

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

CASE NO: 16-2022-AP-24
DIVISION: AP-A

PAUL INFNAGER,
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

February 26, 2024

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).

Following a hearing held on November 18, 2022, the Hearing Officer found:

That on the 15th day of October 2022, at 6:29 p.m., Jacksonville Sheriff's Officer M.F. Iezzi, responded to a car wash location in reference to a wellbeing check where car wash employees stated that they observed the following:

1. The Petitioner speed (sic) onto the car wash property.

2. The Petitioner almost strike (sic) a curb and service table.
3. The Petitioner drove recklessly on the property.
4. That the Petitioner was unable to put his car in neutral and keep his foot off the brake pedal as instructed while in the car wash tunnel.
5. The Petitioner stumbling (sic) and appeared to be out of touch with reality.
6. That the Petitioner had slurred speech and the odor of an alcoholic beverage on his breath.

After making the aforementioned observations, the car wash employees took the Petitioner's keys from him to prevent him from driving because they thought he was impaired after which the Petitioner walked away from the car wash.

While in contact with the Petitioner and after he agreed to return to walk back to the car wash Officer Iezzi observed and noted the following:

1. That the Petitioner had the odor of an alcoholic beverage on his breath.
2. That the Petitioner's speech was slurred and mumbled.
3. That the Petitioner (sic) eyes were watery and bloodshot.
4. That the Petitioner's eye lids were droopy.
5. That the Petitioner was unsteady on his feet.
6. That the Petitioner's face was flushed.
7. That the Petitioner admitted taking Lorazepam and other pain killers for pain.

Jacksonville Sheriff's Officer Wildey, 68484, who was also on the scene stated the following in his statement to Officer Iezzi after watching the car wash security camera footage:

1. That he observed the Petitioner in the security camera footage drive onto the car wash property at a high rate of speed.
2. That he observed the car wash employees helping the Petitioner in the security camera footage because he was unable to put his vehicle's transmission in neutral.
3. That he observed the Petitioner in the security camera footage drive into the detailing bay.
4. That he observed the Petitioner sway while standing and appear to be very confused in the security camera footage.
5. That he observed the Petitioner stumble while walking in the security camera footage.

Officer Iezzi then asked the Petitioner to perform field sobriety tasks and while performing those tasks exhibited numerous cues (sic) of impairment as detailed in the Jacksonville Sheriff's Office Field Sobriety Report (DDL-3).

Based on the aforementioned the Petitioner was lawfully arrested for DUI and was read the Implied Consent Warning after which the Petitioner refused to take a breath test.
App 002-004.

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 or 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 a 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.

I find that all elements necessary to sustain the suspension for refusal to submit to a breath, blood, or urine test under section 322.2615 of the Florida Statutes are supported by a preponderance of the evidence.
App 005.

Petitioner alleges two grounds for relief: (1) Unlawful Detention, and (2) No Probable Cause for the Arrest. Both arguments are based on the same premise: that officers never personally observed Petitioner in physical control and operation of his motor vehicle. In support, Petitioner relies upon Steiner v. State, 690 So. 2d 706, 708 (Fla. 4th DCA 1997) and Wagner v. State, 2023 WL 3749370 (Fla. 4th DCA May 21, 2023). In both cases, the appellate court held that police could only effectuate an arrest under the following circumstances:

- (1) the officer witnesses each element of a prima facie case, (2) the officer is investigating an accident and develops probable cause to charge DUI, or (3) one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest.

Wagner, 2023 WL 3749370 at *2 (quoting Sawyer v. State, 905 So. 2d 232, 234 (Fla. 2d DCA 2005)). However, both Steiner and Wagner involved officers receiving information from a third party and then immediately arresting the defendant. In the instant case, the car wash employees

attempted to effectuate a citizens' arrest by taking the Petitioner's keys until officers arrived.¹ Once officers did arrive, they observed footage of Petitioner's reckless driving at the car wash. They further investigated by finding and speaking with Petitioner. Based on their observations, the officers concluded the Petitioner was under the influence of alcohol. Because officers viewed surveillance footage of Petitioner in physical control of a vehicle and conducted their own investigation, it cannot be said that the Hearing Officer departed from the essential requirements of the law by upholding the suspension of Petitioner's license. Accordingly, the Petition is **DENIED.**²

GUY, BEVERLY, and NORTON, JJ., concur.

Lee Lockett, counsel for Petitioner

Charles Burden, Jr., counsel for Respondent.

¹ Arguing that no citizen's arrest had occurred, Petitioner quotes the following from Steiner: "In order to effectuate a citizen's arrest, a misdemeanor must not only be committed in the presence of a private citizen, but here must be an arrest - that is a deprivation of the suspect's right to leave." 690 So. 2d at 708. However, the very next sentence distinguishes Steiner from the instant case: "In this case, even if we assume that the record supports the fact that the security guard observed the petitioner in control of his car, **the guard did nothing to effect the arrest by depriving the petitioner of his keys or otherwise.**" Id. (emphasis added).

² Petitioner's Motion for Oral Argument is **denied**.