

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

THOMAS WILLIAM STRAUB, JR.,
Petitioner,

v.

Ref. No.: 18-0065AP-88B
UCN: 522018AP000065XXXXCI

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

_____ /

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) sustaining the suspension of his driving privilege for refusing to submit to a breath test pursuant to § 322.2615, Florida Statutes. Petitioner contends that the DHSMV’s final order was not supported by competent, substantial evidence demonstrating that Petitioner was lawfully stopped. Upon consideration of the Petition, Response, Reply, “Petitioner’s Reply to Court’s Judicial Notice,” and “Respondent’s Response to Order Allowing Parties to Present Information Relevant to the Propriety of Taking Judicial Notice,” 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 May 28, 2018[,] Officer Hennis conducted a traffic stop on a vehicle driven by Thomas William Straub Jr., the Petitioner, for failing to stop or yield prior to entering a roadway from a parking lot. Officer Hennis observed the Petitioner exhibiting indicators of impairment and contacted Officer Negersmith to conduct a DUI investigation.

Officer Negersmith made contact with the Petitioner and found him to have slurred speech, a sway while standing, bloodshot eyes[,] and an odor of an alcoholic beverage on his breath. The Petitioner refused to perform Field Sobriety Tasks and was arrested for DUI. The Petitioner refused to provide breath samples after being read Implied Consent.

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

“The constitutional validity of a traffic stop depends on purely objective criteria.” *Hurd v. State*, 958 So. 2d 600, 602 (Fla. 4th DCA 2007) (internal citations omitted). “Generally, ‘the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.’” *State v. Arevalo*, 112 So. 3d 529, 531 (Fla. 4th DCA 2013) (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). “The test is whether a police officer could have stopped the vehicle for a traffic violation.” *Hurd*, 958 So. 2d at 602. This objective analysis “‘asks only whether any probable cause for the stop existed,’ making the subjective knowledge, motivation, or intention of the individual officer involved wholly irrelevant.” *Id.* (quoting *Holland v. State*, 696 So. 2d 757, 759 (Fla.1997)).

Petitioner asserts “that the Hearing Officer erred in determining that there was a legal stop prior to the arrest of Petitioner” because both the testimony and written record only contain “a nonspecific and conclusory” basis for the stop, which demonstrates that the officer had only an “unparticularized suspicion” or “inarticulate hunch” that driving over the sidewalk without stopping when exiting a business was a violation of some unnamed statute. According to the Initial Brief, “[i]t is undisputed that Petitioner drove across the ‘sidewalk area’ that runs across the entrance/exit to the SunTrust Bank parking lot” on Clearwater Beach. Moreover, Petitioner does not seem to dispute that he did not stop. Instead, Petitioner argues that the record fails to show driving actions that violate any statute because the record is not “clear as to each material fact regarding the basis for the stop.” In the Reply Brief, Petitioner expands on this argument by asserting that “[t]he record fails to reflect by the necessary competent substantial evidence that Petitioner was legally stopped” because it “lacks any evidence of the zoning at the location of the alleged violation” to show that it was in a “business district,” as required by the applicable statute.

Section 316.125(2), Florida Statutes, states in relevant part that “[t]he driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway.” Section 316.003(8), Florida Statutes, defines a business district as “[t]he territory contiguous to, and including, a highway when 50 percent or more of the frontage thereon, for a distance of 300 feet or more, is occupied by buildings in use for business.”

Section 90.202(11), Florida Statutes, provides a court may take judicial notice of “facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court.” Case law has interpreted this to allow judicial notice of “matters known in the

community.” See *McKinney v. State*, 640 So. 2d 1183, 1184 (Fla. 2d DCA 1994). Here, it is generally known within the community that the area of Clearwater Beach in question, the 400 block of Poinsettia Avenue near the SunTrust Bank, is comprised of mostly businesses. To be considered a business district, the law requires only 50 percent of an area to consist of “buildings in use for business” for a distance of a mere 300 feet. Accordingly, this Court takes judicial notice of the status of the 400 block of Poinsettia Avenue as a business district as defined in § 316.003, Florida Statutes.

Having resolved the business district issue, the Court must still determine whether competent, substantial evidence supports the Hearing Officer’s decision that Petitioner was lawfully stopped. The Complaint/Arrest Affidavit for Driving Under the Influence lists the reason for the stop as “failing to stop/yield prior to entering a roadway from a parking lot (400 [block] of Poinsettia).” The Complaint/Arrest Affidavit for Refusal to Submit to Testing states Petitioner “was stopped for failing to yield or stop before entering the roadway.” The Offense Report narrative indicates that Petitioner “failed to stop/yield before entering the roadway over a sidewalk.” A review of the transcript of the hearing indicates that the stopping officer, Officer Hennis, testified that he witnessed Petitioner’s vehicle leaving the SunTrust Bank parking lot and “not stop at the sidewalk.” Officer Hennis elaborated:

He doesn't stop at the sidewalk when he's exiting from the driveway onto the roadway and then he also does not stop at the road — he didn't make a stop at all. He just passes the driveway and enters the roadway without any kind of stop, you know, passing the sidewalk, onto the roadway and headed southbound

The DUI officer, Officer Negersmith, testified that Officer Hennis told him Petitioner was stopped for “failure to yield a [sic] stop before entering a roadway over a sidewalk on Poinsettia.” He also testified that the location was on Clearwater Beach at the SunTrust Bank and across from Frenchy’s restaurant. When counsel for Petitioner asked about the specifics of what Petitioner did

wrong, Officer Negersmith stated Petitioner “came out of the parking lot and didn’t stop, just drove out.” Accordingly, the documentary evidence and testimony provide competent, substantial evidence that Petitioner was lawfully stopped.

Conclusion

Because competent, substantial evidence supports the Hearing Officer’s decision that Petitioner was lawfully stopped, 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
_____ day of _____, 2019.

Original Order entered on December 9, 2019, by Circuit Judges Pamela A.M. Campbell, Amy M. Williams, and Linda R. Allan.

Copies furnished to:

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