

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

ELIZABETH ANN DOWNING,

**CASE NO.: 2012-CA-016319-O
WRIT NO.: 12-78**

Petitioner,

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**

Respondent.

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Ronald Barnes, Hearing Officer.

Matthew P. Ferry, Esquire,
for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

BEFORE MUNYON, DAVIS, and J. KEST, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Elizabeth Ann Downing (“Downing”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the Order sustained the suspension of her driver’s license. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

Findings of Fact

As gathered from the Hearing Officer's findings from the Arrest Report, Traffic Citation/Warning Report, and other related documents presented at the formal review hearing on September 4, 2012, the facts are summarized as follows: On August 4, 2012 at approximately 5:13 p.m., Officer Meadows of the Winter Park Police Department was dispatched to the scene of a dispute between two drivers. Information was relayed to the officer by dispatch that a vehicle operated by Downing was following a vehicle operated by Shannon Tatum ("Tatum") after the dispute between them occurred on Interstate 4. Officer Meadows located both vehicles and positively identified them by location and vehicle description. Officer Meadows activated his emergency lights and Tatum's vehicle pulled over in response. Downing's vehicle continued until it was stopped by Officer Perez.

Officer Meadows first made contact with Tatum, who described the incident as it occurred on Interstate 4 resulting in Downing following her vehicle. According to Tatum, she then decided to drive toward the Winter Park Police Station and call the police as well, whose dispatcher further instructed her to continue driving toward the police station and that officers were waiting to stop her vehicle. After interviewing Tatum, Officer Meadows approached Downing's vehicle and identified Downing as the same person who had been driving the vehicle when he first observed it. Officer Meadows immediately, upon approaching the vehicle's open window, smelled the strong and obvious odor of an alcoholic beverage coming from the vehicle's interior. Officer Meadows asked Downing for her side of the story and while she was speaking he observed that her eyes were bloodshot, red and glassy and her speech was lethargic and thick-tongued. Officer Meadows observed that the odor of alcohol became stronger as Downing spoke. Officer Meadows then requested Downing's driver's license and observed that

she fumbled with her wallet while trying to extract it and she rambled and repeated herself often exhibiting mood swings while describing the incident. Also, Downing admitted to having “a drink” prior to driving. Based on his concerns about Downing’s level of impairment, Officer Meadows requested Downing to exit her vehicle. When exiting the vehicle, Downing stumbled, leaned on her vehicle for balance, and swayed while standing.

At that point, Downing was requested to perform the field sobriety exercises and complied, performing several of the exercises poorly and exhibiting further clues of impairment. Upon completion of the exercises, Downing was placed under arrest for DUI and transported to the Winter Park Police Station where she was observed for thirty-one minutes and was requested to submit to a breath test. Downing submitted to the test and the results were .245 and .242. Downing’s privilege to operate a motor vehicle was suspended for driving with an unlawful breath alcohol level.

Standard of Review

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep’t of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver license was suspended for driving with an unlawful breath alcohol level, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a), Fla. Stat. (2012).

Arguments

In the Petition, Downing argues that the Hearing Officer's decision to sustain her license suspension is not supported by competent substantial evidence that her vehicle was lawfully stopped and that she was lawfully detained. Conversely, the Department argues that the Hearing Officer's decision sustaining Downing's license suspension conforms to the essential requirements of the law and is supported by competent substantial evidence that the stop of Downing's vehicle and the detainment of Downing were lawful.

Analysis

Downing's first argument addressing the stop of her vehicle: At the hearing, Downing's counsel moved to invalidate the license suspension arguing that there was no traffic infraction or suspicion of criminal activity to justify the stop. The Hearing Officer reserved ruling on this motion and subsequently in the Order denied the motion finding that Downing was stopped for the officers to conduct a criminal investigation. In the Petition, Downing also presents this argument, but adds that competent substantial evidence is lacking because the stop was based on information from an anonymous tipster. Downing claims that there is no record evidence that the identity and contact information of the person who called the Winter Park Police Department was known or provided to the officers prior to the stop and seizure of her vehicle.

To have a valid stop for driving under the influence, a law enforcement officer need only possess a well-founded, reasonable suspicion based upon objective, specific, articulable facts that a person detained in the stop of a vehicle has committed, is committing, or is about to commit a violation of the law. Thus, a person's driving pattern does not have to rise to the level of a traffic infraction to justify a stop. *See State v. Carrillo*, 506 So. 2d 495 (Fla. 5th DCA 1987). Further, "The courts of this state have recognized that a legitimate concern for the safety of the motoring public 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." *Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992); see *Ndow v. State of Florida*, 864 So. 2d 1248, 1250 (Fla. 5th DCA 2004)(holding that a police officer who observes a motor vehicle operating in an unusual manner may be justified to make a stop even when there is no violation of vehicular regulations and no citation is issued; and in determining whether such an investigatory stop was justified, the courts must look to the totality of the circumstances); see also *Ortiz v. State*, 24 So. 3d 596, 600 (Fla. 5th DCA 2009)(addressing a law enforcement officer's community caretaking duties).

This Court finds that the very detailed facts contained in the Arrest Report and Traffic Citation/Warning Report, as summarized above, addressing the events leading to the stop of Downing's and Tatum's vehicles, provided competent substantial evidence for the Hearing Officer to find that the stop was lawful. Specifically, the officers were dispatched to locate the subject vehicles based on the information received from Tatum about the verbal altercations and that she was being followed by the other vehicle. Therefore, in the interest of Tatum's safety and the safety of any other persons who Downing could come in contact with, competent substantial evidence existed for the Hearing Officer to conclude that the officers were justified in stopping

Downing's vehicle to investigate and prevent a possible road rage incident between the drivers from escalating to a dangerous level such as assault. Lastly, Downing's argument about an anonymous tipster is without merit as the record clearly shows that the information provided to the officers was from Tatum and not from an unidentified person who was not directly involved in the events leading to the stop.

Downing's second argument addressing her detainment: Also at the hearing, Downing's counsel moved to invalidate the suspension based on an unlawful detention because Downing was stopped and detained by Officer Perez for an unspecified period of time before the arrival of Officer Meadows. The Hearing Officer reserved ruling on this motion and subsequently in the Order denied the motion finding that Downing was detained while Officer Meadows interviewed the complainant prior to moving over to her location as he was conducting a criminal investigation. Again in the Petition, Downing presents this argument and concludes that the subsequent observations made by Officer Meadows and the results of Downing's performance of the field sobriety exercises should not have been considered by the Hearing Officer.

Again, this Court finds that the very detailed facts contained in the Arrest Report and Traffic Citation/Warning Report, as summarized above, addressing the events leading to the stop and the events during the detainment of Downing, provided competent substantial evidence for the Hearing Officer to find that the detainment of Downing was lawful. Specifically, due to the situation possibly escalating to a dangerous level between the drivers, it would be reasonable for the Hearing Officer to find that the situation in this case necessitated Downing's detainment by Officer Perez while Officer Meadows first interviewed Tatum, a possible victim, prior to interviewing Downing.

Conclusion

Based on the foregoing, this Court finds that Downing was provided due process and the Hearing Officer's decision to sustain her license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this Court's review cannot go further to reweigh the evidence presented and as long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and this Court's job is ended. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Elizabeth Ann Downing's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 6th day of March, 2014.

/S/

LISA T. MUNYON
Presiding Circuit Judge

DAVIS and J. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Matthew P. Ferry, Esquire**, Law Office Warren W. Lindsey, P.A., P.O. Box 505, Winter Park, Florida 32790, matt@warrenlindseylaw.com and **Richard M. Coln, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, richardcoln@flhsmv.gov, marianneallen@flhsmv.gov on this 6th day of March, 2014.

/S/

Judicial Assistant