

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2018-AP-134
DIVISION: AP-A

BETHANY MARIE BENNETT,

Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

On certiorari review of an administrative hearing.

June 19, 2019

PER CURIAM.

This matter is before the Court on Petitioner Bethany Marie Bennett's Petition for Writ of Certiorari filed December 17, 2018. We have jurisdiction. *See* §§ 322.2615(13) and 322.31, Fla. Stat.; Rule 9.030(c), Fla. R. App. P.

The Petition seeks an Order of this Court quashing the suspension of her driver's license following her arrest for DUI and reinstating her driving privilege. Petitioner raises three issues. In denying this Petition, the Court writes only to address the first issue raised by Petitioner, as the remaining two issues raised are due to be summarily denied without comment.

Just after 1:00 a.m. on September 21, 2018, Petitioner was traveling northbound in the southbound lanes of the East Beltway of Interstate 295 in Jacksonville, Duval County, Florida. Petitioner (after being observed by a Jacksonville Sheriff's officer and before the officer could initiate a traffic stop) pulled over into an adjacent construction

area and endeavored to turn around. During that time, the Jacksonville Sheriff's officer activated his emergency lights and stopped Petitioner in the construction area. The officer advised Petitioner she was observed traveling the wrong direction on the Interstate and he asked her for her license and registration. During the traffic stop, the officer smelled a moderate odor of alcohol and noticed Petitioner's speech to be thick-tongued. When asked if Petitioner had consumed alcohol, Petitioner stated she had two drinks at an earlier work party. As a result, the officer requested assistance with a DUI investigation. The officer did not pursue any DUI investigation prior to the arrival of the DUI investigating officer.

Officer J. Byrne, the DUI investigating officer dispatched to the scene, arrived approximately 18 minutes later. After Petitioner displayed additional signs of impairment (bloodshot eyes and slurred speech), Officer Byrne initiated a DUI investigation and advised Petitioner of same. After said investigation, Petitioner was arrested for DUI and transported to the Duval County Pretrial Detention Facility, where she submitted to a breath test and yielded results 0.169g/210L and 0.175g/210L.

In her first issue raised, Petition argues that the administrative hearing officer failed to comply with the essential requirements of the law and failed to afford Petitioner due process by holding that the "prolonged detention" of Petitioner until Officer Byrne's arrival was lawful notwithstanding that the initial officer did not himself pursue any DUI investigation prior to Officer Byrne's arrival in an effort to "dispel the suspicion that gave rise to [Petitioner's] detention." *See* Petition, p. 7. Petitioner's argument fails.

This Court's scope of review on the Petition is limited to three considerations: (i) whether procedural due process was afforded; (ii) whether the essential requirements of

the law were observed; and (iii) whether the administrative findings and judgment are supported by competent, substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

The subject *Terry* stop¹ is permissible so long as the stop is temporary and reasonable under the circumstances and the officer has a well-founded suspicion that the individual detained has committed, is committing or is about to commit a crime. *See Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968); *see also Fernandez v. State*, 57 So. 3d 915 (Fla. 3d DCA 2011). Whether the detention pursuant to *Terry* is temporary and reasonable is determined by the entirety of the circumstances of an individual case. *State v. Simons*, 549 So. 2d 785 (Fla. 2d DCA 1989).

Petitioner does not materially dispute that there existed a lawful basis to stop Petitioner or a well-founded, articulable suspicion of criminal activity sufficient to permit the *Terry* stop in this case – and appropriately so. This stop was objectively reasonable. Rather, Petitioner asserts that the officer’s stop was unnecessarily and unreasonably prolonged pending the arrival of Officer Byrne. *See* Petition, pp. 7-14. Thus, the issue for this Court to resolve is whether the stop of Petitioner was unconstitutionally prolonged.

A consideration in determining the reasonableness of the detention is whether the law enforcement authorities “diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.” *Saturnino-Boudet v. State*, 682 So. 2d 188, 192 (Fla. 3d DCA 1996) (quoting *United States v. Sharpe*, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575 (1985)). While there is no bright-line time limit on the investigative detention of persons or property, the detention should “last no longer than is necessary

¹ *See Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).

to effectuate the purpose of the stop.” *Id.* (quoting *Sharpe*, 470 U.S. at 684, 105 S.Ct. at 1574. While the actual time of the detention is a consideration, it is of less significance than other factors the court must evaluate in determining the reasonableness of the stop. *Id.*

The passage of approximately eighteen minutes until the arrival of Officer Byrne did not render the detention of Petitioner unreasonable. On the facts revealed in the record before this Court, certainly the Jacksonville Sheriff’s Officers had sufficient basis to stop Petitioner and reasonably detain her. Given the observations of the officer at the time of the stop, including detecting the odor of alcohol and thick-tongued speech, his immediate actions in summoning Officer Byrne to the scene were not unreasonable. Further, the ensuing eighteen-minute wait for Officer Byrne to arrive likewise did not render the *Terry* stop unreasonable.

In light of the entirety of the circumstances presented to the officer(s) involved in this stop, the conduct by the Jacksonville Sheriff’s Office demonstrates sufficient diligence in the pursuit of a means of investigation that was likely to confirm or dispel the officer’s suspicion that Petitioner was committing the crime of Driving Under the Influence. *See Saturnino-Boudet*, 682 So. 2d at 192. Our holding here is in consistent with other state and federal cases concluding stops of longer duration were reasonable under the circumstances. *See Cresswell v. State*, 564 So. 2d 480 (Fla. 1990)(finding that a 45-minute delay for use of a narcotics dog was not unreasonable); *Poliar v. State*, 898 So. 2d 1013 (Fla. 4th DCA 2005)(finding that a 20-minute delay after the initial stop was justified by the officer’s observations); and *Sands v. State*, 753 So. 2d 630 (Fla. 5th DCA 2000)(affirming the trial court’s finding that a 15-minute detention before the drug dog

arrived was reasonable); *see also United States v. French*, 974 F.2d 687 (6th Cir. 1992); *United States v. Hardy*, 855 F.2d 753 (11th Cir. 1988).

As a result, having reviewed the record of this cause, we conclude due process was afforded Petitioner, the hearing officer followed the essential requirements of law, and hearing officer's determinations are supported by competent, substantial evidence.

It is, therefore,

ORDERED:

The Petition for Writ of Certiorari is **DENIED**.

SOUD, SALVADOR, ROBERSON, JJ., concur.

Copies furnished to:

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