

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. 2020-CA-010326-O

RUSSELL RANDALL,

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
BUREAU OF DRIVER IMPROVEMENT,

Respondent.

Petition for Writ of Certiorari from the
Department of Highway Safety and
Motor Vehicles, Bureau of Driver Improvement,
Dawn Jarvis, Hearing Officer.

Stuart I. Hyman, of
Stuart I. Hyman, P.A., Orlando,
for Petitioner.

Christie S. Utt, General Counsel, and
Kathy A. Jimenez-Morales, Chief Counsel, Tallahassee,
for Respondent.

Before ALVARO, EGAN and J. BEAMER, JJ.

Petitioner Russell Randall timely filed this petition seeking certiorari review of a State of Florida, Department of Highway Safety and Motor Vehicles (“the Department”), order affirming the suspension of his driver’s license for refusal to submit to a breath alcohol test. This Court has jurisdiction pursuant to Florida Rule

of Appellate Procedure 9.030(c) and sections 322.2615(13) and 322.31 of the Florida Statutes. We deny the petition.

Background

Randall requested a formal review hearing of his driver's license suspension pursuant to § 322.2615, Florida Statutes. Testimony and exhibits entered into evidence at the hearing support the facts adopted by the hearing officer in her written "Findings of Fact, Conclusions of Law and Decision." Specifically, while on routine patrol, Corporal Kristopher Kruse of the Clermont Police Department observed a vehicle traveling at a high rate of speed on State Road 50, clocking it by radar at 71 mph. Corporal Kruse observed the vehicle make multiple lane changes, some of which were in close proximity to other vehicles, with at least one without a blinker, and he observed that the vehicle was drifting from the left fog line to the right lane divider and made abrupt steering corrections multiple times while he was behind it. Corporal Kruse conducted a traffic stop.

Upon approaching the vehicle, Kruse observed Randall in the driver's seat. During his conversation with Randall, the corporal noticed Randall's glassy eyes, drooping eyelids, and slurred speech. When Corporal Kruse asked where Randall was coming from, he stated that Randall had to repeat the restaurant's name three times before the corporal understood him due to Randall's slurred speech. The corporal told Randall why he was stopped, and Randall argued that he was not doing

71 mph. Since Corporal Kruse had concerns that Randall may be impaired, he requested Officer Andrew Wilkins come to assist with a DUI investigation. Corporal Kruse could have fully investigated the incident, but if an arrest was ultimately necessary, the corporal could not leave the city to process the arrest since he was the supervisor on duty for the department that night.

Officer Wilkins responded to the scene, and after he made contact with Randall, he noticed that Randall's eyes were glassy and that he could detect the odor of alcohol from Randall's breath when he spoke. He requested Randall to step out of the vehicle and perform field sobriety tests, but Randall began to complain of injuries, stated he was retired NYPD, and made excuses as to why he could not complete the exercises. Randall complained of a panic attack after being prompted to exit the vehicle despite his breathing being fine and seemingly calm. He requested EMS, and when EMS arrived, he asked to be taken to the hospital. Randall was taken to South Lake Hospital, within the City of Clermont, for evaluation, but Randall ultimately refused medical assistance later at the hospital.

Officer Wilkins and Corporal Kruse responded to the hospital, and after Randall had been seen by medical personnel, Officer Wilkins again requested that Randall participate in the field sobriety exercises. When Randall refused to comply, he was arrested for DUI. Randall was observed for the 20-minute observation period, and Corporal Kruse then requested a sample of Randall's breath. Randall stated that

he did not refuse but could not provide the sample for medical reasons. Randall complained of chest pain despite already refusing x-rays, breathing problems despite refusing bloodwork to test for possible reasons for the breathing complications, and pain in his back and right leg. He continuously made excuses for not taking the breath test but requested that Corporal Kruse bring it to him so he could blow in the tube. Randall then blew air around the tube but refused to place his lips on the mouthpiece. After being read implied consent, Randall continued to avoid the breath test – ultimately causing the instrument to time out. During the second attempt, Randall said he was not doing it, so a refusal was registered and the appropriate paperwork was completed.

While in the hospital, Randall frequently became agitated and yelled for hospital staff. Each time he would do so, it had been noted that a distinct odor of alcoholic beverage would be present in the hospital room. Also, in the hospital, Randall stated he was unable to walk to the bathroom without a walker, but after he was issued the DUI citation and transported to the Lake County Jail, he was able to walk into the intake area without any assistance, directly contradicting his claims of only being able to walk with assistance.

The hearing officer determined that based on the above, Randall was placed under lawful arrest for DUI. She also noted that she had reviewed the video evidence in its entirety, and it supported the evidence in this case. She found that all the

elements necessary to sustain the suspension of Randall's license for refusal to submit to a breath, blood, or urine test under § 322.2615 of the Florida Statutes were supported by a preponderance of the evidence.¹ The suspension of Randall's license was affirmed. This action followed.

Standard of Review

On first-tier certiorari review of a hearing officer's decision to sustain the suspension of a driver's license, the circuit court's 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. *See City of Deerfield Beach*

¹ At a formal review hearing of an administrative suspension of a driver's license for refusal to submit to a breath test, the Department carries the burden of proving by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension, and the scope of the review shall be limited to:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended 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.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she 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.

§ 322.2615(7)(b), Fla. Stat. Implicit within the scope of review is consideration of the lawfulness of the arrest. *See Florida Dept of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011).

v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982); *Dep't Highway Safety & Motor Vehicles v. Cherry*, 91 So. 3d 849, 854 (Fla. 5th DCA 2011). The circuit court, sitting in its appellate capacity, may not reweigh the evidence considered by the hearing officer at a license suspension hearing. *See Cherry*, 91 So. 3d at 854-5. *See also* §322.2615(13), Fla. Stat. (subsection allowing for review via petition for writ of certiorari to the circuit court not to be construed to provide for a de novo review.)

Analysis

Randall submits several arguments contending that the hearing officer departed from the essential requirements of law and that her decision was not based on competent, substantial evidence. He bases some of these arguments on the dash cam and body cam videos he has provided as part of his appendix, citing *Wiggins v. Dep't Highway Safety & Motor Vehicles*, 209 So. 3d 1165 (Fla. 2017).

First, Randall asserts that Corporal Kruse had no reasonable suspicion to detain him longer than necessary to issue a citation and that he was illegally detained to allow Officer Wilkins to arrive and do the DUI investigation, as seen in the real-time video related to this case. Randall came to the attention of Corporal Kruse due to his unlawful speed and driving pattern. When Corporal Kruse stopped and then approached the vehicle, his report states that he observed that Randall's eyes were glassy, he had droopy eyelids, his speech was slurred, and he spoke with a "mushed

mouth,” pushing words together. His hearing testimony added that Randall’s eyes were bloodshot and that he moved with slow, sluggish movements.

The only video of Randall’s initial encounter with Corporal Kruse came from the officer’s vehicle dash cam. The footage of Randall’s driving begins as Randall’s vehicle is still in the distance and does not show a driving pattern substantially different from that described in the officer’s report and testimony. On approach to the vehicle, the dash camera is not pointed toward the driver’s side of Randall’s vehicle to see the parties’ interaction at that point – much less the condition of Randall’s eyes or the speed of his movements. It is difficult to hear the conversation clearly.

We find that the video evidence does not substantially conflict with Corporal Kruse’s arrest report and testimony related to the initial stop and detention such that the report and testimony could not be considered competent, substantial evidence for the hearing officer’s decision. The arrest report and testimony of Corporal Kruse support the hearing officer’s conclusion that there was reasonable suspicion to detain Randall for longer than necessary to write a traffic citation while waiting for Officer Wilkins to arrive at the scene and that the length of detention was not unreasonable.

Second, Randall also asserts that there was no reasonable cause for Officer Wilkins to detain him to conduct a DUI investigation, including the field sobriety exercises, since the record below is devoid of evidence of any communication

between the officer and Corporal Kruse about Kruse's observations, citing *Montes-Valeton v. State*, 216 So. 3d 475 (Fla. 2017), and since Officer Wilkins himself observed no slurred speech or bloodshot or red eyes on the part of Randall. However, Officer Wilkins testified at the hearing that he spoke to Corporal Kruse on his arrival, who informed him of why he did the stop and why he called the officer to the scene. In addition, Corporal Kruse can be heard on the dash cam video discussing the stop of Randall with Officer Wilkins both on the phone and once he arrives. While it is difficult to make out the entire conversation on the video, there is competent, substantial evidence presented in the case from which the hearing officer could determine there was an appropriate discussion between the officers, allowing the fellow officer rule to apply.

Further, Randall contends that the officers illegally entered his hospital room without a warrant or consent to require field sobriety tests and a breath test, citing *Jones v. State*, 648 So. 2d 669 (Fla. 1994). However, courts in Florida have made a distinction between the level of privacy to be afforded to a patient admitted to a hospital with a private room, like in *Jones*, and a patient in the emergency department of a hospital. See *State v. Butler*, 1 So. 3d 242, 247 (Fla. 1st DCA 2008); *Buchanan v. State*, 432 So. 2d 147, 148 (Fla. 1st DCA 1983).

At the hospital, Randall was in a room with an open door, not a curtained area. However, this room was still within the emergency department, not a private room,

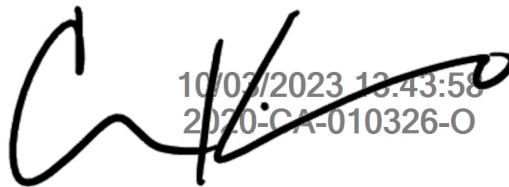
which would be associated with the heightened expectation of privacy discussed in *Jones*. Therefore, we find that there would be no requirement for an arrest warrant, search warrant, or Randall's consent for the officers to enter the room holding Randall in the hospital's emergency department to continue the DUI investigation of Randall, which had begun roadside. The hearing officer's rejection of Randall's argument on this point meets the essential requirements of law and is supported by competent, substantial evidence.

Finally, Randall contends that Officer Wilkins had no probable cause to arrest him for DUI and require a breath test. However, we find that when viewing the totality of the circumstances, there was competent, substantial evidence to support the hearing officer's decision that there was probable cause for Randall to be charged with DUI in this case, and that decision meets the essential requirements of law. Even if the officers' interaction with Randall in the hospital is not considered, the testimony and evidence presented of Randall's impairment included the time of the stop, Randall's difficulty maintaining his lane of travel, speeding, his failure to use a turn signal, the odor of alcohol emanating from him, his glassy eyes, his droopy eyelids, his occasionally slurred speech, his slow and sluggish movements, his combative demeanor after it was explained to him that he was being held for a DUI investigation, his refusal to submit to field sobriety exercises at the scene of the stop,

and Randall's feigned medical episodes to frustrate the DUI investigation.² If the officers' interactions with Randall within the hospital room are considered, although Randall refused to perform the field sobriety exercises, the officers could certainly observe his demeanor, speech, and condition. Those observations were listed in their reports. When viewing all of the record evidence, there was substantial, competent evidence of these factors in the record for the hearing officer to find that the arrest was lawful, and the testimony and evidence were not substantially contradicted by the real-time video submitted in this case.

Based on the foregoing, the Court concludes that Randall was provided procedural due process and that the hearing officer's order did not depart from the essential requirements of law and was supported by competent, substantial evidence. It is therefore ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE and ORDERED.

A handwritten signature in black ink, appearing to read 'Chad Alvaro', is written over a digital timestamp and case number.

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eSigned by Chad Alvaro 10/03/2023 13:43:58 YCpw81gh

CHAD K. ALVARO
Presiding Circuit Judge

EGAN and J. BEAMER, JJ., concur.

²It was within the officers', and then the hearing officer's, purview to determine that Randall was faking or at least substantially exaggerating his condition to frustrate the DUI investigation.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List via transmission of Notices of Electronic Filing generated by the ePortal System, including to the following: Stuart I. Hyman, Esq., Stuart I. Hyman, P.A., 1520 East Amelia Street, Orlando, Florida 32803; and Kathy A. Jimenez-Morales, Chief Counsel, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, A-432, Tallahassee, Florida 32399-0504.

Judicial Assistant