

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**

EMMANUEL G. MANIAS,
Petitioner,

v.

Ref. No. 19-000072AP-88B
UCN: 522019AP000072XXXXCI

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 pursuant to § 322.2615, Florida Statutes. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

The Hearing Officer found the following facts to be supported by a preponderance of the evidence:

On September 11, 2019, Officer Gibson stopped the Petitioner for driving at night without headlights. The vehicle was slow to pull over. Officer Viars responded upon hearing the call on the department radio. Both Officers approached the vehicle with Officer Gibson on the driver side and Officer Viars on the passenger side. There were two occupants, the driver/Petitioner and a passenger. Officer Gibson saw the Petitioner attempting to conceal a bottle. Officer Gibson asked for the bottle and after checking, the bottle was wine and open and half full. Officer Viars saw a vape pen in the cup holder. Officer Gibson asked the Petitioner to exit the vehicle and he complied. When asked, Petitioner admitted to a “couple” of drinks earlier. Officer Viars observed that Petitioner had bloodshot/watery eyes, a distinct odor of an alcoholic beverage on his breath and would sway while standing. Officer Viars asked to look at Petitioner's eyes and he agreed but was becoming agitated and asked if this was necessary. Officer Viars told Petitioner that this was a DUI investigation. Officer Viars conducted Horizontal Gaze Nystagmus and noted signs of possible impairment. Petitioner was asked to perform additional Standardized Field Sobriety Exercises (SFSE). He was hesitant but then agreed. During the walk and turn as well as the one leg stand, Petitioner complained of back/leg pain. The other SFSE were accomplished with Petitioner seated. Petitioner exhibited additional indicators of impairment. During the time, Petitioner admitted to drinking alcohol but denied any drug use. Petitioner was arrested for DUI, and was asked to submit a sample of his breath for testing the breath alcohol level. He stated that he would and was

read his Miranda right and refused to answer any further questions. Officer Gibson then informed Officer Viars that the vape pen had tested positive for THC and that the passenger had claimed the pen belonged to Petitioner. Petitioner was transported to the jail facility and provided samples of his breath which yielded a breath alcohol level of 0.075 g/210L and 0.075g/210L. Petitioner was then asked to provide a urine sample. Petitioner became belligerent and eventually refused. The Implied Consent warning was read to Petitioner but he continued to refuse.

Based on Petitioner's refusal to provide a urine 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 contends there was not competent, substantial evidence in the record demonstrating that the officers had reasonable cause to believe Petitioner was under the influence of a chemical or controlled substance, "as they did not make any such allegation, and specifically documented that the offense was not drug related, and that the .075 breath test result did not immediately establish reasonable cause to believe that Petitioner was under the influence of anything other than alcohol." Florida Statutes § 316.1932(1)(b) provides in pertinent part:

Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances . . . or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered . . . **at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances.**

(Emphasis added).

Reasonable cause is not defined in the statute. Black's Law Dictionary indicates it is synonymous with probable cause. "The existence of probable cause requires an examination of the totality of the circumstances." *Mathis v. Coats*, 24 So. 3d 1284, 1288 (Fla. 2d DCA 2010) (citation

omitted). “The existence of probable cause is measured by an objective standard, not based on an officer's underlying intent or subjective motivation.” *D.H. v. State*, 121 So. 3d 76, 81 (Fla. 3d DCA 2013) (citations omitted). Here, the Complaint/Arrest Affidavit for Driving Under the Influence states in pertinent part:

Officer Gibson conducted traffic stop on a vehicle that was driving without lights. Upon [Officer Viars'] arrival, Officer Gibson was walking up to the vehicle as [Officer Viars] approached the passenger side. [Officer Viars] observed a bottle of wine sitting behind the driver's seat and it was found to be open and half full. The driver was asked to step out and [Officer Viars] requested he step onto the sidewalk. [Petitioner] swayed while walking and [Officer Viars] could smell an odor of an alcoholic beverage on his breath. [Petitioner] consented to Field Sobriety Exercises and performed poorly. He provided a breath sample but refused a urine sample.

The Complaint/Arrest Affidavit for Refusal to Submit to Testing states in pertinent part:

A traffic stop conducted on a vehicle that was driving without headlights. Field Sobriety tests were conducted which [Petitioner] performed poorly. [Petitioner] was asked to provide a urine sample after his breath results were a .075.

On both Arrest Affidavits, in regard to whether there was any indication of “Alcohol Influence” observed, the officer checked “yes,” and as to whether there was any indication of “Drug Influence” observed, the officer checked “unknown.” The Offense Report has “yes” marked under “Alcohol related” and “no” marked under “Drug related.” It also states that Petitioner admitted to consuming alcohol but denied any drug use. The Offense Report narrative states:

As [Officer Viars] looked into the vehicle, [he] could see a vape pen inside the cup holder with a liquid that [he] identified as possible THC oil. . . . [T]he oil inside the vape pen tested positive for THC oil. . . . [T]he passenger had stated the pen belonged to [Petitioner].

At the DHSMV hearing, Petitioner moved to invalidate the suspension asserting the request for a urine sample was unlawful. The Hearing Officer found that:

Petitioner exhibited signs of impairment and had a vape pen which field tested positive for THC in his vehicle. Further, the passenger stated that the pen belongs to Petitioner. Despite Petitioner's denial of ownership of the pen or drug use, these facts create reasonable cause to believe Petitioner was under the influence of chemical substances or controlled substances.

Section 322.2615(7), Florida Statutes, requires the Hearing Officer to “determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension.” This Court must determine if the Hearing Officer's decision is supported by competent, substantial evidence. In determining if competent, substantial evidence exists, this

Court may only decide “whether the record contains the necessary quantum of evidence.” *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). A reviewing court “is not permitted to go farther and reweigh that evidence . . . or to substitute its judgment about what should be done.” *Id.*; *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) (“As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.”). Here, a review of the appendix indicates that competent, substantial evidence supports the Hearing Officer’s decision.

Conclusion

Because the DHSMV’s final order 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, on this ____ day of _____, 2020.

Original Order entered on June 23, 2020, by Circuit Judges Pamela A.M. Campbell, Linda R. Allan, and Thomas M. Ramsberger.

Copies furnished to:

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