

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
Case No.: 2015CA014330

ROBERT A. GIBSON,
Petitioner,

v.

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Opinion filed: **AUG 17 2016**

Petition for Writ of Certiorari from the Department of Highway Safety and Motor Vehicles.

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PER CURIAM.

Robert A. Gibson seeks relief from an order of a hearing officer for the Department of Highway Safety and Motor Vehicles ("DHSMV") that affirmed his driver license suspension. Gibson argues the hearing officer's finding that he was lawfully arrested was not based upon competent, substantial evidence and therefore the order affirming the suspension must be quashed. We agree and grant the Petition.

On September 18, 2015, a police officer with the Palm Beach Gardens Police Department ("PBGPD") was on duty running radar in the City of Lake Worth, which was outside her

jurisdiction. The officer pulled Gibson over for speeding and following too closely to the car in front of him. When the officer approached Gibson, she noticed the smell of alcohol on his breath and observed other signs of intoxication. The officer asked Gibson to exit his vehicle to perform roadside tasks; Gibson was unable to follow simple commands. The officer then placed Gibson under arrest for Driving Under the Influence ("DUI") and transported him to the Palm Beach County Breath Alcohol Testing Center ("BAT") where Gibson submitted to a breath alcohol test and registered a breath-alcohol level above the legal limit. Based upon his breath-alcohol level, the DHSMV suspended Gibson's driver license.

Gibson requested a formal review hearing of the license suspension pursuant to section 322.2615(6), Florida Statutes. At the hearing, the arresting officer testified that she was "working for the mutual aid of PBSO" and was permitted to "help when the Sheriff's office calls for help." The mutual aid agreement was not entered into evidence and there was no further testimony as to the scope of the agreement. The officer also testified that Gibson was stopped for speeding and not for suspicion of DUI.

Gibson moved to vacate the license suspension based upon a lack of evidence proving the existence and terms of a mutual aid agreement that would provide authority for the PBGBD officer to perform a traffic stop in the City of Lake Worth. The hearing officer found that the arresting officer had probable cause to believe Gibson was driving a motor vehicle in Florida while under the influence of an alcoholic beverage and that Gibson had a breath-alcohol level that exceeded the lawful limit as provided in section 316.193, Florida Statutes. The hearing officer also concluded, based on the police officer's testimony, that the arrest was lawful pursuant to a mutual aid agreement between PBGBD and PBSO and that the officer had the

authority to make the arrest even though the traffic stop occurred outside the jurisdiction of the PBGPD. Petitioner seeks review of this decision.

Standard of Review

On certiorari review of an administrative action, this Court asks only “(1) whether procedural due process was followed, (2) whether there was a departure from the essential requirements of the law, and (3) whether the administrative findings and judgment are supported by substantial evidence.” *Dep’t of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

Analysis

Gibson argues that the hearing officer’s finding that the extra-jurisdictional arrest was lawful is not supported by competent, substantial evidence, therefore DHSMV cannot suspend his driver license because Gibson’s breath test was not conducted incident to a lawful arrest.

1. There is no competent, substantial evidence in the record to support a finding that Gibson was lawfully arrested.

When a law enforcement officer makes a stop outside of the boundaries of his or her jurisdiction, the officer has no power to make an arrest, absent certain exceptions. *Dep’t of Highway Safety & Motor Vehicles v. Pipkin*, 927 So. 2d 901 (Fla. 3d DCA 2005). The three circumstances that qualify as these exceptions are 1) if the officer is in “fresh pursuit” of the individual, *Porter v. State*, 765 So. 2d 76 (Fla. 4th DCA 2000), 2) the incident consists of a valid citizen’s arrest by the officer, *Phoenix v. State*, 455 So. 2d 1024 (Fla. 1984), or 3) there is a valid mutual aid agreement that allows the specific actions of the officer within the jurisdiction, *Daniel v. State*, 20 So. 3d 1008 (Fla. 4th DCA 2009). The first circumstance is inapplicable, but DHSMV argues that there is competent, substantial evidence to support a finding that the arrest

was authorized under a mutual aid agreement between PBGPD and PBSO and, alternatively, that it was a valid citizen's arrest.

We find that there was not competent, substantial evidence before the hearing officer to conclude that the arrest was lawful under a mutual aid agreement. While the evidentiary requirements for providing documentation of mutual aid agreements in administrative proceedings may be more relaxed than in criminal proceedings, there still must be competent, substantial evidence that a valid mutual aid agreement existed at the time of the traffic stop and that the arrest was made within the scope of its terms. *Lewis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 963a (Fla. 15th Cir. Ct. July 31, 2006); *Brennan v. State*, 20 Fla. L. Weekly Supp. 459a (Fla. 9th Cir. Ct. Nov. 28, 2012). In the instant case, the arresting officer's testimony that she was "working for the mutual aid of PBSO" and was permitted to "help when the Sheriff's office calls for help" was insufficient to establish the existence and scope of the mutual aid agreement.

DHSMV alternatively argues that regardless of whether a mutual aid agreement existed, the officer conducted a lawful citizen's arrest. We find that there is no competent, substantial evidence in the record to support that conclusion. While DUI is a breach of the peace, which would permit a citizen's arrest, the initial stop in such a citizen's arrest must be based upon the citizen's reasonable suspicion that the driver is intoxicated. *State v. Furr*, 723 So. 2d 842 (Fla. 1st DCA 1998). Nothing in the record indicates the officer had reasonable suspicion that Gibson was driving under the influence prior to the traffic stop; rather, the officer specifically testified that she stopped Gibson for speeding and not for suspicion of DUI. Based upon Gibson's traffic infraction alone, a citizen's arrest was impermissible.

2. Remanding to the hearing officer to determine whether exclusionary rule applies.

Given that there was no competent, substantial evidence to support the hearing officer's finding that Gibson was lawfully arrested, the Court's next inquiry is whether and how the exclusionary rule should apply. Gibson argues that the DHSMV cannot suspend his license because the breath test evidence was gathered pursuant to an unlawful arrest. The Second District has acknowledged this issue and makes clear that a determination that a stop was illegal does not necessarily require exclusion of a later breath test; however, the court declined to opine as to whether or when the exclusionary rule applies. *Roark v. Dep't of Highway Safety & Motor Vehicles*, 107 So. 3d 1131, 1133 (Fla. 2d DCA 2012). The Fourth District Court of Appeal has not addressed the applicability of the exclusionary rule in such a scenario as the one in this case.

Roark indicates that whether or not the exclusionary rule applies is a fact-dependent inquiry. *Id.* If such determination requires weighing the facts, the hearing officer would be in the best position to make the initial decision as to whether the exclusionary rule should prohibit consideration of the breath test results. As the hearing officer determined that the stop was lawful, the hearing officer never considered the applicability of the exclusionary rule in this case. Accordingly, the hearing officer must be afforded an opportunity to determine whether the exclusionary rule applies.

Ruling

The Court finds the hearing officer's finding that Gibson was lawfully arrested was not supported by competent, substantial evidence. Accordingly, the Petition for Writ of Certiorari is **GRANTED**, the final order of the hearing officer is **QUASHED** and the matter is **REMANDED** to for the hearing officer to consider the applicability of the exclusionary rule.
BLANC, CARACUZZO, and OFTEDAL, JJ., concur.