

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

CASE NO: 16-2018-AP-49

DIVISION: CR-H

MICHAEL ERIC STEVENS,  
Petitioner,

v.

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
Respondent.

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

January 29, 2021

**OPINION**

This cause is before this Court on Petitioner, Michael Eric Stevens's "Petition for Writ of Certiorari," filed on May 9, 2018. The Petition raises two arguments for review: (1) Whether or not the Department failed to afford Petitioner his due process right to a hearing with the appearance of impartiality; and (2) Whether or not the Department's order was supported by competent, substantial evidence when the hearing officer determined Officer Moeller legally detained and arrested Petitioner.

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).

(1)

Petitioner asserts the Department denied his due process right to a hearing with the appearance of impartiality. On February 14, 2019, this Court entered an Order Staying Proceedings until the First District Court of Appeal issued opinions in three cases involving the same issue raised by Petitioner. Since this Court entered that Order, the First District Court of Appeal per curiam denied second-tier certiorari review in each of those cases. Dep’t of Highway Safety and Motor Vehicles v. Sarris, No. 1D18-2081, 2019 WL 994049, at \*1 (Fla. 1st DCA Mar. 1, 2019); Skinner v. Dep’t of Highway Safety and Motor Vehicles, 266 So. 3d 820 (Fla. 1st DCA 2019); Fernandez v. Dep’t of Highway Safety and Motor Vehicles, 276 So. 3d 277 (Fla. 1st DCA 2019).

Nevertheless, Petitioner’s argument regarding the right to a hearing with the appearance of impartiality has been repeatedly rejected by the Fourth Circuit. See e.g., Meadows v. Dep’t of Highway Safety and Motor Vehicles, 26 Fla. L. Weekly Supp. 699a (Fla. 4th Cir. Sept. 27, 2018); Eman v. Dep’t of Highway Safety and Motor Vehicles, 16-2017-AP-000056-XXXX, (Fla. 4th Cir. May 22, 2017); Spears v. Dep’t of Highway Safety and Motor Vehicles, 16-2017-CA-000579-XXXX (Fla. 4th Cir. June 15, 2017); Bruschi v. Dep’t of Highway Safety and Motor Vehicles, 16-2017-AP-000065-XXXX (Fla. 4th Cir. Oct. 5, 2017). While not binding authority, this Court finds the reasoning in those opinions to be persuasive. Accordingly, Petitioner’s claim is denied.

(2)

Petitioner argues that the Department's order was supported by competent, substantial evidence when the hearing officer determined Officer Moeller had reasonable suspicion to detain Petitioner for a DUI investigation and probable cause to arrest Petitioner.

Law enforcement may temporarily detain a driver for a DUI investigation based on reasonable suspicion. State v. Taylor, 648 So. 2d 701, 703-04 (Fla. 1995). A reasonable suspicion "is one which has a factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge and experience." State v. Davis, 849 So. 2d 398, 400 (Fla. 4th DCA 2003). Florida courts have determined a combination of speeding, the smell of alcohol, and bloodshot or watery eyes may lead to sufficient reasonable suspicion sufficient to detain a driver for a DUI investigation. State v. Castaneda, 79 So. 3d 41, 42 (Fla. 4th DCA 2011); see also Origi v. State, 912 So. 2d 69, 71, 72 (Fla. 4th DCA 2005) (finding a police officer had sufficient reasonable suspicion to detain a driver for a DUI investigation where the latter drove at a high rate of speed, smelled of alcohol, and had bloodshot eyes); Mendez v. State, 678 So. 2d 388, 390 (Fla. 4th DCA 1996) (finding that the officer was justified in conducting a DUI investigation where the driver's face was flushed, she had bloodshot eyes, and her vehicle was illegally parked).

Probable cause sufficient to support an arrest "exists where the facts and circumstances allow a reasonable officer to conclude that an offense has been committed." Mathis v. Coats, 24 So. 3d 1284, 1288 (Fla. 2d DCA 2010). Determining the existence of probable cause requires considering the totality of the circumstances as analyzed in the context of the officer's knowledge, experience, and special training. Id.

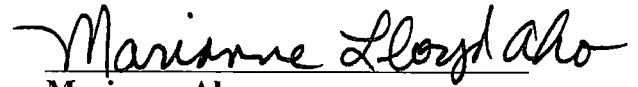
Here, competent, substantial evidence supported the hearing officer's finding that Officer

Moeller legally detained Petitioner for a DUI investigation. Officer Moeller observed Petitioner driving almost twenty miles per hour over the speed limit on J. Turner Butler Boulevard. As Officer Moeller activated his vehicle's lights to conduct a traffic stop, Petitioner applied his brakes in the travel lane and veered slightly into the left lane before slowly pulling his vehicle over to the right shoulder of the road. After stopping Petitioner, Officer Moeller requested Petitioner's license and registration, but Petitioner provided Officer Moeller with a work order that he believed to be his registration. Officer Moeller detected the odor of alcohol, Petitioner had a flushed face, and Petitioner stated he had consumed alcohol before attending a basketball game. The record, therefore, contains competent, substantial evidence to support the hearing officer's conclusion that Officer Moeller had reasonable suspicion to detain Petitioner for a DUI investigation.

The DVD, Arrest and Booking Report, and testimony from the formal review hearing also provide competent, substantial evidence to support the finding that Officer Moeller had probable cause to arrest Petitioner. These include the above observations, as well as Petitioner's driving pattern and conduct during the stop. Although Petitioner argues a discrepancy exists between the DVD and Officer Moeller's observations of Petitioner's driving after the former activated his lights, Officer Moeller's statement of events is not "totally contradicted and totally negated and refuted by video evidence of record . . . ." Wiggins v. Dep't of Highway Safety and Motor Vehicles, 209 So. 3d 1165, 1166 (Fla. 2017). This Court declines to reweigh the evidence and substitute its judgment for that of the hearing officer. See Dep't of Highway Safety and Motor Vehicles v. Favino, 667 So. 2d 305, 309 (Fla. 1st DCA 1995). The totality of the evidence before the hearing officer constitutes competent, substantial evidence to support finding Officer Moeller had probable cause to arrest Petitioner. Therefore, Petitioner's claim is denied.

Based on the foregoing, the "Petition for Writ of Certiorari" is **DENIED**.

**DONE AND ORDERED** at Jacksonville, Duval County, Florida, this 29<sup>th</sup> day of  
January, 2021.

  
**Marianne Aho**  
**Circuit Judge**

L. Lee Lockett, Esq., counsel for Petitioner

Mark Mason, Esq., counsel for Respondent  
Florida Department of Highway and Motor Vehicles