

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

GRADY BISHOP,
Petitioner,

**CASE NO.: 2013-CA-005456-O
WRIT NO.: 13-35**

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**
Respondent.

DATE: October 22, 2013

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

David S. Katz, Esquire, for Petitioner.

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

BEFORE H. RODRIGUEZ, WOOTEN, and HIGBEE, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Grady Bishop (“Bishop”) 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 Hearing Officer's findings of fact and the ICJIS Arrest Affidavit, Florida Traffic Crash Report, and other related documents presented at the formal review hearing on March 20, 2013, the facts are summarized as follows: On February 13, 2013, at approximately 2:58 a.m., Officer J. Catanzaro with the Orlando Police Department responded to a hit-and-run crash with injuries. Per the Crash Report, the hit-and-run vehicle struck three vehicles that were stopped at intersections waiting for the traffic light to turn green: 1) The first vehicle was at N. Orange Avenue and E. Central Boulevard; 2) The second vehicle was at S. Orange Avenue and E. Pine Street; and 3) The third vehicle was at S. Orange Avenue and E. South Street. After striking the third vehicle, the alleged hit-and-run vehicle continued moving on S. Orange Avenue and then collided with a light pole, a road sign, and a parking meter at which point it was rendered inoperable and came to stop in the middle lane of S. Orange Avenue. Officer Catanzaro was informed by the driver of one of the struck vehicles that the hit-and-run vehicle was a large white pickup truck.

Shortly thereafter, Officer B. Broadhurst was in the area of the crash and heard the crash. Officer Broadhurst observed a white pickup truck inoperable in the location described above and approached the vehicle finding the sole occupant later identified as Bishop sitting in the driver's seat. Officer Broadhurst secured Bishop in handcuffs pending further investigation and to ensure that he did not flee the scene. Officer Broadhurst also called for backup for traffic control. Officer J. Campbell responded to the scene. Officer Catanzaro then completed his crash investigation and informed Bishop that Officer Campbell would be speaking to him in reference to a DUI investigation.

Officer Campbell then made contact with Bishop and read him the Miranda Warning. Officer Campbell then informed Bishop that based on his observations of Bishop's slurred speech and the odor of alcohol on his person, he believed that Bishop was under the influence of alcohol. Officer Campbell then asked Bishop if he was willing to submit to the field sobriety exercises. Bishop agreed to submit to the exercises and was released from the handcuffs. During pre-exercise screening, Bishop admitted to drinking alcohol prior to driving and rated himself an 8 on a 0 to 10 scale of impairment, with 10 being the most impaired. Bishop performed the exercises poorly, exhibiting further clues of impairment: 1) During the horizontal gaze nystagmus exercise ("HGN") Bishop swayed while standing, his eyes were bloodshot and glassy, the odor of alcohol was coming from his breath, and he lacked smooth pursuit and nystagmus in both eyes; 2) During the walk-and-turn exercise, Bishop paused between almost every step, nearly falling twice, performed an incorrect turn, and took an incorrect number of steps both down and back; 3) During the one-leg-stand exercise, Bishop only raised his foot approximately 2 inches from the ground not as instructed, counted incorrectly, and put his foot down 3 times.

Bishop was placed under arrest for DUI and was transported to the Orange County DUI Testing Center. At the DUI Testing Center, Bishop was observed for the 20 minute period, read the Implied Consent Warning, and was requested to submit to a breath test. Bishop submitted to the test with results of .178 and .191. Bishop was then taken to the Orange County BRC where he was charged with 3 counts of leaving the scene of a crash with property damage and DUI with property damage. Bishop's 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).

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).

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. (2013).

Arguments

Bishop argues that the Department's ruling is without merit as there is insufficient competent admissible evidence essential to the finding that the requirements of law are present. Specifically, Bishop argues that there was insufficient competent substantial evidence to support that probable cause existed to justify his detention and his de facto arrest and that reasonable suspicion existed to connect his vehicle to any BOLO ("Be On the Look Out") or dispatch about the crime of a leaving the scene of a crash.

Analysis

At the formal review hearing, Bishop's counsel moved to invalidate the license suspension arguing that Bishop was unlawfully detained. Specifically, Bishop's counsel argued that Officer Broadhurst lacked reasonable suspicion of a crime being committed when he placed Bishop in handcuffs and secured him in his patrol vehicle and the description of the hit-and-run vehicle being a large white truck was insufficient. The Hearing Officer denied the motion finding that as articulated in Officer Broadhurst's statement in the Arrest Affidavit, Officer Broadhurst had reason to believe that the crime of leaving the scene of a crash had been committed and that Bishop was only secured pending further investigation of the hit-and-run crash. The Hearing Officer also found counsel's argument claiming an insufficient description of the hit-and-run vehicle to be non-persuasive due to the timing and proximity of the large white truck from the original crash scene where Officer Broadhurst observed it sitting in the middle of the road, especially at nearly 3:00 a.m.

Upon review of the record, this Court finds that the Arrest Affidavit and the Crash Report provided competent substantial evidence for the Hearing Officer to conclude that Officer Broadhurst had reasonable suspicion to stop and detain Bishop in handcuffs as the officer had

reason to believe that the crime of leaving the scene of a crash had been committed and that it was necessary that Bishop be secured pending further investigation of the hit-and-run crash. *See Brown v. State*, 719 So. 2d 1243, 1245 (Fla. 5th DCA 1998) (holding that to justify a warrantless stop, an officer must have an articulable, reasonable suspicion that a violation of the law has occurred); *Dep't of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1351-1352 (Fla. 2d DCA 1992). Also, from review of the events leading up to when Officer Broadhurst located Bishop's vehicle as revealed in the Crash Report and Arrest Affidavit, this Court finds that it was reasonable for the Hearing Officer to find that the description of the hit-and-run vehicle as being a large white truck was sufficient in light of the timing, proximity, and condition of Bishop's vehicle in relation to the crash scenes.

Conclusion

Upon review of the record, this Court finds that Bishop 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.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **David S. Katz, Esquire**, Katz & Phillips, P.A., 509 W. Colonial Drive, Orlando, Florida 32804, dkatz@kplegalteam.com and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, kimgibbs@flhsmv.gov, marianneallen@flhsmv.gov, on this 23rd day of October, 2013.

/S/ _____
Judicial Assistant