

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

MATTHEW DAVID MCDONALD,

CASE NO.: 2015-CA-002396-O

Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

Petition for Writ of Certiorari
from the Department of
Highway Safety and Motor Vehicles,
Regenia Newton, Hearing Officer.

Shon Joseph Douctre, Esq.,
for Petitioner.

Michael Greenberg, Assistant General Counsel,
for Respondent.

Before O'KANE, UNDERWOOD, and MURPHY, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Matthew David McDonald ("Petitioner") seeks certiorari review of the Department of Highway Safety and Motor Vehicles' ("Respondent") Findings of Fact, Conclusions of Law and Decision upholding the suspension of his driver's license. This Court has jurisdiction pursuant to Florida Statute §§ 322.2615(13) and 322.31, and Florida Rules of Appellate Procedure 9.030(c)(3), 9.100, and 9.190.

Procedural History

As gathered from the record, Officer Imparato observed Petitioner driving a silver Nissan on January 4, 2015 at approximately 2:05 a.m. Petitioner was at the intersection of University Boulevard and Gemini Boulevard South traveling east toward Parking Garage A. He passed the garage entrance and began traveling in a circle. He then traveled on Andromeda Loop South going back toward Gemini Boulevard, turned left going south on Gemini Boulevard, then turned left on Hydra Lane going back toward Gemini Boulevard South. He turned right going north toward University Boulevard, made a left turn onto University Boulevard and stopped at the red light at the intersection of University Boulevard and Alafaya Trail.

Officer Imparato pulled up next to Petitioner's vehicle and rolled down his passenger side window. Petitioner opened his window as well. Officer Imparato took notice of the fact that there were no other passengers in the car. Officer Imparato asked Petitioner if he was lost or needed directions, to which he responded, "I just want to go home." At this point, the officer observed that Petitioner's speech was very slurred and he looked confused. As a result of this behavior, the officer exited his vehicle and approached Petitioner's driver side window, asking him where he was headed. At this point, he could smell the strong odor of alcohol coming from inside the vehicle. Petitioner admitted that he was coming from a bar called the Library where he had consumed one beer and one rum and coke beverage.

Based on the totality of the circumstances, Officer Imparato asked Petitioner to exit his vehicle. Upon his compliance, the officer was able to determine that the smell of alcohol was coming from Petitioner's facial area. He observed that Petitioner had a noticeable orbital sway and his eyes were red, watery and bloodshot. He then performed a series of Field Sobriety Exercises, which Petitioner willingly performed. While performing these exercises, Petitioner

displayed other indicators of impairment including failure to follow instructions, swaying side to side, failing to keep his balance and walking off the line during the walk and turn exercise, and failing to keep his head still and follow the stimulus in the horizontal gaze nystagmus exercise. Based on his personal experience, interactions with Petitioner and his performance during the sobriety exercises, Petitioner was placed under arrest for DUI. Officer Guadagnino responded to the scene to wait for a tow truck to arrive and discovered a silver flask with a small amount of alcohol while taking inventory of the vehicle. Officer Imparato used his department-issued Portable Breath Tester and took an open air sample that registered positive for alcohol content. Petitioner was transported to the Orange County DUI Center. He willingly performed a blood alcohol breath test and was determined to be over the legal limit. His license was suspended for driving with an unlawful blood alcohol level.

Arguments on Appeal

Petitioner argues that Respondent's order departs from the essential requirements of law as Petitioner was denied procedural due process when the hearing officer found that there was probable cause to believe he was in actual or physical control of a motor vehicle with a breath/blood alcohol level greater than .08 because there was no probable cause for the stop and no reasonable suspicion to conduct a DUI investigation.

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 arresting law enforcement trooper had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages 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 § 316.193.

§ 322.2615(7)(a), Fla. Stat. (2015).

Analysis and Finding

Petitioner argues that Officer Imparato ordered him to roll down his window and that such an order constituted an illegal detention, as he did not feel as though he could ignore this request or leave after it was made. He asserts that this escalated their interaction to an illegal stop. However, the record refutes this claim.

A hearing examiner's factual findings cannot be rejected as long as there is support from competent substantial evidence. *Miller v. Secretary*, 2010 WL 2366935, at *2 (M.D. Fla. 2010) (citing *Tedder v. Fla. Parole Comm'n*, 842 So. 2d 1022 (Fla. 1st DCA 2003) (the Parole Commission could not reject a hearing examiner's factual findings as long as they were supported by competent, substantial evidence)). When competent substantial evidence supports a hearing officer's factual findings, it is improper to substitute new findings for those of the hearing officer. *Sch. Dist. of Collier Cnty. v. Fuqua*, 136 So. 3d 687, 691 (Fla. 2d DCA 2014)

(“an agency may not reject or modify the hearing officer’s factual findings unless it determines from reviewing the entire record that competent substantial evidence does not support them”); *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013) (citing *Resnick v. Flagler Cnty. Sch. Bd.*, 46 So. 3d 1110, 1112-13 (Fla. 5th DCA 2010)) (“If the hearing officer’s factual findings are supported by competent substantial evidence, ‘the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence’”).

Upon hearing testimony from Petitioner, it was decided that this evidence was not persuasive or credible in regards to whether the officer ordered him to roll down his window. The hearing officer also determined that Petitioner had not provided any other information that was contrary to Officer Imparato’s report. As a result, the hearing officer relied upon Officer Imparato’s arrest affidavit in order to make factual findings in this case. In his affidavit, Officer Imparato stated that he pulled up next to Petitioner’s vehicle and opened his own passenger side window. Petitioner opened his window without being requested, or directed, to do so. This is competent substantial evidence to support the hearing officer’s findings that this interaction was not an illegal detention and was a voluntary interaction.

Based on the record, there was not a departure from the essential requirements of law, Petitioner was afforded procedural due process, and there was competent substantial evidence to support the hearing officer’s decision.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the Petitioner's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of January, 2016.

/S/
JULIE H. O'KANE
Presiding Circuit Judge

MURPHY and UNDERWOOD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Shon Joseph Douctre, Esq.**, Private Counsel, LLC at 733 West Colonial Drive, Orlando, Florida 32804, as counsel for Petitioner; and **Michael C. Greenberg, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, at 5023 53rd Avenue East, Bradenton, Florida 34203, as counsel for Respondent on the 4th day of January, 2016.

/S/
Judicial Assistant