

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

RICHARD REIS,

CASE NO.: 2012-CA-003618-O

Petitioner,

WRIT NO.: 12-15

v.

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

Respondent.

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

Michael J. Snure, Esquire and William R. Ponall, Esquire,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,
for Respondent.

BEFORE JOHNSON, EVANS, and SHEA, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Richard Reis (“Reis”) 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 his 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 ICJIS Arrest Affidavit and other related documents presented at the formal review hearing on February 1, 2012, the facts are summarized as follows: On January 4, 2012, at 11:45 p.m., Officer R. Gutierrez was dispatched to scene of a crash. Sergeant J. Scott heard the call and responded. Sergeant Scott was the first officer to arrive at the scene and observed a person, later identified as Reis, standing by the crashed vehicle. There were no other persons at the scene. Sergeant Scott then observed Reis walk to the driver's door, open it, and sit down in the driver's seat. During his personal contact with Reis, Sergeant Scott noticed that Reis stood with an orbital sway while standing, his speech was slurred, and it appeared that Reis had a hard time listening and at one point Reis called the officer "honey". Based on his observations, Sergeant Scott called for a DUI officer to respond.

The DUI Officer Steven Adams then arrived at the scene and Sergeant Scott explained his observations to him. Officer Adams also met with Officer Gutierrez who also was at the scene to conduct the crash investigation. Officer Gutierrez informed Officer Adams that he had completed his crash investigation and determined that Reis was at fault in the single vehicle crash. As stated in the Arrest Affidavit, Reis was driving his company assigned vehicle east on Anderson Street when he attempted to turn onto the entrance ramp to 1-4 East. He did not turn the wheel long enough and drove into the concrete wall.

Officer Adams then made contact with Reis who was sitting in the driver's seat. When Reis opened the door, Officer Adams smelled the odor of the impurities of alcohol coming from Reis. Officer Adams then asked Reis to exit the vehicle and noticed that Reis was extremely unsteady on his feet and his eyes were glassy. Officer Adams told Reis that Officer Gutierrez had completed the crash investigation and that he was found at fault. Officer Adams then

informed Reis of their observations and that based on the observations he was conducting a criminal investigation for DUI. Officer Adams then asked Reis if he was willing to do the field sobriety exercises. Reis agreed to perform the exercises. Officer Adams noticed the odor of the impurities of alcohol emitting from Reis' mouth as he spoke with thick speech. Officer Adams then asked Reis if he was sick, wore contacts, had any physical defects, was taking medication, was diabetic, taking insulin, was epileptic, had a glass eye, or was under the care of a doctor or dentist. He stated no. The field sobriety exercises were instructed, demonstrated, and video recorded. During the horizontal gaze nystagmus exercise, Reis would not or could not follow the instructions. During the walk and turn exercise, Officer Adams held Reis' arm to maintain his balance. Reis also stepped from the line several times; he started 3 times before being told to begin; he swayed; and he raised his arms. Reis missed heel to toe on steps 2,4,5,6, and 7 and continued not touching heel to toe and took at least 13 steps. Reis turned around and leaned against the car and made no attempt complete the task. During the one-leg-stand, Reis started before being told to begin. He also did not look at his foot or count out loud; he swayed while balancing; he hopped; he raised his arms; and put his foot down several times.

Based on his training and experience, Officer Adams believed that Reis was driving the vehicle in the City of Orlando while under the influence of alcohol to the extent his normal faculties were impaired. Reis was then was placed under arrest for DUI and transported to the DUI Testing Center. At the DUI Testing Center, Reis was observed for the 20 minute period, read the Implied Consent Warning, and was requested to submit to a breath test. Reis submitted to the breath test with results of 0.188 and 0.190. Reis' driver's license 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

Reis argues that the Hearing Officer’s decision to sustain his license suspension was not supported by competent substantial evidence that: 1) there was probable cause to believe that he was driving or in actual physical control of a motor vehicle and 2) the officers had the necessary reasonable suspicion of DUI to initiate a criminal investigation.

Conversely, the Department argues that the license suspension and formal review hearing adhered to the essential requirements of the law and the Hearing Officer’s decision was supported by competent substantial evidence in the record.

Analysis

At the formal review hearing, Reis' counsel moved to invalidate the license suspension arguing that there was insufficient evidence that Reis was driving or in actual control of the vehicle. The Hearing Officer denied the motion based on: 1) Upon arriving at the crash scene, Sergeant Scott observed that Reis was standing by the vehicle and no other persons were present at the scene; 2) Sergeant Scott then observed Reis walk to the driver's door, open it, and sit in the driver's seat; 3) Per Officer Gutierrez's crash investigation, the crash was determined to be a single vehicle crash caused by hitting a concrete wall and Reis was found to be at fault; and 5) Reis was driving his company assigned vehicle.

Reis' counsel also made a motion to invalidate the suspension because there was insufficient evidence in the record to establish that Officer Gutierrez and Sergeant Scott had reasonable suspicion of DUI to detain Reis for Officer Adams' DUI investigation. The Hearing Officer denied the motion based on: 1) The crash was caused from driving into a concrete wall and 2) Sergeant Scott's observations of Reis including that he exhibited an orbital sway while standing, slurred speech, trouble listening, and called the Sergeant Scott "honey". Thus, the Hearing Officer found that based on these factors, there was reasonable suspicion to conduct the DUI investigation.

This Court now addresses these arguments on appeal. First, addressing Reis' argument that probable cause was lacking to believe that he was driving or in actual physical control of a motor vehicle, this Court finds that upon review of the record, specifically the Arrest Affidavit, the Hearing Officer's decision was supported by competent substantial evidence as discussed above including Sergeant Scott's observations of Reis, Officer Gutierrez's crash investigation, and the undisputed evidence that the subject vehicle was a company owned vehicle that was

assigned to Reis for work purposes. *See Perry-Ellis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 942a (Fla. 9th Cir. Ct. 2006) (holding that the reasonable inferences from the facts and circumstances of the case were sufficient to place Perry-Ellis in apparent control of her vehicle including that the officer observed Perry-Ellis walking around her car near the crash; the vehicle was registered to Perry-Ellis and was resting against the pole that controls the railroad crossing gate; and no other person was present at the scene with actual or physical authority over the vehicle that was involved in the crash).

Second, addressing Reis' argument that the officers lacked the necessary reasonable suspicion of DUI to initiate a criminal investigation, this Court finds that upon review of the record, specifically the Arrest Affidavit, the Hearing Officer's decision was supported by competent substantial evidence as discussed above including that the crash was caused by driving into a concrete wall and Sergeant Scott's observations of Reis that he exhibited an orbital sway while standing, slurred speech, trouble listening, and called Sergeant Scott "honey".

Further, Officer Adams' observations of Reis as discussed above in the findings of fact provided competent substantial evidence for the Hearing Officer to find that Officer Adams had reasonable suspicion to pursue the DUI investigation including requesting Reis to perform the field sobriety exercises. Specifically, as the Department correctly points out in its Response, the Arrest Affidavit reveals that when Officer Adams spoke to Reis while he sat in the driver's seat of the just-crashed vehicle, Reis' eyes were glassy, his speech was "thick" and he smelled of the impurities of alcohol when he spoke. *See Carder v. Dep't of Highway Safety & Motor Vehicles*, 15 Fla. L. Weekly Supp. 547a, n. 2 (Fla. 9th Cir. Ct. 2007) (finding that the combination of the officer' the Carder's bloodshot, glassy eyes and odor of alcohol provided competent substantial

evidence that the officer has reasonable suspicion to request that Carder submit to field sobriety tests, even if her speech was not slurred).

Lastly, as the Department also correctly points out, Reis' poor performance of the field sobriety exercises, coupled with the previously noted indicators of impairment (including the fact that Reis had just crashed his company assigned vehicle into a wall), provided ample probable cause for a DUI arrest and justified the request for breath-alcohol testing from Reis. *See Department of Highway Safety and Motor Vehicles v. Silva*, 806 So. 2d 551 (Fla. 2d DCA 2002) (circumstances surrounding the accident together with the officer's observations provided ample probable cause for the driver's DUI arrest). In addition, under the 'fellow officer rule', Officer Adams' probable cause to arrest Reis can be based on the reported observations of Sergeant Scott and Officer Gutierrez. *See Dep't of Highway Safety & Motor Vehicles v. Leonard*, 718 So. 2d 314, 316 (Fla. 5th DCA 1998) (holding that under the fellow officer rule, the combined observations of two or more officers may be united to establish probable cause to arrest and applies to misdemeanor as well as felony offenses); *see also Dep't of Highway Safety & Motor Vehicles v. Porter*, 791 So. 2d 32 (Fla. 2d DCA 2001) (holding that the law enforcement officer had probable cause to believe the driver had operated vehicle while intoxicated based on his observations together with information from another law enforcement officer that the driver had been driving).

Conclusion

Upon review of the record, this Court finds that Reis was provided due process and the Hearing Officer's decision to sustain his license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Further, because the scope of the Court's review is limited to determining whether competent substantial evidence

existed in support of the hearing officer's findings and decision, the Court's review cannot go further to reweigh the evidence presented. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines that there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end as the issue is not whether the hearing officer made the best, right, or wise decision, instead, the issue is whether the hearing officer made a lawful decision).

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Richard Reis' Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 17th day of December, 2013.

/S/ _____
ANTHONY H. JOHNSON
Presiding Circuit Judge

EVANS and SHEA, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Michael J. Snure, Esquire and William R. Ponall, Esquire**, Snure & Ponall, P.A., 425 W. New England Avenue, Suite 200, Winter Park, FL 32789, ponallb@criminaldefenselaw.com, snurem@criminaldefenselaw.com and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, FL 32857, kimgibbs@flhsmv.gov, marianneallen@flhsmv.gov, on this 17th day of December, 2013.

/S/ _____
Judicial Assistant