

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

SERGIO ANDRES RIANO GARCIA
Petitioner,

CASE NO.: 22-CA-000796

DIVISION: J

v.

STATE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI
AND
DENYING MOTION FOR LEAVE TO AMEND OR FOR REMAND

This case is before the Court on Petition for Writ of Certiorari filed January 27, 2022, and amended February 18, 2022. The petition is timely, and this Court has jurisdiction. §322.31, Fla. Stat.; Rules 9.100(c)(2) and 9.030(c)(3), Fla. R. App. P. Petitioner seeks review of a final order upholding the suspension of his driving privilege for refusing to submit to a breath test to determine the amount of alcohol in his blood. Petitioner contends that his arrest was unlawful because of the length of time he was detained by law enforcement and also that the unlawful detention rendered any consent to relocate and perform field sobriety exercises irredeemably tainted. Because a request for a breath test must be incident to a *lawful* arrest, Petitioner contends that the decision departs from the essential requirements of law. The Court has reviewed the petition, response, reply, appendices, and applicable law and determines that where law enforcement personally observed Petitioner traveling southbound in the northbound lanes of traffic at an excessive speed, and Petitioner fled when law enforcement attempted to initiate a stop, law enforcement had reasonable suspicion for the stop. Moreover, when Petitioner attempted to flee a second time, the use of handcuffs was warranted. Thereafter, indicators of impairment formed the basis for further detention and arrest, such that the resulting request that Petitioner submit to a breath test was lawful. The petition must therefore be denied.

FACTS AND PROCEDURAL HISTORY

On October 17, 2021 at approximately 4:39 a.m., Trooper Darling was driving southbound on Dale Mabry Highway when he saw Petitioner's vehicle driving southbound in the northbound lanes at an excessive speed. Trooper Darling immediately activated his emergency equipment and began to pursue Petitioner. Petitioner did not slow down and used a break in the median to transition to the southbound lanes. Petitioner continued to drive away from Trooper Darling, at times reaching speeds as high as 100 miles per hour, until Petitioner turned into Chica's Cabaret on West Martin Luther King Boulevard.

Trooper Darling saw Petitioner exit from the driver's side of the vehicle and a female passenger exiting from the passenger side. Petitioner and his passenger attempted to blend in with a crowd of people lined up at the entrance to the club. Trooper Darling exited his vehicle to effect the stop. The crowd pointed at Petitioner, confirming Trooper Darling's identification of Petitioner as the driver. Petitioner again ignored Trooper Darling's order directing him to show his hands and attempted to elude him a second time. Petitioner was subsequently placed in handcuffs, with Trooper Darling telling Petitioner he was being handcuffed for officer safety.¹ By then, Trooper Darling already added a fleeing and eluding charge to the reckless driving charge.

The record shows that Petitioner exhibited signs of impairment including an odor of alcohol; slurred speech; bloodshot and watery eyes; and swaying while standing. Although the record is unclear about what specific time Petitioner was placed in the police vehicle, it was between 4:47 a.m., when Petitioner turned into the parking lot, and 5:22 a.m., when Petitioner was transported to another location for field sobriety exercises he agreed to perform. Petitioner was handcuffed until transported to an adjacent parking lot to perform the field sobriety tests, which he performed poorly, providing additional indicators of impairment. Based on these indicators of impairment, Petitioner was arrested for DUI. Thereafter, Petitioner was requested and refused to submit to a breath test. As a result, his driving privileges were administratively suspended.

Petitioner requested and received a formal review of the administrative suspension. At the formal review a hearing officer is required to determine whether the law enforcement officer had probable cause to believe Petitioner was driving or in actual physical control of a vehicle while under the influence of drugs or alcohol, whether Petitioner refused to submit to a breath test after being requested to do so by a law enforcement officer, and whether the Petitioner was told that if he refused to submit to a test his driving privilege would be suspended for a year, or 18 months for a subsequent refusal. §322.2615(7)(b)(1-3), Fla. Stat. In her November 29, 2021 Order, the hearing officer concluded that the stop was justified because Petitioner was observed driving southbound in the northbound lane and fled when law enforcement attempted to initiate a traffic stop. The hearing officer found that the 34-minute delay between the stop and his removal to another location for field sobriety exercise was not unreasonable because other events in that timeframe justified the extended detention. Finally, the hearing officer found that the DUI arrest was lawful because law enforcement officer had probable cause based on the results of the field sobriety exercises. This petition followed.

STANDARD OF REVIEW

"[A] circuit court conducting first-tier certiorari review of an administrative decision is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative

¹ Trooper Darling testified that earlier in his pursuit of Petitioner, Petitioner pulled into a poorly lit dead-end area and seemed to be approached by other people, leading the trooper to believe that there was a possibility of an ambush.

findings and judgment were supported by competent, substantial evidence.” *Wiggins v. Florida Dep’t of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1170 (Fla. 2017).

ANALYSIS

It is axiomatic that the request for a breath test must be incident to a lawful arrest. §316.1932(1)(a)(1)(a), Fla. Stat. Where Petitioner’s wrong-way travel at an excessive speed provided reasonable suspicion for law enforcement to initiate a traffic stop, and Petitioner thereafter attempted to elude law enforcement officer not once, but twice, probable cause for an eluding charge existed. This justified the detention and use of handcuffs for officer safety. “Courts have generally upheld the use of handcuffs in the context of a *Terry* stop where it was reasonably necessary to protect the officer’s safety or to thwart a suspect’s attempt to flee.” *Hidelgo v. State*, 25 So. 3d 95, 97 (Fla. 3d DCA 2009). Although police should not routinely handcuff suspects to conduct an investigative stop, the determinative factor for the use of handcuffs is whether it is a reasonable response to the particular situation, not the officer’s subjective belief. *Id.*; *Studemire v. State*, 955 So. 2d 1256, 1258 (Fla. 4th DCA 2007) (notwithstanding lapse by officer, objective circumstances provided justification for use of handcuffs). Put another way, the test for evaluating an officer’s acts based on concern for safety is not the officer’s subjective thoughts, but the rational inferences that a reasonably prudent person would draw under the circumstances. *Studemire*, at 1258. Thereafter, where Petitioner exhibited signs of impairment including an odor of alcohol, slurred speech, bloodshot and watery eyes, and swaying while standing, probable cause for the arrest for DUI existed.

The court is unpersuaded by Petitioner’s argument that the time between his initial detention and the commencement of field sobriety exercises was excessive such that it requires that the suspension be set aside. In support of his argument, Petitioner relies on *Cocke v. State*, 889 So.2d 132 (Fla. 4th DCA 2004). In *Cocke*, defendant was stopped in response to a Be-On-the-Look-Out of a suspicious incident, and, after being patted down, was handcuffed and locked in the rear seat of a police car for at least 25 minutes, after which he gave a confession to smoking marijuana. *Id.* at 133. The court in *Cocke* found that the stop became a de facto arrest when the defendant remained handcuffed in a patrol car for a significant amount of time despite the fact that he did not resist arrest, had no weapon, was not belligerent, and there were no expressed concerns about officer safety. *Id.* at 135. The court found that in the absence of probable cause for the detention, the use of handcuffs was unwarranted. *Id.* at 134. Here, in contrast, Petitioner drove recklessly in an attempt to elude law enforcement, justifying the stop. Thereafter, Petitioner again attempted to evade law enforcement, justifying the use of handcuffs. In addition, Petitioner exhibited additional indicators of impairment, justifying the arrest for DUI.

Petitioner’s argument that the officer had no reason to believe that Petitioner remained a flight risk requires the Court to reweigh evidence. This court may not do so. *Dep’t of Highway Safety & Motor Vehicles v. Favino*, 667 So. 2d 305, 309 (Fla. 1st DCA 1995) (order granting a writ of certiorari overturned because the court necessarily reweighed evidence and substituted its own judgment instead of determining whether the evidence supported the conclusions made by the hearing officer). Petitioner also

argues that the alleged improper detention tainted the consent to be transported and to perform field sobriety exercises. The detention was not improper. Nor is it improper to transport a detainee to another, safer location to perform field sobriety exercises. *Andrix Johnson v. State Dep't of Highway Safety and Motor Vehicles*, 28 Fla. L. Weekly Supp. 1067a (Fla. 13th Cir. Ct. [Appellate] January 21, 2021).

PETITIONER'S MOTION FOR LEAVE TO AMEND

Additionally, Petitioner has filed a Motion for Leave to Amend or Alternatively a Motion for Remand of his petition because of evidence discovered after the entry of all briefs. This Court, in certiorari, does not "sit as a trial court to consider new evidence or make additional findings." *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001). Remand has been ordered by circuit courts where petitions have been granted because a party was denied due process. *Dep't of Highway Safety & Motor Vehicles v. Azbell*, 154 So. 3d 461, 462 (Fla. 5th DCA 2015). But the court refused to remand for a second bite of the apple with different evidence. *Id.* Only one chance to offer evidence is allowed unless the petitioner was prevented from presenting material evidence. *Id.* Here, the proffered testimony is that the officers can be heard giving a different reason for why they are using handcuffs, but this does not negate the circumstances present—that Petitioner twice attempted to elude law enforcement—which allowed for their use. The hearing officer determined that the events leading up to the use of the handcuffs justified the detention, and case law cited above supports that conclusion. The Court finds that the indicators of impairment and Petitioner's two attempts to elude officers were competent, substantial evidence to support this finding.

It is therefore ORDERED that the Motion for Leave to Amend or Alternatively Motion for Remand is DENIED. It is FURTHER ORDERED that the petition is DENIED.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 10/21/2022
Rex Barbas
By: _____
Rex Martin Barbas, CIRCUIT JUDGE

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