

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

CAITLIN MICHELE SCHAEFFER,

CASE NO.: 2014-CA-001818-O

Petitioner,

v.

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

Respondent.

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

Matthew P. Ferry, Esquire,
for Petitioner.

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

BEFORE S. KEST, THORPE, and EVANS, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Caitlin Michele Schaeffer (“Schaeffer”) 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 her 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 testimony, Charging Affidavit, and other related documents presented at the formal review hearing on January 16, 2014, the facts are summarized as follows: On December 17, 2013, at approximately 2:13 a.m., Trooper Ramirez of the Florida Highway Patrol and Auxiliary and Trooper Christie, a ride along, were traveling southbound on State Road 434 from University Boulevard. Trooper Ramirez observed a black Ford utility vehicle traveling southbound on State Road 434 in the left through lane near Collegiate Way. The subject vehicle then proceeded to make a U-turn at a traffic signal in the median that was posted "Do Not Enter". The subject vehicle traveled back northbound on State Road 434 by cutting across a left turn lane for northbound traffic. Trooper Ramirez then made a U-turn, got behind the subject vehicle, and conducted a traffic stop.

After making the traffic stop, Trooper Ramirez approached the subject vehicle on the driver's side and observed several occupants inside the vehicle. Trooper Ramirez then requested the driver, later identified by her Florida Driver License as Schaeffer, to retrieve her driver's license and proceed towards the rear of her vehicle. Schaeffer then exited her vehicle and produced her driver's license. Trooper Ramirez observed that Schaeffer's eyes were red, glassy, and blood shot, and that she wore on her right wrist a blue wristband which is commonly associated with clubs/bars to indicate a person is of drinking age. Trooper Ramirez also observed that Schaeffer's speech was slurred, she had the distinct odor of alcohol coming from her mouth and lower face area, and she displayed an orbital sway while standing. Also, Schaeffer stated that she consumed alcohol around 7:30 p.m. in downtown Orlando and that she obtained the wristband from a UCF pub but she did not consume any alcohol there. Trooper Ramirez informed her of the reason for the traffic stop and after

verifying her information via an NCIC/FCIC inquiry, the trooper asked her to perform the field sobriety exercises. She complied but performed the exercises poorly. At that point, Trooper Ramirez placed Schaeffer under arrest for DUI and transported her to the Orange County Breath Test Center.

At the Center, Schaeffer was observed for twenty minutes, read the Implied Consent Warning, and was requested to submit to a breath test. Schaeffer first requested to speak with an attorney and Trooper Ramirez read her the decision from the Third District Court of Appeal.¹ Schaeffer then agreed to submit to the breath test. Thereafter, she changed her mind several times and stated that she would not take the breath test without first speaking to an attorney or her parents. After her request was denied, Schaeffer ultimately refused to take the breath test resulting in the suspension of her driver's license.

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's license was suspended for refusing to submit to a

¹ Although the case name and cite for the Third District Court of Appeal decision is not stated in Trooper Ramirez's Charging Affidavit nor in the testimony, this Court notes the case, *State v. Hoch*, 500 So. 2d 597 (Fla. 3d DCA 1986) (holding that a person has no Sixth Amendment right-to-counsel before being required to submit to a breath test and the results of such test are physical evidence and not testimonial; thus, a suspect has no Fifth Amendment right to consult with an attorney prior to deciding whether to submit to the test).

breath, blood, or urine test, 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 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. (2013).

Argument

In the Petition, Schaeffer argues that the Hearing Officer's decision to sustain her license suspension is not supported by competent substantial evidence that the arresting officer had reasonable suspicion to detain her for a DUI investigation and to request that she perform the field sobriety exercises. Specifically, Schaeffer argues that the facts known to Trooper Ramirez prior to requesting her to exit her vehicle to detain her for a DUI investigation were legally insufficient to support reasonable suspicion that her normal faculties were impaired by alcohol; thus, she concludes that her continued detention was illegal and violated the Fourth Amendment.

Analysis

Law enforcement officers can order drivers to exit their vehicles as a matter of routine procedure for police safety during traffic stops. *Pennsylvania v. Mimms*, 434 U.S. 106, 109-111 (1977) (holding that where the driver was lawfully stopped for driving the vehicle with an

expired license plate, it was reasonable for the police officer to order the driver to exit the vehicle and thus permissible under the Fourth Amendment, notwithstanding that the officers had no reason to suspect foul play from the driver at time of the stop as there had been nothing unusual or suspicious about his behavior); *Hewitt v. State*, 920 So. 2d 802, 804-805 (Fla. 5th DCA 2006) (holding that the police officer did not violate the Fourth Amendment by asking the driver to exit her vehicle when the driver was being temporarily detained pursuant to a traffic violation); *see State v. Watana*, 50 So. 3d 92, 95 (Fla. 4th DCA 2010) (citing *Mimms* and holding that once a vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to exit the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures); *see also State v. Olave*, 948 So. 2d 995, 997 (Fla. 4th DCA 2007) (citing *Mimms* and *Hewitt* and holding that after making the traffic stop for a broken taillight, the police officer was justified in requesting the driver to exit his vehicle as such request was not in violation of the Fourth Amendment). Accordingly, from review of the record in the instant case, there was competent substantial evidence for the Hearing Officer to find that Trooper Ramirez was justified in requesting Schaeffer to exit her vehicle pursuant to the traffic stop due to her making an illegal U-turn.

Further, Trooper Ramirez's observations of Schaeffer provided competent substantial evidence for the Hearing Officer to find that Trooper Ramirez was justified in detaining Schaeffer longer for the DUI investigation including requesting that she perform the field sobriety exercises. Trooper Ramirez's observations of Schaeffer included: 1) red, glassy, and blood shot eyes; 2) the blue wristband on her wrist; 3) slurred speech; 4) the distinct odor of alcohol coming from her mouth and lower face area; 5) an orbital sway while standing; and 6) Schaeffer's admission to consuming alcohol. *State v. Taylor*, 648 So. 2d 701, 703-704 (Fla.

1995) (finding that after making the traffic stop for speeding, when the driver exited his car, he staggered and exhibited slurred speech, watery, bloodshot eyes, and a strong odor of alcohol, and holding that these observations combined with speeding, were more than enough to provide the officer with reasonable suspicion that a crime was being committed, i.e., DUI, and thus, the officer was entitled to conduct the DUI investigation and the request that the driver perform field sobriety tests was reasonable under the circumstances and did not violate any Fourth Amendment rights).

Conclusion

Based on the foregoing, this Court finds that Schaeffer was provided due process and the Hearing Officer's decision to sustain her license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this Court's review cannot go further to reweigh the evidence presented and as long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and this Court's job is ended. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001).

Lastly, in this case, the Department filed its "Motion to Tax Attorney's Fees and for Sanctions Pursuant to Section 57.105(1), Florida Statutes", arguing that Schaeffer's Petition and Appendix are improper and frivolous by not being in compliance with administrative and appellate rules and case law. Upon review of said Motion and Schaeffer's Response, this Court finds that granting said Motion is not warranted in this case and thus, must be denied.

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

1. Petitioner, Caitlin Michele Schaeffer's Petition for Writ of Certiorari is **DENIED**.

2. "The Department's Motion to Tax Attorney's Fees and for Sanctions Pursuant to Section 57.105 Florida Statutes" filed March 20, 2014 is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 21st day of August, 2014.

/S/

SALLY D.M. KEST
Presiding Circuit Judge

THORPE and EVANS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Matthew P. Ferry, Esquire**, Law Office Warren W. Lindsey, P.A., P.O. Box 505, Winter Park, Florida 32790 and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, on this 21st day of August, 2014.

/S/

Judicial Assistant