

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

ANISSA BASULTO,
Petitioner,

v.

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

Ref. No.: 19-000032-AP-88B
UCN: 522019AP000032XXXXCI

FILED
CIVIL COURT REC. DEPT.
2020 MAR 24 PM 4:50
KEN BURKE
CLERK OF CIRCUIT COURT

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles ("DHSMV") sustaining the suspension of her driving privilege pursuant to § 322.2615, Florida Statutes. 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 February 24, 2019, Officer Santana was dispatched in reference to an anonymous 911 call regarding a female being attacked by four males. A description of the vehicle was given. Officer Santana observed the described vehicle make a U-turn, pull into the parking lot of Pinch A Penny and park. Officer Santana pulled into the parking lot and stopped the vehicle. Officer Santana made contact with the Petitioner to check on her welfare, observed signs of impairment and requested further investigation.

Officer Hastings arrived at the stop and made contact with the Petitioner. Officer Hastings observed the Petitioner's eyes to be bloodshot and watery, her speech was slurred and she had the odor of an alcoholic beverage coming from her breath. The Petitioner was leaning on her vehicle for support, staggered heavily as she walked and swayed while speaking with Officer Hastings.

The Petitioner performed Field Sobriety Tests poorly. Based on the totality of the circumstances, the Petitioner was arrested for DUI. The Petitioner submitted to a breath test. The results were .169g/210L and .165g/210L.

Based on Petitioner's breath samples, her 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). “The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop.” *Dobrin v. Dept. of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174 (Fla. 2004). An officer may conduct an initial stop based on reasonable suspicion if the officer has “a legitimate concern for the safety of the motoring public.” *Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992). Such concern “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.* Florida law supports an officer’s ability to conduct a welfare check on the occupants of a stopped or parked vehicle at an unusual time or place. *See, e.g., Dermio v. State*, 112 So. 3d 551, 555-56 (Fla. 2d DCA 2013) (finding the initial encounter to be a lawful welfare check where the car was parked in the parking lot of a local bar around 3:30 in the morning with the motor running and the lights on).

Here, Petitioner does not challenge whether there existed competent, substantial evidence to support the Hearing Officer’s factual findings, but instead argues that the facts do not establish a lawful basis for the initial encounter with the Petitioner. Specifically, Petitioner asserts that the

Hearing Officer departed from the essential requirements of law by “determin[ing] the traffic stop was lawful on the basis of an anonymous tip.” However, the Hearing Officer actually determined that the stop was a lawful welfare check. The facts establish that Officer Santana approached Petitioner to check on her welfare because of an anonymous call regarding a female being attacked by four males. In addition, Officer Santana did not pull over Petitioner; instead, Officer Santana approached the car after it pulled into a Pinch A Penny at 1:00am and parked. Accordingly, Officer Santana properly conducted a welfare check based on the details provided in the anonymous tip and Petitioner’s action of parking at a closed business in the middle of the night.

Conclusion

Because the Hearing Officer did not depart from the essential requirements of law, it is

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

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this
____ day of _____, 2020.

Original Order entered on March 16, 2020, by Circuit Judges Pamela A.M. Campbell,
Linda R. Allan, and Amy M. Williams.

Copies furnished to:

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