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

FREDERICK JOSEPH BRIAN, APPELLATE CASE NO: 2019-CA-005935-O

Petitioner,
vs.

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

Respondent.
_____/

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

Matthew P. Ferry, Esq.
Lindsey & Ferry, P.A.
Attorney for Petitioner

Mark L. Mason, Esq.
Assistant General Counsel
Florida Department of Highway
Safety and Motor Vehicles
Attorney for Respondent

Before ALVARO, WILSON, MUNYON, JJ.

PER CURIAM.

Frederick Brian ("Petitioner") seeks certiorari review of a Final Order entered by the Department of Highway Safety and Motor Vehicles ("Department") sustaining his driver license suspension for driving with an unlawful blood-alcohol level. We have jurisdiction and dispense with oral argument. *See* § 26.012(1), Fla. Stat. (2019); Fla. R. App. P. 9.030(c)(3). For the reasons discussed herein, we deny the instant Petition.

BACKGROUND

Following the Petitioner's arrest for driving under the influence, he requested a formal administrative review of his license suspension pursuant to section 322.2615, Florida Statutes

(2019). An evidentiary hearing was held for that purpose on April 4, 2019.[1] The Petitioner's counsel moved to strike the offense report from the record on the basis that the report was not in affidavit form as required by statute and, thus, should not be considered. Counsel argued that since the offense report was not signed or notarized properly, it should be stricken from the record. Additionally, counsel noted that the jurat did not contain the Petitioner's name, the arresting officer did not swear and affirm the offense report was true and correct, and there was a lack of information regarding the person who administered the oath and performed the attestation, including the fact that there was no officer identification number or notary seal included on the jurat. Thus, counsel argued that in the absence of the offense report, there was not competent and admissible evidence to establish that the arresting officer had probable cause to believe that the Petitioner was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical controlled substances.

On April 15, 2019, the Department Hearing Officer issued a Final Order and made the following findings of fact:

> I find that the following facts are supported by a preponderance of the evidence: On February 25, 2019 at approximately 1:56 a.m., Officer E. Barnhorst of the Apopka Police Department responded to a traffic crash which occurred in a parking lot involving a possible drunk driver. Upon arrival, Officer Barnhorst met with both drivers and the Fire Department. A traffic crash investigation was not conducted due to the crash occurring in a parking lot. The at fault driver, later identified as Frederick Joseph Brian, was still in the driver's seat of his vehicle and had the keys nearby. The Fire Department personnel advised the officer that Mr. Brian was not being cooperative. Officer Barnhorst spoke to Mr. Brian to make certain that he was not suffering a medical episode. The officer observed that Mr. Brian made slow and deliberate movements, his speech was slurred, mumbled, and thick tongued,

[1] The following exhibits were admitted at the hearing: 1) DDL-1: Florida Uniform Traffic Citation #A915XNE, 2) DDL-2: Florida Class E Driver License of Frederick Joseph Brian, 3) DDL-3: Apopka Police Department Offense Report (Five pages including the Jurat), 4) DDL-4: Apopka Police Department Statement by Wailani Colon, 5) DDL-5: Request for Test, 6) DDL-6: Orange County Sheriff's Office Alcohol Influence Form, 7) DDL-7: Implied Consent Warning, 8) DDL-8: Affidavit of Refusal to Submit to Breath and/or Urine Test, 9) DDL-9: For Official Use Only Driver Record of Frederick Joseph Brian.

his eyes were bloodshot and glossy, his clothing was disheveled, and he had difficulty answering simple questions.

Officer Barnhorst asked Mr. Brian some medical related questions to which Mr. Brian stated that he does not take any medications and was not in need of medical attention. Mr. Brian advised that he was not diabetic and that he knew what day and date it was. Mr. Brian stated that he didn't know why the police and fire been driving and did not hit another vehicle. After some discussion, the officer convinced Mr. Brian to allow the Fire Department to perform a medical checkup. Mr. Brian stood up and leaned against the vehicles for balance. Another officer stood with Mr. Brian while Officer Barnhorst spoke with the other driver.

Officer Barnhorst made contact with Ms. Wailani Colon Betancourt who was the driver of the not at fault vehicle. Ms. Betancourt provided a verbal statement as well as a sworn statement, which was written by another person. Ms. Betancourt advised Officer Barnhorst that she was sitting in her vehicle, which was parked in front of her apartment building. Ms. Betancourt stated that she observed Mr. Brian attempting to park in a space next to hers. While pulling in, Mr. Brian scraped the driver side of his vehicle along the passenger side of Ms. Betancourt's vehicle, causing damage to the passenger side mirror and bumper. Ms. Betancourt stated that she exited her vehicle to speak to Mr. Brian, but he ignored her and appeared drunk. Ms. Betancourt called the police.

Officer Barnhorst returned to speak to Mr. Brian and learned that he was again refusing to cooperate with the Fire Department. Mr. Brian stated that he did not want the Fire Department to do anything and signed a refusal form. Mr. Brian stated that he was going into his house and Officer Barnhorst told him that he could not leave until he had dispelled the officer's fears that he was operating a motor vehicle under the influence. Mr. Brian stated that he was in a parking lot to which Officer Barnhorst advised that it didn't matter.

Officer Barnhorst requested that Mr. Brian perform the Field Sobriety Exercises. Mr. Brian argued that he had not been driving. The officer told Mr. Brian that the investigation was past that point and requested again that Mr. Brian perform the exercises. Mr. Brian advised that he would not be doing the Field Sobriety Exercises. Officer Barnhorst informed Mr. Brian that based on the observations to that point, he would be subject to arrest if he did not perform the Field Sobriety Exercises. The officer advised Mr. Brian that the Field Sobriety Exercises were his opportunity to dispel the officer's concerns. Officer Barnhorst asked Mr. Brian if he felt he was okay to drive and Mr. Brian said that he did not.

After further discussion, Mr. Brian agreed to perform the Field Sobriety Exercises. Officer Barnhorst asked Mr. Brian if he wore glasses and Mr. Brian stated that he did not. The officer asked Mr. Brian to read his name tag and Mr. Brian could not, then stated that he needed his glasses. The officer asked if he could get Mr. Brian's glasses for him, but Mr. Brian didn't understand the question. Officer Barnhorst

> asked the question several times. Mr. Brian then stated that he would not be performing the Field Sobriety Exercises. Mr. Brian placed his hands behind his back at which time he was placed under arrest for DUI. Due to Mr. Brian's unsteady balance, he had difficulty getting into the back seat of the patrol vehicle. Mr. Brian eventually just laid down and said to close the door. Officer Barnhorst had to physically assist Mr. Brian into a seated position in the patrol vehicle.
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> Officer Barnhorst stated that he was suffering from allergies and could not smell the odor of an alcoholic beverage in the patrol vehicle. Officer Sullivan advised Officer Barnhorst that the odor of an alcoholic beverage was apparent in the patrol vehicle and that the back of the patrol vehicle smelled like a brewery while they were assisting Mr. Brian into his seat. The Intoxilyzer instrument was inoperable at the Apopka Police Department, so the officer transported Mr. Brian to the Orange County DUI Testing Center. Mr. Brian was observed for twenty minutes, then escorted to a breath testing room. Officer Barnhorst read the Implied Consent Warning to Mr. Brian and requested that he provide samples of his breath for testing. Mr. Brian advised that he would not be providing a breath sample. Officer Barnhorst informed Mr. Brian of the consequences of refusing and Mr. Brian stated that he understood and would still not be providing a breath sample. Mr. Brian's privilege to operate a motor vehicle was suspended for refusing to submit to the breath test.
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> Based on the foregoing, the Hearing Officer finds that Frederick Joseph Brian was placed under lawful arrest for DUI.

The hearing officer determined by a preponderance of the evidence that sufficient cause existed to sustain the Petitioner's suspension. The Department informed the Petitioner in an order the suspension of his driving privilege had been sustained. The Petitioner seeks timely review of the Final Order.

STANDARD OF REVIEW

On first-tier certiorari review of agency action, a circuit court must determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgment were supported by competent substantial evidence. *Broward Cnty. v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 843 (Fla. 2001). This Court may not reweigh the evidence or substitute its judgment for that of the agency, for it is the Department hearing officer's responsibility as trier of fact to weigh the record evidence, assess the

credibility of the witnesses, resolve any conflicts in the evidence, and make findings of fact. *Dep't of Highway Safety and Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989) (citation omitted). Instead, this Court's function is to review the record to determine whether the decision is supported by competent substantial evidence. *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'r*, 794 So. 2d 1270, 1273-75 (Fla. 2001); *see also Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1093-94 (Fla. 2003). Competent substantial evidence is defined as such relevant evidence as a reasonable person would accept as adequate to support the findings and decision made. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

The Florida Supreme Court has recently emphasized the "close review" a circuit court must conduct in reviewing the Department's decision to sustain a license suspension for DUI, as compared to first-tier review of other administrative hearings: "[a] court conducting section 322.2615 first-tier certiorari review faces constitutional questions that do not normally arise in other administrative review settings," in that the court must conduct "a Fourth Amendment analysis of whether there was reasonable suspicion to stop the vehicle or probable cause to believe that the driver was in physical control of the vehicle while under the influence of alcohol." *Wiggins v. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1172 (Fla. 2017). As such, probable cause sufficient to justify an arrest exists "where the facts and circumstances, as analyzed from the officer's knowledge, special training and practical experience, and of which he has reasonable trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed." *Dep't of Highway Safety and Motor Vehicles v. Favino*, 667 So. 2d 305, 309 (Fla. 1st DCA 1995) (quoting *City of Jacksonville v. Alexander*, 487 So. 2d 1144, 1146 (Fla. 1st DCA 1986). Furthermore, "the facts constituting probable cause need not meet the standard of conclusiveness and probability required of the circumstantial facts upon

which conviction must be based." *Id.* (quoting *State v. Riehl*, 504 So. 2d 798, 800 (Fla. 2d DCA 1987). Instead, probable cause is a conclusion drawn from reasonable inferences drawn from an arrestee's actions that support the officer's conclusion. *State v. Cote*, 547 So. 2d 993, 995 (Fla. 4th DCA 1989).

STAUTORY BACKGROUND

Section 322.2615 provides for the suspension of one's driving privilege for DUI. Specifically, the statute authorizes a law enforcement officer to suspend one's driving privilege when that person is driving or in physical control of a vehicle and has a blood or breath alcohol level of .08 or higher. Alternatively, a law enforcement officer may also suspend the driving privilege of one who refuses to submit to a urine, breath, or blood-alcohol test. § 322.2615(1)(a), Fla. Stat. (2019). If the driver refuses to perform a lawfully requested urine, breath, or blood test, the officer must notify the driver that his or her license will be suspended for a year, or eighteen months if the driver has previously had his or her license suspended for failure to submit to such tests. § 322.2615(1)(b)1.a. Section 322.2615 is to be read *in pari materia* with section 316.1932, *Fla. Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1076 (Fla. 2011), as revised on denial of rehearing (Nov. 10, 2011), a statute which provides that the requested sobriety tests "must be incidental to a lawful arrest" and that the officer must have "reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages." § 316.1932(1)(a)1.a., Fla. Stat. (2019). Once the license is suspended, the driver may request review by the Department through an administrative hearing before the Department within ten days after issuance of the notice of suspension. § 322.2615(1)(b) 3. The statute further provides that the review hearing will essentially function as a trial before the Department:

> Such formal review hearing shall be held before a hearing officer designated by the department, and the hearing officer shall be authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the officers and witnesses identified in documents [submitted for review], regulate the course and conduct of the hearing, question witnesses, and make a ruling on the suspension.

§ 322.2615(6)(b).

During a formal review hearing for license suspension for driving with an unlawful blood-alcohol level or breath-alcohol level of .08 or higher, the hearing officer is limited to the following issues, which must be established by a preponderance of the evidence[2]:

> 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; and
>
> 2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a). The hearing officer's authorization to determine the "lawfulness of the stop" is built into the provision of the essential element of whether probable cause existed. *Wiggins,* 209 So. 3d at 1167 (citation omitted). Finally, the hearing officer's decision may be reviewed by an Article V judge or judges in a circuit court by a writ of certiorari. § 322.2615(13).

DISCUSSION

The Petitioner argues that the offense report authored by Officer Barnhorst does not qualify as an "affidavit" under section 322.2615(2)(a) because the jurat is defective, therefore, it is not a document that can be considered self-authenticating. Further, the Petitioner argues that the lack of any reference to an odor of alcohol prior to his arrest precludes a finding of probable cause. For the reasons explained below, we find that there was competent substantial evidence to support the

[2] "Proof by a preponderance of the evidence means proof which leads the Hearing Officer to find that the existence of a contested fact is more probable than its nonexistence." *Smith v. State*, 753 So. 2d 703, 704 (Fla. 5th DCA 2000) (citations omitted).

hearing officer's decision to sustain the suspension of the Petitioner's driving privilege; thus, the hearing officer's decision was in accordance with the essential requirements of law.

I. The offense report was an affidavit properly relied on by the hearing officer because technical defects in an affidavit do not render it a nullity.

A DUI is a misdemeanor offense under Florida law. *See* Sections 316.193(2)(a), 775.08(2), 901.15(1), Fla. Stat. (2019). Generally, a law enforcement officer may only make a warrantless misdemeanor arrest when the officer has actually witnessed commission of the offense. *See* Section 901.15, Florida Statutes (2019). Pursuant to section 316.645, Florida Statutes (2019), however, a "police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash." Thus, a warrantless arrest at the scene of a traffic accident for misdemeanor DUI is the exception to the general statutory requirement that an officer can only make a warrantless misdemeanor arrest if the offense is committed in his presence. *See State v. Hemmerly*, 723 So. 2d 324, 325 (Fla. 5th DCA 1999) (a police officer is authorized to arrest when based on his or her personal investigation at the scene of a traffic crash, the officer has reasonable and probable grounds to believe that a driver has committed the misdemeanor crime of DUI).

Section 322.2615(2) provides that a "law enforcement officer shall forward to the department . . . a report of the arrest, including an affidavit stating the officer's grounds for belief that the person arrested was in violation of s. 316.193 . . . " Section 322.2615(11) provides that a "formal review hearing may be conducted upon a review of the reports of a law enforcement officer." Rule 15A-6.013 provides that in a formal administrative review proceeding, the hearing officer shall consider "any report or photocopies of such report submitted by a law enforcement

officer . . . relating to the arrest of the driver . . . " Moreover, Rule 15A-6.013(2) does not require extrinsic evidence of authenticity as a condition precedent to admissibility. Accordingly, when read in conjunction, these principles allow a hearing officer to consider any report, even unsworn, submitted by a law enforcement officer.[3] *See Tolentino v. Dep't of Highway Safety and Motor Vehicles*, 7 Fla. L. Weekly Supp. 304a (Fla. 9th Cir. Ct. 2000).

Section 117.10, Florida Statues (2019), permits law enforcement officers to administer oaths when engaged in official duties and, specifically, section (2) exempts law enforcement officers from the technical requirements of a notarial certificate. While the Petitioner argues that nothing in the record establishes that the attestor, "J. Miller," is a law enforcement officer, this exact argument has previously been rejected by courts. *See Dep't of Highway Safety and Motor Vehicles v. Padilla*, 629 So. 2d 180, 181 (Fla. 3d DCA 1993) (holding that there was no evidence to dispute that the affiant was fully and properly sworn before an authorized attesting officer); *Dep't of Highway Safety and Motor Vehicles v. McGill*, 616 So. 2d 1212, 1213-14 (Fla. 5th DCA 1993) (concluding that the documents filed by the officer were "affidavits," even though technically defective under the amended Chapter 117). Moreover, one police officer may attest to the signature of another police officer regarding implied-consent-law refusal affidavits. *See Dep't of Highway Safety and Motor Vehicles v. Brown*, 179 So. 3d 547, 549-550 (Fla. 3d DCA 2015).

We find that the technical defects contained in the offense report or "affidavit" here do not render it a nullity because it substantially complied with the requirements of the statute. *See Gupton*, 987 So. 2d at 738 (holding that the attestor's failure to designate on probable cause affidavit whether attestor was a notary public or a police officer did not result in the document not

[3] *See Gupton v. Dep't of Highway Safety and Motor Vehicles*, 987 So. 2d 737, 738 n. 2 (Fla. 5th DCA 2008) (noting that the formalities with respect to the submission of evidence are somewhat relaxed in the context of administrative proceedings).

being an "affidavit"); *Crain v. State*, 914 So. 2d 1015, 1018-24 (Fla. 5th DCA 2005) (holding that an improperly sworn affidavit was not a fatal defect); *Dep't of Highway Safety and Motor Vehicles v. Cochran*, 798 So. 2d 761, 763 (Fla. 5th DCA 2001) (holding that the possible defect in the affidavit alone was not a sound basis to overturn the hearing officer's findings which supported the license suspension when viewed with additional documentation that clarified the evidence); *McGill*, 616 So. 2d at 1213 (Fla. 5th DCA 1993) (holding that document was an affidavit despite technical defects in notarization when notarization substantially complied with statute or met generally recognized criteria for affidavits and there was no genuine issue about its authenticity); *Kaminski v. Dep't of Highway Safety and Motor Vehicles*, 22 Fla. L. Weekly Supp. 513a (Fla. 9th Cir. Ct. 2014) (holding that the law enforcement reports signed by the officer, which included a notary's certificate that the document had been "sworn to and subscribed before me," was sufficient evidence for the hearing officer to rely as the form substantially complied with the statute even when minor technical defects existed); *Gise v. Dep't of Highway Safety and Motor Vehicles*, 11 Fla. L. Weekly Supp. 394a (Fla. 9th Cir. Ct. 2004) (holding that the failure to indicate whether the officer was personally known or produced identification did not render the affidavit a nullity and was not fatal to the sworn statement because the officer's statement was still made under oath and subjected the officer to perjury if the affidavit proved untrue).

The Petitioner claims that "the arresting officer did not swear and affirm the "offense report" was true and correct." However, the jurat sheet specifically states as follows:

> I, the arresting law enforcement officer, swear and affirm that I have established probable cause to believe the DEFENDANT listed did commit the offense as detailed on the attached charging affidavit.

Officer Barnhorst did not type his name on this statement, but he signed the jurat directly below this statement, he printed his name next to his signature, and he did swear and affirm that the facts

detailed in the charging affidavit and initial report were true and correct. The hearing officer received the offense report with the jurat sheet, and the offense report is the only document in the record containing the facts that Officer Barnhorst relied upon in finding probable cause to charge the Petitioner with DUI. We find that the label the report is given, whether it be a narrative in an "offense report" or a "charging affidavit" is irrelevant because, as set forth above, courts routinely reject the notion that these types of defects render an affidavit a nullity. Additionally, the Petitioner argues that the jurat is defective because it does not contain the Petitioner's name. However, the hearing officer addressed this issue by noting that the case number on the jurat matched the case number on the offense report, which only names one person charged for DUI in violation of section 316.193 – the Petitioner. Accordingly, we find that the hearing officer did not depart from the essential requirements of the law in relying upon the offense report to make the required probable cause determination and to sustain the driver's license suspension.

II. The odor of alcohol prior to arrest is not a requirement to conduct a lawful arrest for DUI and the absence of such does not preclude a finding of probable cause.

Probable cause for an arrest may be based on circumstantial evidence and common sense inferences coupled with the general knowledge and experience of the officer. *See Dep't of Highway Safety & Motor Vehicles v. Whitley*, 846 So. 2d 1163, 1165-66 (Fla. 5th DCA 2003) ("Generally, probable cause sufficient to justify an arrest exists where the facts and circumstances, as analyzed from the officer's knowledge, special training and practical experience, and of which he has reasonable trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offence has been committed."). The State may satisfy its burden to prove the lawfulness of a DUI arrest by a preponderance of the evidence by simply submitting the arresting officer's written report, as was done in the instant case. *See Dep't of Highway Safety & Motor Vehicles v. Dean*, 662 So. 2d 371, 372-73 (Fla. 5th DCA 1995) ("By statute, [determination

of whether a preponderance of the evidence supports probable cause for an arrest] may be made based on the written documents and reports generated by law enforcement.").

We have previously held that "[w]hile it is permissible that a review hearing can be conducted on documentary evidence alone, the documentary evidence nevertheless must make it clear how the arresting officer arrived at his or her conclusions supporting probable cause, rather than merely reciting conclusions without reciting factual support for the conclusions." *Roberts v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 27a (Fla. 9th Cir. Ct. 2005), *cert. denied*, 938 So. 2d 513 (Fla. 5th DCA 2006). We find that the offense report here was more than adequate to support the hearing officer's findings. The record shows that the Petitioner was found at fault in a crash in which he collided into the passenger side of a parked vehicle. The record shows that after Officer Barnhorst arrived on scene and made contact with the Petitioner, Officer Barnhorst observed the following signs of impairment: the Petitioner had to lean against his vehicle for balance, his movements were slow and deliberate, he had trouble answering simple questions, he had slurred, thick-tongued and mumbled speech, his eyes were bloodshot, and his clothing was disheveled. Based upon these observations, Officer Barnhorst concluded that the Petitioner appeared to be under the influence of something. The Petitioner then refused to perform field sobriety exercises. We find that with or without the odor of alcohol, Officer Barnhorst's observations of the Petitioner provided him probable cause to arrest the Petitioner for DUI.[4] *See Dep't of Highway Safety and Motor Vehicles v. Hirtzel*, 163 So. 3d 527, 530-31 (Fla. 1st DCA 2015) (holding that there was competent, substantial evidence to support finding of hearing officer reviewing suspension of motorist's driver's license that probable cause existed to believe that

[4] We reiterate that "[p]robable cause sufficient to justify an arrest exists where the facts and circumstances, as analyzed from the officer's knowledge, special training and practical experience, and of which he has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed." *Sosnowski v. State*, 245 So. 3d 885, 888 (Fla. 1st DCA 2018) (citation omitted).

motorist was driving under the influence of alcohol, though there was no direct evidence that motorist drank alcohol prior to his involvement in single-vehicle accident); *Dep't of Highway Safety and Motor Vehicles v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012) (bloodshot watery eyes, slow movements, and poor performance on field sobriety exercises constituted competent substantial evidence of impairment that should not have been reweighed by the circuit court merely because no odor of alcohol was observed).

Additionally, our prior decision in *Perry-Ellis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 942a (Fla. 9th Cir. Ct. 2006), is instructive because it involved a traffic crash that did not occur in the presence of law enforcement officers. There, we held that the officer's investigation, including his personal observations of Perry-Ellis after the accident where she exhibited slurred speech, unsteady gait, and an inability to perform the field sobriety exercises, constituted competent substantial evidence to find that she was driving the vehicle while under the influence. Moreover, no other person was present at the scene with Perry-Ellis with actual or physical authority over the vehicle that was involved in the crash. Thus, we held that even without Perry-Ellis' admission, the reasonable inferences from the facts and circumstances of the case were sufficient to place her in apparent control of her vehicle.[5] *See also State v. Benyei*, 508 So. 2d 1258, 1259 (Fla. 5th DCA 1987) (holding that, although the vehicle may have been inoperable at the time the officer arrived at the scene, the circumstantial evidence was sufficient for the jury to find that the defendant was driving while intoxicated when her car went off the highway onto a median). Accordingly, we find that the offense report in the instant case provided ample factual support for Officer Barnhorst's probable cause determination.

[5] *See also Dep't of Highway Safety and Motor Vehicles v. Silva*, 806 So. 2d 551, 554 (Fla. 2d DCA 2002) (circumstances surrounding the accident together with the officer's observations provided ample probable cause for the driver's DUI arrest).

This Court's review of the record indicates that the hearing officer's decision to sustain the suspension of the Petitioner's driving privilege is supported by competent substantial evidence and was in accordance with the essential requirements of law. Where competent substantial evidence supports the findings and conclusions of the administrative agency and the record discloses neither an abuse of discretion nor a violation of law by the agency, a court should not overturn the agency's determination. *Cohen v. Sch. Bd. of Dade Cnty.*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984). The hearing officer, as the trier of fact, was responsible for resolving any conflicts in the evidence and was free to weigh and reject any testimony, as long as that decision was based on competent substantial evidence. *Dep't of Highway Safety & Motor Vehicles v. Wiggen*, 152 So. 3d 773, 776 (Fla. 5th DCA 2014). It is not this Court's task to reweigh evidence presented to the hearing officer, evaluate the pros and cons of conflicting evidence, and reach a conclusion different from that of the agency. *Id*. Accordingly, the Petition for Writ of Certiorari is denied.

DONE AND ORDERED in Orlando, Orange County, Florida this _____day of March, 2020.

CHAD K. ALVARO
Presiding Circuit Judge

WILSON and MUNYON, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order has been furnished to **Matthew P. Ferry, Esq.**, Attorney for Petitioner, **Lindsey & Ferry, P.A.**, 1150 Louisiana Avenue, Suite 2, Winter Park, Florida 32790; and **Mark L. Mason, Esq.**, Attorney for Respondent, **Office of the General Counsel, Department of Highway Safety and Motor Vehicles**, 2900 Apalachee Parkway, A-432, Tallahassee, Florida 32399, this _____ day of March, 2020.

_____
Judicial Assistant