

**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**

RUSSELL RIVERA,  
Petitioner,

v.

Ref. No. 19-000036AP-88B  
UCN: 522019AP000036XXXXCI

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

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**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 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 March 16, 2019, Deputy Mowatt observed the Petitioner’s vehicle driving at a high rate of speed which he estimated to be 70 MPH in a 30 MPH zone. Deputy Mowatt activated his radar and confirmed the Petitioner’s speed at 71 MPH in the 30 MPH zone. Deputy Mowatt initiated a traffic stop, made contact with the Petitioner and observed signs of impairment.

Deputy Mowatt observed the Petitioner’s eyes to be bloodshot and glassy and he had a strong and distinct odor of an alcoholic beverage coming from his breath.

Deputy Mowatt requested the Petitioner perform Field Sobriety Tests. The Petitioner told Deputy Mowatt he had two plates in his knee and has three spinal surgeries; Deputy Mowatt also took into account information from the Petitioner that he is on his feet a lot for his job as he owns a motorcycle shop when determining the standardized Field Sobriety Tests were appropriate to administer to the Petitioner. Based on the Petitioner’s performance on all three Field Sobriety Tests, Deputy Mowatt’s observations, and the totality of the circumstances, the Petitioner was placed under arrest for DUI.

Deputy Mowatt requested the Petitioner submit to a breath test which the Petitioner refused after being read Implied Consent.

Based on Petitioner's refusal to provide a breath sample, his license was suspended. After the 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 contends the Hearing Officer departed from the essential requirements of law by admitting evidence regarding the HGN test, and, without the HGN test, the Hearing Officer's finding that Deputy Mowatt had probable cause to arrest Petitioner was not supported by competent, substantial evidence. Because competent, substantial evidence supports the determination that probable cause existed for the arrest without consideration of the HGN test, we decline to address the admissibility of the HGN test.

Probable cause for a DUI 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 the instant case, Petitioner agreed to perform field sobriety exercises. Although there was only one "decision clue" indicating impairment on the one-leg-stand exercise, the Deputy observed three decision clues during Petitioner's performance on the walk-and-turn exercise. Petitioner maintains that he should have been provided alternative field sobriety exercises after he informed the Deputy that he had two plates in his knee and three spinal surgeries, and since he was required to perform the regular exercises despite his injuries, his performance on the walk-and-turn exercise is not indicative of impairment. However, considering the totality of the

circumstances, competent, substantial evidence supports a determination that probable cause existed for the arrest. In addition to his performance on the field sobriety exercises, Petitioner was stopped shortly after 1:00 am for driving 71 MPH in a 30 MPH zone, had a strong and distinct odor of alcohol, bloodshot and glassy eyes, was lethargic, and was swaying. Accordingly, competent, substantial evidence supports the Hearing Officer's decision upholding Petitioner's license suspension.

### **Conclusion**

Because the Hearing Officer's order is supported by competent, substantial evidence, 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 June 8, 2020, by Circuit Judges Pamela A.M. Campbell, Linda R. Allan, and Thomas M. Ramsberger.

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