

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**

MICHAEL ANTHONY GIALLOURAKIS,
Petitioner,

Case No.: 19-000007AP-88A
UCN: 522019AP000007XXXXCI

v.

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

_____ /

Opinion Filed _____

Petition for Writ of Certiorari from
Decision of Hearing Officer
Bureau of Administrative Reviews
Department of Highway Safety
and Motor Vehicles

Kevin J. Hayslett, Esq.
Attorney for Petitioner

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Mark L. Mason, Asst. Gen. Counsel
Attorneys for Respondent

PER CURIAM

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles upholding the suspension of his driving privilege pursuant to § 322.2615, Florida Statutes. Petitioner asserts that the Hearing Officer's decision departed from the essential requirements of law and was not supported by competent, substantial evidence. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

At 1:02 am on September 14, 2018, Pinellas County Sheriff's Deputy Jacoby observed Petitioner speeding. As Deputy Jacoby was attempting to catch up to Petitioner to pace clock him, Deputy Jacoby noticed Petitioner was drifting within his lane. Deputy Jacoby then saw Petitioner stop abruptly with all four tires past the stop line, at which time Deputy Jacoby pulled him over. Upon making contact with Petitioner, Deputy Jacoby observed Petitioner's eyes to be watery and glassy and detected an odor of alcoholic beverage coming from inside the vehicle (Petitioner was the sole occupant). Deputy Jacoby also stated that Petitioner "appeared impaired."

Deputy Jacoby then asked Petitioner to step out of the vehicle so he could perform an HGN test of Petitioner's eyes, which provided indicators of impairment. Thereafter, Deputy Jacoby requested Petitioner perform additional field sobriety exercises. After performing poorly on the field sobriety exercises, Petitioner was arrested for driving under the influence. He provided breath samples indicating a breath alcohol concentration of .151 and .161. Petitioner's license was suspended based on his breath test results. After a Formal Review 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 he was illegally detained for field sobriety exercises without the requisite reasonable suspicion of criminal activity. Specifically, Petitioner maintains that Deputy Jacoby had an “insufficient basis on which to form a reasonable suspicion of Petitioner’s impaired operation of a motor vehicle” because Deputy Jacoby “made the simple conclusory statement in his narrative report that Petitioner ‘appeared impaired’ . . . without observing or recording any clues of actual impairment before having Petitioner exit for initiation of a DUI investigation.”

Deputy Jacoby’s Offense Report narrative listed the following information about the stop:

On 09/14/18, at approximately 0102 hours. I observed a green vehicle travelling eastbound on Main Street make a quick and hard stop at the red light on Patricia Avenue. . . . Upon making contact with the driver, . . . [his] eyes were glassy and watery and he appeared impaired.

[Petitioner] agreed to HGN, but had difficulty following the pen with his eyes. . . . [Petitioner] had a distinct odor of an alcoholic beverage emanating from his breath.

At the Formal Review Hearing, Deputy Jacoby testified that he observed Petitioner speeding and “some side to side in the lane, where [Petitioner] was touching the lane markers.” Petitioner then made “a quick and hard stop” at a red light with all four tires completely over the stop line. Deputy Jacoby “[m]ade contact with [Petitioner], made some observations that appeared that he was impaired. . . . [H]e had watery, glassy eyes and while speaking, [Deputy Jacoby] started to detect an odor of alcoholic beverage coming from inside the vehicle and [Petitioner] was the sole occupant.”

“To request that a driver submit to field sobriety tests, a police officer must have reasonable suspicion that the individual is driving under the influence.” *State v. Ameqrane*, 39 So. 3d 339, 341 (Fla. 2d DCA 2010). “Reasonable suspicion is something less than probable cause, but ‘an officer needs more than a mere hunch before he can detain a suspect past the time reasonably

required to write a citation.” *Maldonado v. State*, 992 So. 2d 839, 843 (Fla. 2d DCA 2008) (internal citations omitted). “Whether an officer's suspicion is reasonable is determined by the totality of the circumstances that existed at the time of the investigatory detention.” *Gaffney v. State*, 974 So. 2d 425, 426 (Fla. 2d DCA 2007) (internal quotations omitted). Considering the totality of the circumstances “allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *State v. Marrero*, 890 So. 2d 1278, 1282 (Fla. 2d DCA 2005) (citations omitted).

Upon certiorari review, this “[C]ourt must review the record to assess the evidentiary support for the agency's decision.” *Dusseau v. Metro. Dade County Bd. of County Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001). Here, a review of the appendix demonstrates competent, substantial evidence supports the Hearing Officer’s decision. When considering the totality of the circumstances, which include the entire driving pattern, Petitioner’s watery and glassy eyes, and the odor of alcohol, Deputy Jacoby had the requisite reasonable suspicion to request Petitioner submit to HGN and other field sobriety exercises. *See State v. Castaneda*, 79 So. 3d 41, 42 (Fla. 4th DCA 2011) (holding that sufficient reasonable suspicion to detain Defendant for the purpose of conducting a DUI investigation existed where “the officer observed Defendant speeding, smelled an alcoholic beverage on Defendant's breath, and observed that Defendant's eyes were bloodshot and watery”); *Origi v. State*, 912 So. 2d 69, 71-72 (Fla. 4th DCA 2005) (holding that traveling at a high rate of speed, the odor of alcohol, and bloodshot eyes “gave rise to a reasonable suspicion sufficient to justify detaining [the driver] for a DUI investigation”).

Conclusion

The Hearing Officer's decision to uphold the license suspension did not depart from the essential requirements of law and is supported by competent, substantial evidence.

Accordingly, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 17th day of July, 2020.

TRUE COPY

Original Order entered on July 17, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Keith Meyer.

Copies furnished to:

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