

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

**CATHERINE WOOLWINE,**

**CASE NO.: 2013-CA-7385-O**

Petitioner,

**WRIT NO.: 13-48**

v.

**STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR  
VEHICLES, DIVISION OF DRIVER LICENSES,**

Respondent.

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DATE: October 23, 2013

Petition for Writ of Certiorari  
from the Florida Department of  
Highway Safety and Motor Vehicles,  
Linda Labbe, Hearing Officer.

William R. Ponall, Esquire, for Petitioner.

Richard M. Coln, Assistant General Counsel,  
for Respondent.

BEFORE EVANS, DOHERTY, and O’KANE, JJ.

PER CURIAM.

**FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

Petitioner, Catherine Woolwine (“Woolwine”) timely filed this Petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2616, Florida Statutes, the Order sustained the suspension of her driver license. This Court has jurisdiction under sections 322.2616(14), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

### *Findings of Fact*

As gathered from the Hearing Officer's findings of fact and the documents presented at the formal review hearing on April 23, 2013, the facts are summarized as follows: On March 16, 2013, at 12:53 a.m., Officer Christopher Olortegui of the University of Central Florida ("UCF") Police Department was on routine patrol on Aquarius Agora Drive within the jurisdictional limits of UCF when he observed a vehicle, a white Volkswagen, traveling towards the intersection of Aquarius Agora Drive and Gemini Boulevard without the headlights and taillights activated. The vehicle only had the daytime running lights activated. Based on these observations, Officer Olortegui initiated a traffic stop of the vehicle.

Upon making contact with the driver who was identified by her driver license as Woolwine, Officer Olortegui detected the impurities of an alcoholic beverage from her facial area. Woolwine admitted she drank one beer at 4:00 p.m. and had been Downtown. Officer Olortegui observed that Woolwine wore a club/bar wristband and noticed that her eyes were bloodshot, glossy, and watery. At that point, Officer Olortegui requested that Woolwine exit the vehicle and submit to the field sobriety exercises. Woolwine agreed to perform the exercises and upon completing them, Officer Olortegui determined that she was under the influence of alcohol and/or drugs, but he believed there was insufficient evidence to arrest her for DUI.

Based on Officer Olortegui's determination that Woolwine was under the age of 21 and exhibited impairment, he requested that Woolwine submit to a breath test. Woolwine agreed to take the portable breath test and the results were 0.105 and 0.104. Woolwine was issued a .02 Suspension Notice and a citation for driving without the vehicle's headlights and taillights activated during night hours under section 316.217(1), Florida Statutes.

### *Standard of Review*

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep’t of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). “It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum.” *Dep’t of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver’s license was suspended because the individual, then under the age of 21, drove with a blood-alcohol or breath-alcohol level of 0.02 or higher, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the law enforcement officer had probable cause to believe that the person was under the age of 21 and was driving or in actual physical control of a motor vehicle in this state with any blood-alcohol or breath-alcohol level or while under the influence of alcoholic beverages.
2. Whether the person was under the age of 21.
3. Whether the person had a blood-alcohol or breath-alcohol level of 0.02 or higher.

§ 322.2616(8)(a), Fla. Stat. (2013).

### *Arguments*

In the Petition for Writ of Certiorari, Woolwine argues: 1) The Hearing Officer's decision constituted a departure from the essential requirements of the law because the record failed to contain the affidavits required by section 322.2616(3), Florida Statutes; 2) The Hearing Officer's decision is not supported by competent substantial evidence that Officer Olortegui had probable cause to believe that she was under the age of 21; and 3) The Hearing Officer's decision it is not supported by competent substantial evidence that her vehicle was lawfully stopped.

### *Analysis*

*Argument I – addressing Officer Olortegui's Statement and Breath Test Affidavit:* In her Petition, Woolwine argues that the record failed to contain the affidavits required by section 322.2616(3), Florida Statutes. This statute requires that a law enforcement officer submit to the Department an affidavit stating the officer's grounds for belief that the person was under the age of 21 and was driving or in actual physical control of a motor vehicle with any blood-alcohol or breath-alcohol level and the results of any blood or breath test.

At the formal review hearing, no testimony was provided and among the documents admitted into evidence were the UCF Police Department Statement from Officer Olortegui ("Statement") and the Breath Test Result Affidavit for Under Age 21 Suspensions ("Breath Test Affidavit"). At the hearing, Woolwine's counsel brought motions to strike and ultimately a motion to invalidate the license suspension arguing that the record evidence lacked properly sworn affidavits.

First, Woolwine's counsel argued that Officer Olortegui's Statement contained an improper attestation/notarization. The Hearing Officer, in her Order, denied the motion to strike

the Statement finding that it was properly sworn and attested to. Specifically, the Hearing Officer found that Officer Olortegui swore under penalties of perjury, that his Statement was true and correct to the best of his knowledge and belief. Further, the Hearing Officer found that Officer Sergeant C. Garrett with badge #87 properly administered Officer Olortegui's oath and attestation swearing to the document.

Woolwine's counsel also moved to strike the Breath Test Affidavit arguing that it was improper because it did not contain a notary stamp and it was unknown who the attestor was. The Hearing Officer also denied that motion finding that there was nothing in section 322.2616, Florida Statutes, nor Rule 15A-6 of the Florida Administrative Code, requiring that breath test results be in affidavit form. She found that Officer Olortegui completed and signed the Breath Test Affidavit and the oath and attestation were properly administered by another law enforcement officer. In addition, the Hearing Officer found that Officer Olortegui's Statement also included the breath test results and was in affidavit form. Accordingly, the Hearing Officer denied the motion to invalidate the license suspension based on the record evidence showing that the required documents were properly signed and attested to by law enforcement. In her Petition, Woolwine again argues that Officer Olortegui's Statement is defective because it included the language "to the best of my knowledge and belief", instead of providing that the person swearing that the facts included are true.

Upon review of the documents at issue, this Court finds the following that is included in the documents: 1) Officer Olortegui's signature and badge # 114 is in the Statement under the portion "I hereby swear under penalty of perjury, that the foregoing statement is true and correct to the best of my knowledge and belief; 2) Officer Garrett's signature and badge #87 is in the "sworn to and subscribed before me" portion in the Statement; 3) Officer Olortegui's signature

and badge #114 is under the language stating that he hereby swears or affirms that he administered the Breath Test to Woolwine and states the breath test results; and 4) the attesting officer's signature and badge # 100 is contained in the "sworn and subscribed portion" of the Breath Test Affidavit.

Section 117.10, Florida Statutes, provides that law enforcement officers are permitted to administer oaths when engaged in the performance of official duties. Therefore, the question centers on whether the evidence provided to the Hearing Officer, without testimony, confirms that Officer Olortegui's Statement and the Breath Test Affidavit were sworn to before a proper notary or another law enforcement officer or corrections officer as required by law.

This Court finds that, as contained in Officer Olortegui's Statement and Breath Test Affidavit, the signatures (especially the clearly legible signature of Sgt. Garrett in the Statement), combined with the badge numbers, and the location of the signatures and badge numbers, support that both documents were sworn and attested to before a law enforcement officer in compliance with sections 117.10 and 322.2616(3), Florida Statutes. Accordingly, this Court finds that Officer Olortegui's Statement and Breath Test Affidavit provided competent substantial evidence in support of the Hearing Officer's findings and decision denying the motions to strike the documents and motion to invalidate the license suspension based on said documents. *See Gupton v. Dep't of Highway Safety & Motor Vehicles*, 987 So. 2d 737 (Fla. 5th DCA 2008) (addressing the attester's failure to designate on probable cause affidavit whether the attester was a notary public or a police officer and holding that such failure to do so did not result in the document not being an "affidavit," as required by statute because both notaries and police officers can administer oaths, and if the attester was a notary public, the notary's seal would have been affixed to the document).

***Argument II – addressing whether probable cause existed to believe that Woolwine was under the age of 21:*** In Officer Olortegui’s Statement, he states: “Ms. Woolwine was, on 3/16/2013, under the age of 21, therefore, because I did detect impairment, I initiated a .02 Violation Suspension and requested a Breath Test.” At the hearing, Woolwine’s counsel moved to invalidate the license suspension arguing that the documentary evidence failed to indicate how Officer Olortegui concluded that she was under the age of 21 and without that information the officer lacked the authority to administer the breath test. The Hearing Officer denied the motion.

Upon review of Officer Olortegui’s Statement, the officer also stated that he identified Woolwine by her Florida driver license. More importantly, Woolwine’s driver license was admitted into evidence and her date of birth as stated on the license proves that she was under the age of 21 when the incident occurred on March 16, 2013. Thus, Woolwine’s driver license and Officer Olortegui’s Statement provided competent substantial evidence for the Hearing Officer to deny the motion invalidate the license suspension based on this argument.

***Argument III– addressing whether the Stop was Lawful:*** As addressed at the hearing, Woolwine in her Petition also addresses Officer Olortegui’s Statement that indicates he stopped her vehicle for driving without headlights and taillights activated. Woolwine also cites sections 316.237 and 316.221, Florida Statutes, that specifies certain visible distance requirements for high and low beam headlights and taillamps. Woolwine argues that the officer’s statement failed to include any facts indicating the vantage point from which he allegedly made the observations; thus, she concludes that Officer Olortegui’s observations failed to establish probable cause that she violated the statutes.

This Court finds that this argument is misplaced. Officer Olortegui’s observations were that both the headlights and taillights were not activated. Thus, it was not necessary for Officer

Olortegui to include his specific vantage point when he made the observations because per his statement, the headlights and the taillights were not turned on at all; thus, there would be no distance of light to measure per the statutes. Accordingly, this Court finds that Officer Olortegui's Statement provided competent substantial evidence for the Hearing Officer to find that the stop of Woolwine's vehicle was justified for her failure to activate the vehicle's headlights and taillights in violation of section 316.217(1), Florida Statutes, addressing driving without headlights and taillights activated during night hours.

### ***Conclusion***

Based on the foregoing, this Court finds that Woolwine was provided due process of law and the Hearing Officer's decision to sustain her license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this Court's review cannot go further to reweigh the evidence presented and as long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and this Court's job is ended. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Catherine Woolwine's Petition for Writ of Certiorari is **DENIED**.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **William R. Ponall, Esquire**, Snure & Ponall, P.A., 425 W. New England Avenue, Suite 200, Winter Park, Florida 32789, [ponallb@criminaldefenselaw.com](mailto:ponallb@criminaldefenselaw.com) and to **Richard M. Coln, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, DHSMV-Legal Office, P.O. Box 570066, Orlando, FL 32857, [richardcoln@flhsmv.gov](mailto:richardcoln@flhsmv.gov), [marianneallen@flhsmv.gov](mailto:marianneallen@flhsmv.gov) on this 25th day of October, 2013.

/S/ \_\_\_\_\_  
Judicial Assistant