IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLOR*ID*A
CIRCUIT CIVIL DIVISION

CHASE ENGELBRECHT,
Petitioner
v.

CASE NO: 22-CA-008310
DIVISION: J

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES.
Respondent.
_____/

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Chase Engelbrecht seeks review of the final order of a hearing officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles entered September 2, 2022. The order affirmed the suspension of Petitioner's driving privileges because of his alleged refusal to submit to a breathalyzer test after being arrested on suspicion of driving under the influence. Law enforcement detained Petitioner at his home after a nightclub's security video showed him hitting a parked car and leaving the scene. Petitioner contends that, where law enforcement did not arrest him in the act of driving, and there was a lapse between the incident and law enforcement's contact with him, there is no evidence that he was driving under the influence, such that the decision is not supported by competent, substantial evidence. The Court has reviewed the petition, response, appendices, and applicable law. Petitioner did not file a reply. Being fully advised in the matter, the Court finds that where the hearing officer based her decision on the conclusion that the record contained both evidence of impairment, and an absence of evidence that Petitioner had consumed alcohol *after* the incident, law enforcement could reasonably conclude that Petitioner was under the influence at the time of the incident. Accordingly, the Court must deny the amended petition.

JURISDICTION AND STANDARD OF REVIEW

A decision by the Department to uphold or invalidate a suspension may be reviewed by a petition for writ of certiorari to the circuit court in the county in which formal or informal review was conducted. §§ 322.31; 322.2615(13), Fla. Stat. This Court, therefore, has jurisdiction to review the Department's decision in this case. Review is not de novo. §322.2615(13), Fla. Stat. Rather, the Court must determine whether Petitioner received procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court may not reweigh the evidence contained in the record. *Dep't of Highway Safety & Motor Vehicles v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012).

As depicted on the Crescent Club's security video, on July 15, 2022, at approximately 11:39 p.m., Petitioner backed his truck out of a parking spot where the right rear hubcap and tire of his truck hit the front left bumper of another parked vehicle, damaging both his truck and the other vehicle. Petitioner stopped briefly without getting out of his truck, then drove home. Neither the video nor any other evidence established whether Petitioner had been drinking or was otherwise impaired at the time of the incident. Based on a tip from a witness who knew Petitioner, and after viewing the security video, the Sarasota County Sheriff's Office visited Petitioner's home, albeit nearly an hour after the collision. After initially claiming she was the driver, Petitioner's female companion, and Petitioner himself, admitted that Petitioner was driving. Petitioner offered that he didn't know he'd hit anything, adding that he had been sleeping at the time deputies arrived. Noting various signs of impairment, including bloodshot eyes, inability to focus, slurred speech, swaying, and lack of coordination, Deputy Brenkle arrested Petitioner for leaving the scene of an accident at 1:04 a.m. on July 16, 2022, and read Petitioner Miranda warnings. After his arrest, Petitioner was asked to submit to field sobriety tests and a breath test, both of which he refused, resulting in the administrative suspension of his driving privilege.

Petitioner timely requested a formal review of the suspension. A formal review was held August 24, 2022. There were no live witnesses; only documentary evidence was submitted into the record. Petitioner made several motions to invalidate the suspension, including one to dismiss the suspension because a lack of competent, substantial evidence supported that Petitioner was impaired at the time of the collision. The hearing officer denied all of Petitioner's motions, affirming the suspension. This timely petition followed.

When reviewing a suspension that is the result of a driver's refusal to submit to testing, the hearing officer is to determine whether law enforcement had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of drugs or alcohol, whether Petitioner refused to submit to any such test after being requested to do so by law enforcement, and whether Petitioner was told that if he refused to submit to such test his privilege to drive a vehicle would be suspended for a period of one year or, in the case of a second or subsequent refusal, for a period of 18 months. §322.2615(7)(b), Fla. Stat. In addition, a hearing officer is required to determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. § 322.2615(7), Fla. Stat. "Preponderance of evidence is defined as evidence 'which as a whole shows that the fact sought to be proved is more probable than not.'" *Dufour v. State*, 69 So. 3d 235, 252 (Fla. 2011) (*quoting State v. Edwards*, 536 So. 2d 288, 292 n. 3 (Fla. 1st DCA 1988)).

Here, Petitioner contends that the hearing officer lacked sufficient evidence to affirm the suspension where there is no evidence as to Petitioner's impairment at the time of the incident and his arrest occurred more than an hour later. It is accurate to say that Petitioner was not stopped in the act of driving. However, the record reflects that

law enforcement saw significant signs of impairment including lack of coordination, slurred speech, a strong odor of alcohol, swaying, and bloodshot eyes after arriving at Petitioner's home. Petitioner admitted that he had been driving, adding that he didn't know he'd hit anyone, and that he'd been sleeping when law enforcement arrived. Significantly, Petitioner did not indicate that he'd consumed alcohol between the time of the accident and the arrival of law enforcement, only that he'd been sleeping. Petitioner refused law enforcement's request to perform field sobriety exercises or submit to a breath test.

Respondent asserts that probable cause to arrest exists where the facts and circumstances within the officer's knowledge are "sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been committed." *Stone v. State*, 856 So. 2d 1109, 1111 (Fla. 4th DCA 2003). Petitioner contends that the hearing officer lacked competent, substantial evidence to uphold the suspension, and shifted the burden to Petitioner to prove that he consumed alcohol *after* the accident. Petitioner relies on *Eckert v. DHSMV,* 20 Fla. L. Weekly Supp. 1134a (Fla. 13th Jud. Cir. App., Aug. 13, 2013) in support of his argument. This reliance is misplaced. Although *Eckert,* like this case, involves an arrest after a hit-and-run accident, the court's decision hinged on the fact that no evidence supported that Eckert was driving at the time of the traffic stop.

The circuit court in *Eckert* does not appear to have been presented with or considered the comparable *Dep't of Highway Safety & Motor Vehicles v. Favino*, 667 So. 2d 305, 308 (Fla. 1st DCA 1995), which Respondent cites in support of its contention that the evidence was adequate to uphold the suspension. In *Favino,* Mr. Favino was the driver of a vehicle involved in a motor vehicle crash. *Id*. at 307. After the crash, Favino drove to his home. *Id*. Over twenty minutes later, law enforcement arrived at Favino's home to speak with him. *Id*. When law enforcement arrived, Favino was drinking grapefruit juice, his eyes were bloodshot, his speech was slurred, his balance was unsteady, and he had an odor of alcohol coming from his person. *Id*. Favino was arrested for DUI and subsequently refused to submit to a breath, urine, or blood test, resulting in the suspension of his driver license. *Id*. A hearing officer sustained the suspension after administrative review. *Id*. Favino petitioned the circuit court for a writ of certiorari, arguing there was no evidence at the hearing that he was drinking prior to or at the time of his motor vehicle crash. *Id*. at 308. Although the circuit court granted the petition, the First District Court of Appeal quashed the circuit court order. *Id*. at 309. Specifically, the district court of appeal held the facts and circumstances of the case were "clearly" sufficient "for a reasonable person to conclude that Favino operated his vehicle while under the influence of alcohol, given the unchallenged observations of the officer shortly after the accident occurred and given the circumstances surrounding the accident." *Id*. Further, the district court of appeal stated "[t]he hearing officer found by a preponderance of the evidence that such probable cause existed, and there was competent, substantial evidence to support that finding." *Id*. Finally, the court held the circuit court impermissibly rejected the hearing officer's findings when there was competent, substantial evidence in the record to support the findings, reweighed the evidence, and substituted its judgment for that of the hearing officer. *Id*.

Except for the length of time between the accident and arrest, this case is virtually identical to *Favino*. In this case, as in *Favino*, sufficient competent substantial evidence supports the conclusion that Petitioner operated his motor vehicle while under the influence of alcohol, given that Petitioner admitted driving, displayed indicators of alcohol consumption and impairment, and gave no indication that he had consumed alcohol between the time of the incident and his detention by law enforcement, instead advising them that he had been sleeping. *See, e.g.*, *Favino*, 667 So. 2d at 309. Because the lack of competent, substantial evidence is the only ground upon which the amended petition seeks relief, and this Court finds that competent, substantial evidence supports the hearing officer's decision to uphold the suspension, the amended petition is DENIED.

DONE AND ORDERED in Tampa, Florida, on the date imprinted with the Judge's signature.

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THE HONORABLE REX BARBAS
CIRCUIT JUDGE

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