

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

NICOLAS CASTILLA,
Petitioner,

v.

CASE NO.: 22-CA-9352
DIVISION: H

FLORIDA DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES
Respondent.

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on Nicolas Castilla's Second Amended Petition for Writ of Certiorari. (Doc. 12). Petitioner contends that the order upholding the administrative suspension of his driving privilege should be quashed because he was not read the current version of implied consent, which now includes enhanced penalties for prior suspensions or fines related to a driver's operation of a *vessel* under the influence. The Court has reviewed the second amended petition (Doc. 12), response (Doc. 16), reply (Doc. 17), appendices, and applicable law. Because Petitioner does not assert that a prior suspension was related to the operation of a vessel under Chapter 327, the omission of the additional reference in the current version of the implied consent he was given was inconsequential and is not ground to invalidate the suspension. Moreover, where Petitioner committed a traffic infraction that caused law enforcement to slam on his brakes, the stop was justified. Thereafter, evidence of alcohol consumption and impairment provided probable cause to support the arrest and breath test request. Accordingly, the petition is denied.

Background

In a formal review of a license suspension, a hearing officer is required to determine:

1. Whether the arresting law enforcement officer 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 refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.

3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat. Implicit within this scope of review is consideration of the lawfulness of the arrest. *See generally Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011).

Petitioner's driver's license was administratively suspended for a violation of section 316.193, Florida Statutes, for driving under the influence (DUI). A formal review hearing was held July 20, 2022 and completed September 21, 2022 before Department hearing officer Bethany Connelly. The suspension was upheld by order issued October 7, 2022, which found the following facts by a preponderance of the evidence:

- i. In the early morning hours of March 21, 2022, Sgt. P. F. Watkins of the Jacksonville Beach Police Department observed a vehicle driven by Petitioner fail to make a right turn into the proper lane, causing Sgt. Watkins to take evasive action to avoid a collision.
- ii. Sgt. Watkins initiated a traffic stop. Petitioner was slow to respond, traveling over five blocks before stopping. Sgt. Watkins observed that Petitioner's eyes were bloodshot, so he detained Petitioner to await a DUI investigator.
- iii. When Officer Keen arrived, Sgt. Watkins reported Petitioner's improper turn that resulted in his having "to slam on the brakes" and that Petitioner's eyes were bloodshot as the bases for seeking a DUI investigation. He also noted a previous license suspension.¹
- iv. Petitioner twice tried to drive away from the scene while law enforcement held his license.
- v. On making contact with Petitioner, Officer Keen detected an odor of alcohol and noted that Petitioner's eyes were bloodshot and watery, and his movements were slow.
- vi. Although Petitioner was lethargic on exiting his vehicle, he did not appear to stumble on video, nor was he unsteady. The video, which did not show Petitioner's eyes or his movements before he exited his vehicle, was consistent with law enforcement narratives.
- vii. Petitioner performed field sobriety exercises and displayed additional signs of impairment. Petitioner advised law enforcement that one of his legs was shorter than the other, but he indicated it would not affect his ability to perform the exercises.
- viii. Petitioner completed field sobriety tests which provided additional evidence of impairment. Thereafter he was arrested for DUI. He refused a lawful request to submit to a breath test.

¹ Petitioner's license was not, in fact, suspended at the time of the stop.

Although not mentioned in the Order, the record shows that in response to Officer Keen's question as to why he could smell alcohol emanating from Petitioner, Petitioner told Officer Keen that he is a bartender and that he had tasted drinks to make sure they "taste right" the night of the traffic stop. This is only relevant, however, if there was a reasonable suspicion on Sgt. Watkins's part that Petitioner was driving under the influence.

Petitioner now presents two bases for quashal of the order upholding the suspension of his driving privileges. First, he contends that he was not given the correct version of implied consent. Second, he claims the record lacks competent, substantial evidence that the officer had reasonable suspicion for the traffic stop.

Standard of Review

Circuit courts review of an administrative agency decision in certiorari is to determine (1) whether procedural due process has been accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). Courts are not entitled to reweigh the evidence but may only review the evidence to determine whether it supports the hearing officer's findings and decision. *Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989).

Analysis

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.

The Court will address first Petitioner's argument that the record lacks evidence that there was a reasonable suspicion to detain and probable cause to arrest him for DUI. The Court disagrees that the record lacks the necessary quantum of evidence to uphold the suspension. Regarding reasonable suspicion to effectuate a traffic stop, Sgt. Watkins observed Petitioner make a right turn on red and immediately cross three lanes of traffic, cutting off Sgt. Watkins's vehicle and causing Sgt. Watkins to hit the brakes to avoid a

collision. Whether or not Sgt. Watkins issued a citation, Petitioner's driving pattern was a citable infraction. §316.151(1)(a), Fla. Stat. This pattern and near collision with Sgt. Watkins justified the initial stop. *State, Dept. of Highway Safety and Motor Vehicles v. Deshong*, 603 So. 2d 1349,1352 (Fla. 2d DCA 1992) (to effect a valid stop for DUI, the officer need only have a "founded suspicion" of criminal activity ...driving need not rise to level of infraction to justify stop for DUI). Thereafter, Petitioner was slow to respond to emergency lights directing him to stop, driving five blocks before stopping. When he finally did stop, he did so in a traffic lane, rather than pulling off the roadway. Petitioner told Sgt. Watkins that he did not see him or any traffic. Sgt. Watkins noted at least two physical signs of possible impairment: lethargy and bloodshot eyes. Although Sgt. Watkins does not mention noticing an odor of alcohol, the odor of alcohol is not required in a reasonable suspicion analysis. *Dept. of Highway Safety & Motor Vehicles v. Rose*, 105 So. 3d 22, 25 (Fla. 2d DCA 2012). That Petitioner's driving required Sgt. Watkins to brake to avoid a collision, the late hour, Petitioner's slow response in stopping, lethargy, and bloodshot eyes together provided Sgt. Watkins for reasonable cause to believe Petitioner was driving under the influence. §316.1932(1)(a)1.a., Fla. Stat. If during the lawful stop an officer obtains further evidence to give the officer reasonable suspicion that a crime has been committed, is being committed, or will be committed, the officer may further detain the person for purposes of determining whether there is probable cause to arrest such person. *State v. Taylor*, 648 So. 2d 701 (Fla. 1995). Therefore, the stop and detention were lawful.

To investigate his suspicion that Petitioner was driving under the influence, Sgt. Watkins requested a DUI investigator. Officer Keen responded, and Sgt. Watkins left the scene. Despite that Officer Keen, parked behind Petitioner, Petitioner attempted to drive away. Officer Keen was able to stop Petitioner from leaving and made contact with him in the driver seat of his vehicle. Officer Keen detected the odor of alcohol. He confirmed Sgt. Watkins's observation that Petitioner's eyes were bloodshot, and his movements were slow. Although Petitioner initially denied consuming alcohol, he later admitted that, as a bartender, he routinely tasted cocktails during work to ensure they are made correctly.

Petitioner agreed to submit to field sobriety tests after disclosing a physical issue, which he said would not affect his ability to perform the tests. Despite Petitioner's argument to the contrary, these provided further indicators of impairment. As a result, Officer Keen placed Petitioner under arrest. The late hour, bloodshot eyes, lethargy, and near collision with law enforcement observed by Sgt. Watkins, along with the added factors of the odor of alcohol, and Petitioner's admission of alcohol consumption, even without the results of field sobriety exercises, provide probable cause to support Petitioner's arrest and the request that he submit to a breath test. *Rose*, 105 So.3d at 23-4, citing *State v. Kliphouse*, 771 So.2d 16, 23 (Fla. 4th DCA 2000) (components central

to developing probable cause include bloodshot eyes, poor coordination, dangerous operation of a vehicle, odor of alcohol, and admissions).

The Court now turns to Petitioner's argument that he was read an older version of implied consent, and law enforcement's failure to read the current version requires that his suspension be invalidated. There is no dispute that Petitioner was read an older version of implied consent. The version of Implied Consent in place at the time of Petitioner's arrest include enhanced penalties for a prior suspension or fine related to a driver's operation of a vessel while under the influence. §316.1932, Fla. Stat. Because Petitioner does not claim he had ever had a suspension or fine related to his operation of a vessel, this portion of the new law was not relevant to informing him of the penalties to which he would be subjected if he refused a breath test. He was, however, told that his license would be suspended, and the length of the suspension, if he refused to submit to a test. That is all that is required. *Grzelka v. State*, 881 So. 2d 633, 634-35 (Fla. 5th DCA 2004) (refusal to submit to breath test was admissible where defendant was advised of at least one adverse consequence that would result from refusal, and nothing in the statute requires exclusion when the statutory warning is not complete). In fact, nothing in the statute mandates that the statute be read to drivers verbatim. §316.1932, Fla. Stat.²

ORDERED AND ADJUDGED that Petitioner's petition for writ of certiorari is **DENIED** in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

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HON. HELENE L. DANIEL
CIRCUIT JUDGE

Electronic copies provided to the parties through JAWS.

² Cf. *Benito Berrios v. Dep't. of Highway Safety & Motor Vehicles*, 29 Fla. L. Weekly Supp. 276a (Fla. 13th Jud. Cir. 2021) (failure to warn of penalties related to CDL did not immunize Petitioner from suspension of his regular driving privilege for refusing to submit to a breath test where Petitioner was not driving a commercial vehicle at the time of traffic stop resulting in license suspension).