

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**

CASEY DURANT HERRING,
Petitioner,

v.

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

Ref. No. 17-000034AP-88B
UCN: 522017AP000034XXXXCI

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) upholding the suspension of his driver’s license for driving under the influence (“DUI”) under section 322.2615, Florida Statutes. Petitioner contends that the DHSMV’s final order finding that probable cause existed for Petitioner’s arrest was not supported by competent substantial evidence. Upon review of the briefs, the appendix, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

In the DHSMV’s final order, the Hearing Officer found the following facts to be supported by a preponderance of the evidence:

On April 20, 2017, Deputy Horning observed the Petitioner’s vehicle stop during a northbound turn on to Belcher Road; the vehicle continued northbound on Belcher Road slower than the posted speed limit, traveling 35mph in a 45mph zone; the vehicle continued to drift within the curb lane as it was slowing down and speeding up; and the vehicle’s passenger tires crossed over the white divider line between the curb and lane divider line. Deputy Horning conducted a traffic stop to check if the Petitioner was sick, injured, or impaired. Upon contact with the Petitioner, he observed signs of impairment and requested a DUI unit.

Deputy Laney arrived and made contact with the Petitioner: he observed him to be swaying; his speech was slurred; his responses were slow; his eyes were bloodshot, glassy, and watery; and he had an odor of an alcoholic beverage coming from his breath.

The Petitioner performed Field Sobriety Exercises poorly, exhibiting further clues of impairment, and was placed under arrest for DUI.

The Petitioner was asked to provide a breath sample. He refused. He was read Implied Consent and he still refused.

Based on Petitioner's refusal to provide a breath sample, his license was suspended. After a hearing, the license suspension was upheld. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

"[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence." *Wiggins v. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017).

Discussion

Petitioner asserts that competent substantial evidence does not support the Hearing Officer's finding that probable cause existed for the arrest. Probable cause for an arrest exists if "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) (internal citations omitted). "The facts are to be analyzed from the officer's knowledge, practical experience, special training, and other trustworthy information." *Id.* Probable cause for a DUI arrest is based on several factors including the odor of alcohol, the "reckless or dangerous operation of a vehicle, slurred speech, lack of balance or dexterity, flushed face, bloodshot eyes, admissions, and poor performance on field sobriety exercises." *Id.* (quoting *State v. Kliphouse*, 771 So. 2d 16, 23 (Fla. 4th DCA 2000)).

In his first argument, Petitioner maintains that Deputy Laney lacked probable cause to arrest him because when questioned at the hearing, Deputy Laney gave only vague information concerning the probable cause determination. For instance, Deputy Laney stated generally that the probable cause determination was based on "information" from Deputy Horning, "contact" with Petitioner, "statements" of Petitioner, and "observations" during the field sobriety exercises. Petitioner further contends that Deputy Laney did not mention the odor of alcohol or testify that Petitioner had "slurred, mumbling, stuttering or incoherent speech." Petitioner's arguments are

without merit because each of his assertions is contradicted by the record, and it is clear that probable cause existed for the arrest.

At the hearing, Petitioner's counsel asked if the probable cause determination "was based on the odor of alcohol and the performance of those two [field sobriety] tests." Deputy Laney answered that it was also based on information from Deputy Horning (and his observations of Petitioner's driving), Deputy Laney's own contact with Petitioner, the statements Petitioner made, the field sobriety exercises, and Deputy Laney's observations while conducting the field sobriety exercises, "which [were] the totality of circumstances leading to [Petitioner's] arrest." He also testified regarding Petitioner's statement about consuming half a glass of beer, the lack of convergence (inability of the eyes to cross), leg tremors, slurred speech, and Petitioner's poor performance on the field sobriety exercises. While Deputy Laney may not have discussed every detail of his investigation, his testimony supported the information in the police reports. *See* § 322.2615(2)(b), Fla. Stat. ("Materials submitted to the department by a law enforcement agency . . . shall be considered self-authenticating and shall be in the record for consideration by the hearing officer.").

The Arrest Affidavit indicates Petitioner was "observed stopping [in the] center of [the] intersection, then almost hit the curb . . . several times." Deputy Horning's Supplemental Report specifies that he observed Petitioner's vehicle "stop in the course of the turn," and travel 35 mph in a 45 mph zone. The vehicle "drift[ed] within the curb lane as it was slowing down and speeding up," and it "travel[ed] past the white lane divider line and continue[d] to be driven between the curb and the lane divider line for several feet prior to repositioning." Upon contact, Petitioner informed Deputy Horning that his erratic driving was due to his inability to light a cigarette because he was new to smoking.

Deputy Horning's Supplemental Report, Deputy Laney's Offense Report, the Arrest Affidavit, and the Field Sobriety Test Form all indicate that Petitioner was swaying, had a distinct odor of alcohol, and bloodshot, glassy, watery eyes. Both the Offense Report and the Supplemental Report state that Petitioner admitted to drinking half a glass of beer. The Arrest Affidavit, Field Sobriety Test Form, and Offense Report all specify that Petitioner had slurred speech. In the Offense Report, Deputy Laney noted Petitioner's eyes had a lack of convergence. Finally, the Offense Report and Field Sobriety Test Form both establish that Petitioner

performed poorly on the field sobriety exercises. Accordingly, both the documentary evidence and the testimony support the Hearing Officer's finding of probable cause for the arrest.

Petitioner's final argument asserts that Deputy Laney's dash camera video conflicts with his testimony concerning the field sobriety exercises, so this Court should reject the testimony and grant the Petition. Petitioner cites *Wiggins. v. Dep't of Highway Safety & Motor Vehicles* for the proposition that "a circuit court applies the correct law by rejecting officer testimony as being competent, substantial evidence when that testimony is contrary to and refuted by objective real-time video evidence." 209 So. 3d 1165, 1175 (Fla. 2017). Deputy Laney's testimony indicates Petitioner stepped off the line and did not always touch heel to toe during the walk and turn test and Petitioner was swaying and put his foot down before being told to do so during the one leg stand test. Unlike the circumstances in *Wiggins* where the video "clearly contradicted and totally refuted" the officer's testimony, a review of the video in this case supports Deputy Laney's testimony. *See id.* at 1173. Thus, the video, testimony, and police reports provide competent substantial evidence to support the Hearing Officer's determination that probable cause existed for the arrest.

Conclusion

Because the DHSMV's final order finding that probable cause existed for Petitioner's arrest is 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 February, 2018.

Original Order entered on February 6, 2018, by Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

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