

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

CASE NO: 16-2020-AP-54

DIVISION: AP-A

REESE ALLEY,
Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition for Writ of Certiorari from the decision of the State of Florida Department of Highway
Safety and Motor Vehicles

APRIL 11, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's decision to uphold the suspension of his driver's license. On certiorari review of an administrative action, this Court's standard of review is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of the law had been observed, and whether the administrative order was supported by competent, substantial evidence." Dep't of Highway Safety and Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008); see also Dep't of Highway Safety and Motor Vehicles v. Trimble, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002).

The hearing officer found as follows:

On May 23, 2020, Lieutenant M. Hauge of the Baker County Sheriff's Office contacted Trooper J. Farley of the Florida Highway Patrol and requested that Trooper Farley respond to assist on a traffic stop that Lieutenant Hauge had conducted due to Lieutenant Hauge's concerns that the driver may be impaired. Lieutenant Hauge advised Trooper Farley that the Sheriff's Office had received a call on the lookout from a citizen regarding a reckless driver near the intersection of US 90 at County Road 125. Lieutenant Hauge observed a vehicle matching the provided description travelling eastbound. Lieutenant Hauge observed the vehicle travel from the inside travel lane in to the continuous left turn lane in the median. Lieutenant Hauge observed the vehicle changing lanes multiple times without using turn signals or establishing itself in any lane. Traffic surrounding the vehicle refused to pass it due to the driving pattern. Lieutenant Hauge was concerned that the driver may be ill, tired, or impaired and activated his emergency lights to conduct a stop on the vehicle.

Lieutenant Hauge made contact with the driver, subsequently identified as Reese Alley (hereafter referred to as the Petitioner). Lieutenant Hauge asked the Petitioner what was going on, in reference to the Petitioner's driving pattern, and also inquired where the Petitioner was coming from. The Petitioner stated that he was coming from Bryceville and heading home to Jacksonville, but the information the Petitioner provided did not make sense given the area where they were in Baker County. The Petitioner advised Lieutenant Hauge that he had been drinking. During their conversation, the Petitioner opened his glove box and Lieutenant Hauge observed what he believed to be a smoking pipe used for marijuana. The Petitioner closed the glove box again and when Lieutenant Hauge asked him to open the glove box back up, the Petitioner became argumentative and uncooperative. The Petitioner was asked to step out of the vehicle and was patted down to ensure that he did not have any weapons. The Petitioner continued to be uncooperative towards Lieutenant Hauge and other deputies who had arrived on scene; the Petitioner kept moving around after he had been asked to stop. For safety reasons, the Petitioner was handcuffed and placed in the back of a patrol car.

After speaking with Lieutenant Hauge, Trooper Farley made contact with the Petitioner who was still seated in the back of a patrol car. While speaking to the Petitioner, Trooper Farley observed that the Petitioner's eyes were bloodshot and watery; his face was flushed; and, Trooper Farley detected the odor of an alcoholic beverage emitting from the Petitioner's breath. The Petitioner advised Trooper Farley that he should not be driving due to his alcohol consumption. Trooper Farley removed the Petitioner from the backseat of the patrol car and relocated him to the front of his patrol car to continue speaking with the Petitioner. After relocating, Trooper Farley advised the Petitioner that he was beginning a driving under the

influence (DUI) investigation. Trooper Farley asked the Petitioner to relocate with him across the street to a paved parking lot, and the Petitioner agreed to do so.

After relocating to the parking lot, Trooper Farley read the Petitioner his Miranda warnings, and the Petitioner acknowledged his understanding of his rights. The Petitioner advised Trooper Farley that he smokes cannabis daily to help increase his appetite. The Petitioner stated that he started drinking at approximately 11:00 a.m. and stopped approximately four hours prior to his contact with Trooper Farley. The Petitioner stated that he consumed approximately eight beers in an eight-hour period. Trooper Farley asked the Petitioner to participate in field sobriety exercises, and the Petitioner agreed to do so. During the horizontal gaze nystagmus (HGN) exercise, Trooper Farley, a drug recognition expert (DRE), observed a lack of smooth pursuit in both of the Petitioner's eyes; distinct and sustained nystagmus at maximum deviation in both eyes; and, the onset of nystagmus prior to 45 degrees in both eyes. Trooper Farley also observed vertical gaze nystagmus.

During the walk-and-turn exercise, the Petitioner could not maintain his balance while in the instructional stage; stopped walking to steady himself during the exercise; missed touching heel-to-toe; stepped off the line; used his arms for balance; and performed the turn incorrectly. During the one-leg stand, the Petitioner swayed; used his arms for balance; hopped; and put his foot down. During the finger-to-nose exercise, the Petitioner swayed; and missed touching the tip of his nose with the tip of his finger. During the modified Rhomberg balance exercise, the Petitioner swayed; and he displayed eyelid tremors. Based on the totality of the circumstances, Trooper Farley arrested the Petitioner for DUI. Trooper Farley then requested that the Petitioner submit to a breath test. The Petitioner refused. Trooper Farley read the Petitioner the Implied Consent Warning, and the Petitioner still refused to submit to the requested test. Trooper Farley entered the Petitioner's information into the database and found that the Petitioner had prior refusals to submit to breath/urine/blood on March 18, 1994 and February 7, 2000. Based on the foregoing, I find the Petitioner was lawfully arrested for the offense of DUI.

I

In his first ground for relief, Petitioner argues the hearing officer departed from the essential requirements of the law by administering an oath over the telephone. Petitioner has failed to demonstrate a departure from the essential requirements of the law because Rule 15A-6013 only requires that oral evidence be taken under oath.

II

In his second ground for relief, Petitioner argues that he was denied procedural due process when the hearing officer found that the length of the suspension should be eighteen months.

However, the hearing officer made no such finding:

After consideration of the foregoing, I conclude as a matter of law, that the law enforcement officer had probable cause to believe that Petitioner was driving in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer, subsequent to a lawful arrest; and that Petitioner was told that if he 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.

These are the only findings required by section 322.2615, Florida Statutes, (2013). Nowhere in the statute is the hearing officer required to make a finding as to a prior refusal. Instead, it is the Department's role to determine the length of the suspension based upon the hearing officer's findings. Id. Here, the hearing officer made the appropriate findings after a noticed hearing.

III

In his third ground for relief, Petitioner argues the hearing officer's order fails to comply with the essential requirements of the law because the initial de facto arrest was unlawful. His argument fails because the officers' actions did not elevate the initial stop into a de facto arrest. See Studemire v. State, 955 So. 2d 1256, 1257-58 (Fla. 4th DCA 2007). Accordingly, the "Petition for Writ of Certiorari" is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.
CHARBULA, SALVADOR, AND SALEM, JJ., concur.

Susan Z. Cohen., counsel for Petitioner

Mark L. Mason, Esq., counsel for Respondent.