety concerns, then a court may not properly rely on this basis to justify the stop. See Agreda v. State, 152 So. 3d 114, 116 (Fla. 2d DCA 2014). 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. Stenmark, 941 So. 2d at 1249.

Here, the only record evidence regarding Deputy Bassous's reasons for the initial traffic stop indicates that the stop was based on two traffic infractions: Failure to signal and an improper turn. Accordingly, the standard for determining whether the initial stop was lawful is determining whether Deputy Bassous had probable cause to effectuate the stop by virtue of Mr. Goudie committing a traffic violation. Deputy Bassous did not issue traffic citations to Mr. Goudie for his failure to use a turn signal or execution of a wide right turn, so this Court must look to Florida Statutes for the applicable provisions to determine whether Mr. Goudie actually committed traffic violations.

Section 316.155, Florida Statutes, mandates when a turn signal is required. In State v. Riley, the Florida Supreme Court interpreted section 316.155 to mean that when no other vehicle is affected by a turn signal, then a signal is not required. 638 So. 2d 507 (1994); see Hurd, 958 So. 2d 600. Here, there are no facts in the record that indicate whether any other vehicle was affected by Mr. Goudie's failure to use a turn signal. In Deputy Bassous's supplemental report, he indicates that he conducted the initial stop in part because he observed Mr. Goudie's vehicle "fail to utilize its right turn signal." In the Complaint/Arrest Affidavit, Deputy Ashcom states that one of the two reasons for the initial stop was "fail[ure] to signal a turn." No other facts or information concerning the circumstances around the initial stop are in evidence. As Mr. Goudie argues, this evidence is insufficient to rise to the level of probable cause required for an initial stop because the record does not establish that Mr. Goudie committed a traffic infraction by failing to use his turn signal.

Sections 316.151 and 316.125, Florida Statutes, both pertain to right-hand turns made by a driver. Section 316.151 is applicable when the driver is turning at an intersection and requires the driver to make a right turn "as close as practical to the right-hand curb or edge of the roadway." Section 316.125 is applicable when the driver is entering the highway from a private road or driveway or emerging from an alley, driveway, or building and it does not limit which lane a driver may turn into when making a right-hand turn. Here, Mr. Goudie was exiting a fast food restaurant and making a right-hand turn onto the roadway, so section 316.125 is applicable. In Deputy

Bassous's supplemental report, he indicates that the other basis for the initial stop was that Mr. Goudie made an "improper right turn as it was a wide right turn into the far left lane." In the Offense Report, Deputy Ashcom states that although she did not witness Mr. Goudie's vehicle in action, "Deputy Bassous observed a vehicle . . . make an improper turn." In the Complaint/Arrest Affidavit, Deputy Ashcom states that the other reason for the initial stop was "an improper right turn." Since section 316.125 does not prohibit a wide right-hand turn out of a business, Mr. Goudie did not commit a traffic infraction.

Therefore, this Court concludes that the evidence in the record does not support the Hearing Officer's finding that the initial stop was lawful, as the evidence does not establish articulable facts of suspicion, and certainly does not establish probable cause.

Conclusion

There is no substantial, competent evidence to support a determination as a matter of law that Deputy Bassous had probable cause that Mr. Goudie committed a traffic infraction based on the sheer lack of evidence in the record pertaining to the initial stop. Accordingly, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari GRANTED; "Findings of Fact, Conclusions of Law and Decision" QUASHED; and matter remanded the Department of Highway Safety and Motor Vehicles.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 1st day of April, 2016

Original Order entered on April 1, 2016, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Keith Meyer.

Copies furnished to:

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