

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

CASE NO.: 16-2020-AP-45

DIVISION: AP-A

MICHAEL EUGENE ANDERSON,
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

October 19, 2021

PER CURIAM

This cause is before this Court on Petitioner Michael Eugene Anderson's "Petition for Writ of Certiorari," filed on October 26, 2020. Petitioner argues the hearing officer's order was not supported by competent, substantial evidence, departed from the essential requirements of the law, and denied due process when the hearing officer found Petitioner was lawfully arrested. Petitioner identifies two bases for this claim: (1) the Department failed to demonstrate Petitioner's detention was not unlawfully prolonged before the DUI investigation, and (2) the record evidence did not establish Officer Stanley spoke with Sergeant Wong before conducting the DUI investigation or arresting 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 & Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008); see also Dep’t of Highway Safety & Motor Vehicles v. Trimble, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002).

(1)

Petitioner alleges the hearing officer’s finding that Petitioner was lawfully arrested was not supported by competent, substantial evidence, departed from the essential requirements of the law, and denied due process because the Department failed to prove Petitioner’s detention was not unlawfully prolonged before the DUI investigation. The Arrest and Booking Report indicates Sergeant Wong stopped Petitioner at approximately 8:50 p.m. Officer Stanley was dispatched at 9:00 p.m. The Report details the time of arrest as 10:45 p.m., but it does not include the time of Officer Stanley’s arrival or the time at which Officer Stanley began the DUI investigation. After arriving at the scene, Officer Stanley made contact with Petitioner, walked over to a nearby parking lot, had a brief conversation with Petitioner, and conducted field sobriety exercises. Officer Stanley then arrested Petitioner. Petitioner asserts “[c]ommon sense would show that it would not take an hour and forty five (45) minutes to complete these tasks.” Therefore, the Department failed to demonstrate that an unreasonable delay did not occur between the initial detention and the DUI investigation.

A traffic stop must last no longer than the time it takes to write the citation. Cresswell v. State, 564 So. 2d 480, 481 (Fla. 1990). To justify an extended detention, a law enforcement officer must have reasonable suspicion of criminal activity. See Rodriguez v. United States, 575 U.S. 348, 355 (2015). “Whether the officer had reasonable suspicion is based on the totality of

the circumstances in light of the officer's background and experience" Napoleon v. State, 985 So. 2d 1170, 1174 (Fla. 1st DCA 2008).

Here, the hearing officer's order was supported by competent, substantial evidence, did not depart from the essential requirements of the law, and did not deny due process when the hearing officer determined Petitioner was lawfully arrested. Sergeant Wong stopped Petitioner after observing him commit two traffic violations. Petitioner's vehicle swayed intermittently to the left and right on the roadway; the vehicle straddled the left and right lane lines multiple times. See □ 316.089(1), Fla. Stat. (2020). Sergeant Wong observed other vehicles on the roadway. Further, Sergeant Wong could not read the vehicle's tag because a faded plastic covering obscured his view. See □ 316.605(1), Fla. Stat. (2020).

Once Sergeant Wong stopped Petitioner's vehicle at 8:50 p.m., he developed reasonable suspicion to detain Petitioner for a DUI investigation. Petitioner's speech was slightly slurred; his eyes were bloodshot and watery; and the odor of an alcoholic beverage emitted from inside the vehicle. Petitioner ultimately admitted he had consumed some beers a few hours ago. After Sergeant Wong requested his license, registration, and insurance, Petitioner produced an expired insurance card. Sergeant Wong had to remind Petitioner to produce his license and registration.

The record does not reflect where Officer Stanley was or what Officer Stanley was doing when he received the dispatch. Petitioner's counsel did not introduce evidence that any delay in Officer Stanley's arrival was a pretext designed to allow Sergeant Wong to search for probable cause for an arrest. See Sanchez v. Fla. Dep't of Highway Safety & Motor Vehicles, 26 Fla. L. Weekly Supp. 73a (Fla. 4th Cir. Ct. Mar. 19, 2018); see also Dep't of Highway Safety & Motor Vehicles v. Stewart, 625 So. 2d 123, 124 (Fla. 5th DCA 1993) ("[T]he burden of proof is by a preponderance of the evidence and . . . submission of the law enforcement officer's written report

to the hearing officer is enough to sustain the burden. This places on the suspendee the burden to call all witnesses, including the arresting officer, in order to rebut the state's prima facie case.”). Rather, the record reflects that Sergeant Wong noticed signs of impairment before and after stopping Petitioner. Officer Stanley was dispatched at 9:00 p.m., only ten minutes after Sergeant Wong initially observed Petitioner’s vehicle. The detention also was not overly intrusive because Petitioner was not handcuffed and was standing near the rear of his vehicle when Officer Stanley arrived at the scene. See Bartholomew v. Fla. Dep’t of Highway Safety & Motor Vehicles, 20 Fla. L. Weekly Supp. 312b (Fla. 9th Cir. Ct. Jan. 11, 2013). Therefore, the hearing officer’s order was supported by competent, substantial evidence, did not depart from the essential requirements of the law, and did not deny due process by determining Petitioner’s detention was not unlawfully prolonged.

To the extent Petitioner argues he was unreasonably detained because Sergeant Wong did not take steps to further the investigation before Officer Stanley’s arrival, this Court disagrees. The Twelfth Judicial Circuit Court’s interpretation of Rodriguez v. United States is persuasive: “[T]he United States Supreme Court made it clear in the Rodriguez case that additional reasonable suspicion developed during a stop obviates the requirement that law enforcement must either release a person or remain actively engaged in an investigation throughout the stop in order for the detention to be lawful.” State v. Guzman, 27 Fla. L. Weekly Supp. 402a (Fla. 12th Cir. Ct. May 24, 2019). Petitioner’s assumption that Sergeant Wong did not further the investigation before Officer Stanley’s arrival does not by itself render the traffic stop unreasonable. Moreover, Sergeant Wong had reasonable suspicion to justify detaining Petitioner after observing him commit traffic violations and noticing signs of impairment during the traffic stop. Petitioner’s claim is therefore denied.

(2)

Petitioner alleges the hearing officer's order was not supported by competent, substantial evidence, departed from the essential requirements of the law, and denied due process when the hearing officer found Petitioner was lawfully arrested because the record evidence did not establish Officer Stanley spoke with Sergeant Wong before conducting a DUI investigation or arresting Petitioner. When Officer Stanley arrived at the scene, Petitioner was not in actual physical control of a motor vehicle. Petitioner argues that Officer Stanley therefore could not lawfully arrest Petitioner without a warrant. Petitioner claims the fellow officer rule does not apply to the instant case because no evidence indicates Officer Stanley spoke with Sergeant Wong before conducting the DUI investigation and arresting Petitioner.

The hearing officer determined Officer Stanley composed the Arrest and Booking Report in chronological order. In the Report, Officer Stanley notes he was dispatched to assist Sergeant Wong, he includes Sergeant Wong's narrative describing his observations before stopping Petitioner, and Officer Stanley describes the DUI investigation. However, Petitioner argues the organization of the Report does not constitute sufficient evidence to establish whether Officer Stanley received and read the narrative from Sergeant Wong before conducting the DUI investigation.

Under the fellow officer rule, a law enforcement officer may develop probable cause to arrest based in part on information known to another officer. Fla. Dep't of Highway Safety & Motor Vehicles v. Porter, 791 So. 2d 32, 34 (Fla. 2d DCA 2001). In Porter, the arresting officer, Deputy Watson, authored an arrest affidavit that included observations from his fellow officer, Deputy Cox:

The DEF did operate a 1984 GMC Jimmy Pickup Truck [...] on SR 52 WB. Deputy Cox stopped him for going 45 mph in a 35 mph zone and leaving his lane

of travel over the right fog line twice. Upon contact I observed a strong odor of alcoholic beverage about him, glassy bloodshot eyes, and was unsteady on his feet. On video he started field sobriety tests then refused to perform them. I advised him it could be used against him. I then placed him under arrest for DUI. After Implied Consent he refused the breath test. He had 4 empty and 8 full Bud Light beers on ice in his truck.

Id. at 33. Deputy Watson also authored a sworn DUI report stating Porter “had been ‘witnessed and stopped by Deputy Cox.’” Id. The hearing officer suspended Porter’s license based solely on the documents submitted by the parties. Id. In granting the Department’s petition for writ of certiorari, the Second District Court of Appeal noted the hearing officer could have easily inferred from the documents that Deputy Cox had observed Porter speeding and crossing the fog line twice while operating his vehicle and that he had passed this information to Deputy Watson, who included it in his report. Id. at 35.

Here, the hearing officer properly determined that Officer Stanley received information from Sergeant Wong to develop probable cause under the fellow officer rule. Officer Stanley authored the Report. After noting he was dispatched to assist Sergeant Wong with a “possibly impaired driver,” Officer Stanley included Sergeant Wong’s narrative. Sergeant Wong observed Petitioner’s vehicle “swaying to the left and right,” as well as straddle the lines on the roadway. After Sergeant Wong stopped Petitioner’s vehicle, he noticed Petitioner’s speech was slightly slurred and his eyes were bloodshot and watery. The slight odor of alcohol emitted from the vehicle’s interior. Sergeant Wong asked Petitioner to produce his driver’s license, registration, and proof of insurance. Petitioner produced an expired insurance card. Sergeant Wong had to remind Petitioner to provide his driver’s license and registration. Officer Stanley followed Sergeant Wong’s narrative with his own observations upon arrival at the scene. From the organization and detail in the Report, the hearing officer could infer Sergeant Wong had passed this information on to Officer Stanley. Similar to the arrest affidavit in Porter, the Report in the

instant case did not include explicit language that Sergeant Wong relayed information to Officer Stanley before the latter conducted a DUI investigation. See id. at 33. Nevertheless, the inclusion of Sergeant Wong’s narrative within the Report and the Report’s organization constitute sufficient evidence for the hearing officer to determine the information has been relayed before the DUI investigation. Accordingly, Petitioner’s claim is denied.

(3)

On November 23, 2020, Petitioner filed a “Motion for Oral Argument,” requesting oral argument on the instant Petition. Since this Court finds Petitioner is not entitled to certiorari relief, his request for oral argument is moot.

Based on the foregoing, the “Petition for Writ of Certiorari” is **DENIED**, and the “Motion for Oral Argument” is **DENIED** as **MOOT**.

SALEM, SALVADOR, AND ROBERSON, JJ., concur.

Susan Z. Cohen, Esq., and David M. Robbins, Esq., counsel for Petitioner

Mark L. Mason, Esq., counsel for Respondent