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NO. COA14-455
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

HAROLD WARD MAROTTI,
Petitioner,

v.

Wake County
No. 13 CVS 7001

JAMES FORTE, in his official
capacity as the COMMISSIONER OF
THE NC DIVISION OF MOTOR VEHICLES,
Respondent.

Appeal by petitioner from order entered 17 October 2013 by
Judge Howard E. Manning, Jr. in Wake County Superior Court.
Heard in the Court of Appeals 20 October 2014.

*George B. Currin Attorney at Law, by George B. Currin, for
petitioner-appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General
Kathryne E. Hathcock, for respondent-appellee.*

GEER, Judge.

Petitioner Harold Ward Marotti appeals from a superior
court order affirming the decision of the North Carolina
Department of Motor Vehicles ("DMV") to revoke petitioner's
driver's license for his willful refusal to submit to a chemical
analysis of his breath after being arrested for impaired

driving. Prior to the license revocation hearing, the district court entered an order dismissing the criminal charges against petitioner based upon its determination that the arresting officer did not have reasonable and articulable suspicion to initiate a traffic stop of petitioner's vehicle. Petitioner argues that in the license revocation proceedings the hearing officer should have considered the constitutionality of the initial traffic stop in determining whether the officer had reasonable grounds to believe that petitioner had committed an implied consent offense and that the evidence obtained as a result of the unconstitutional traffic stop should have been excluded. Petitioner's arguments have been rejected by this Court in *Hartman v. Robertson*, 208 N.C. App. 692, 703 S.E.2d 811 (2010), and, therefore, we affirm.

Facts

Around 2:45 a.m. on 22 April 2012, Officer Eric Ankarstran of the Garner Police Department observed petitioner driving several miles under the speed limit and swerving within his lane of travel. Officer Ankarstran stopped petitioner, who strongly smelled of alcohol, was disoriented, and had wandering blood-shot eyes. Petitioner performed poorly in several roadside sobriety tests and Officer Ankarstran arrested petitioner for driving while impaired.

Petitioner was subsequently asked to submit to a chemical breath test to determine his blood alcohol concentration ("BAC"), and his first breath sample registered a BAC of 0.23. Petitioner then failed to provide a second sample as required by N.C. Gen. Stat. § 20-139.1(b3). Officers asked petitioner to provide a breath sample two more times, but petitioner consistently blew too gently into the machine to provide a proper sample. Because petitioner had shown that he was capable of providing a proper sample, but then refused to provide a sample thereafter, the officers reported petitioner as having refused the chemical breath test.

On 30 April 2012, the DMV notified petitioner that his driver's license was subject to revocation due to his refusal to submit to the chemical breath test. Petitioner requested a hearing on the revocation.

On 25 February 2013, prior to the license revocation hearing, the Wake County District Court entered an order dismissing the criminal charges pending against petitioner as a result of his 22 April 2012 arrest. The court found that a review of the patrol car dash camera video recording from Officer Ankarstran's vehicle was not consistent with the officer's testimony that petitioner was weaving in his lane. Instead, the video revealed that petitioner was driving

normally. The court concluded that the facts were insufficient to establish that Officer Ankarstran had a reasonable and articulable suspicion to initiate a traffic stop. The order noted that the State had indicated that it did not intend to appeal the order.

At the DMV hearing on 8 May 2013, petitioner argued that the DMV should not revoke his license because the initial stop of his vehicle was unconstitutional as established by the 25 February 2013 district court order. The hearing officer, however, concluded that the legality of petitioner's arrest was not within the scope of the issues enumerated in N.C. Gen. Stat. § 20-16.2(d) for a license revocation hearing.

The hearing officer entered a decision affirming the revocation of petitioner's driver's license based upon his conclusions that (1) Officer Ankarstran had reasonable grounds to believe petitioner had committed an implied-consent offense, (2) petitioner was charged with an implied consent offense, (3) the charge did not involve death or critical injury to another person, (4) petitioner was notified of his rights as required by N.C. Gen. Stat. § 20-16.2(a), and (5) petitioner willfully refused to submit to a chemical analysis of his breath or blood.

Petitioner sought review of the hearing officer's decision in superior court. After a hearing on 2 September 2013, the

superior court entered an order affirming the decision revoking petitioner's driver's license. Petitioner timely appealed the order to this Court.

Discussion

On appeal from a DMV decision, the superior court sits as an appellate court and determines "whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license." N.C. Gen. Stat. § 20-16.2(e) (2013). This Court reviews the superior court's order to "'(1) determin[e] whether the trial court exercised the appropriate scope of review and, if appropriate, (2) decid[e] whether the court did so properly.'" *Johnson v. Robertson*, ___ N.C. App. ___, ___, 742 S.E.2d 603, 607 (2013) (quoting *ACT-UP Triangle v. Comm'n for Health Servs.*, 345 N.C. 699, 706, 483 S.E.2d 388, 392 (1997)).

Here, the superior court reviewed the record and the transcript of the DMV's administrative hearing and heard arguments from both parties. In its order affirming the DMV decision, the court specifically found that:

applying the review afforded by N.C.G.S. § 20-16.2(e), that there is sufficient evidence in the record to support the Findings of Fact of the [DMV's] Decision;

that the Conclusions of Law of the [DMV's] Decision are supported by the Findings of Fact; and that the [DMV] did not commit an error of law in revoking the Petitioner's license to drive a motor vehicle.

Thus, the order shows that the trial court applied the correct standard of review.

In arguing that the trial court erred in applying the standard of review, petitioner argues that the hearing officer committed errors of law by (1) failing to consider the constitutionality of the initial traffic stop in determining whether there were reasonable grounds to believe that petitioner had committed an implied consent offense and (2) by failing to apply the exclusionary rule to exclude at the revocation hearing all evidence obtained as a result of the unconstitutional stop and detention of petitioner.

Petitioner concedes that both of these arguments have been rejected by this Court in *Hartman*, 208 N.C. App. at 696, 698, 703 S.E.2d at 814, 816, which held that "the propriety of the initial stop is not within the statutorily-prescribed purview of a license revocation hearing" and that "evidence in a license revocation hearing similarly is not subject to the exclusionary rule." Although petitioner argues that *Hartman* was incorrectly decided, he acknowledges that this Court is bound by its prior opinion and asserts that he is presenting his two arguments to

preserve them for further review by our Supreme Court. Because we are bound by *Hartman*, see *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989), we hold that the hearing officer did not commit an error of law by failing to consider the constitutionality of the initial traffic stop or by failing to apply the exclusionary rule to the evidence presented at the revocation hearing.

After reviewing the record, we conclude that the trial court correctly determined that there was sufficient evidence to support the hearing officer's findings of fact and that its conclusions of law are supported by the findings of fact. Because the trial court properly applied the correct scope of review in affirming the DMV's decision, we affirm the order.

Affirmed.

Judges CALABRIA and McCULLOUGH concur.

Report per Rule 30(e).