

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

AYSA GURER,

Petitioner,

vs.

CASE NO.: 2010-CA-24296

WRIT NO.: 10-93

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

Respondent.

_____ /

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

Stuart I. Hyman, Esq.,
for Petitioner.

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

Before POWELL, BRONSON, and O'KANE, J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Gurer appeals by certiorari the decision of a hearing officer after a formal review hearing sustaining the suspension of his driver's license. We have carefully considered his Petition and Appendix, the Response and Supplemental Appendix of respondent Department, and the applicable law. We deny the Petition for the reasons set forth below.

Petitioner argues in his petition that Officer McNutt did not have probable cause to arrest him for DUI without a warrant because McNutt did not see him driving. Petitioner does not contest that McNutt had probable cause to believe that Petitioner was under the influence of alcoholic beverage when McNutt encountered him at the crash scene.

Officer McNutt was the only witness to testify at the formal review hearing. He arrived at the scene of a three-car rear end collision at an intersection approximately 35 minutes after it had occurred. Officer Myers, the accident investigator, was just finishing her crash investigation. Leaving aside what Officer Myers told McNutt and the contents of the crash report, McNutt's testimony together with his arrest report, which was properly marked and placed into the record, established the following. McNutt saw the three vehicles involved. He saw petitioner Gurer sitting on a nearby curb approximately 15 feet from the crashed vehicles. A driver of one of the other cars involved, Glaucy Mendes, made a verbal statement to McNutt, reduced it to writing, signed it and gave it to McNutt who authenticated it.¹ In her statement, she told McNutt what had happened, how she was involved in the crash, that "she saw Gurer at the driver's seat of one of the vehicles directly after the crash, and that Gurer was seated near the vehicle approximately 15 feet from it near the curb area. McNutt then approached Gurer who was seated at the nearby curb, told him that he was conducting a DUI investigation, and gave him the *Miranda* warnings. Gurer said to McNutt "I really f---d up. I had way too much to drink."²

Probable cause exists where the facts and circumstances, as analyzed from the officer's knowledge, special training and practical experience, and of which he has trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. *Dep't Highway Safety & Motor Vehicles v. Pitts*, 815 So. 2d 738 (Fla. 1st DCA 2002). Probable cause is often a conclusion drawn from reasonable inferences.

¹ Mendez's written statement was for some unknown reason not contained in the packet sent to the Department, and was thus not in evidence at the hearing. However, her statement was contained in McNutt's arrest report and testimony at the hearing. Mendez was a "citizen informant", and her statement was trustworthy information. It was also corroborated by McNutt's own observations at the scene.

² Since Petitioner's admission was made to McNutt after the crash investigation was concluded, and was made after McNutt had advised Petitioner he was conducting a DUI investigation and had given petitioner his *Miranda* rights, it was admissible and could be considered by the hearing officer. *See State v. Marshall*, 695 So. 2d 686 (Fla. 1997). McNutt could reasonably infer from Petitioner's presence at the scene and this admission that Petitioner had driven one of the crashed vehicles.

Dep't Highway Safety & Motor Vehicles v. Favino, 667 So. 2d 305 (Fla. 1st DCA 1995); *State v. Cote*, 547 So. 2d 993 (Fla. 4th DCA 1989). The facts constituting probable cause need not meet the standard of conclusiveness and probability of the circumstantial facts upon conviction is based. *Favino*, 667 So. 2d 305.

We conclude that independent of what Officer Meyers told Officer McNutt and the contents of Myer's crash report, the hearing officer found by a preponderance of the evidence that Petitioner was driving a motor vehicle while under the influence of alcohol and the officer had probable cause to lawfully arrest him for DUI. There was substantial competent evidence to support that finding. The hearing officer was the trier of fact, and we as an appellate court will not re-weigh the evidence or substitute our judgment for that of the hearing officer. *Dep't Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 643 (Fla. 5th DCA 1994), *review denied*, 651 So.2d 1195 (Fla. 1995).

Consequently, the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 9th day of January , 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

THEOTIS BRONSON
Circuit Judge

/S/

JANET C. THORPE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Stuart I. Hyman, Esq.**, 1520 E. Amelia Street, Orlando, Florida 32803; and **Richard M. Coln, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857, by mail, this 9th day of January , 2012.

/S/

Judicial Assistant