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

ROBERT D. GARCIA,

CASE NO.: 2018-CA-008671-O

Petitioner,

v.

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

Respondent.

_______________________________/

Petition for Writ of Certiorari
from the decision of the Department
of Highway Safety and Motor Vehicles
Reginia Newton, Hearing Officer.

Michael D. Barber, Esquire, for Petitioner.

Mark L. Mason, Esquire, for Respondent.

TRAVER, D., Circuit Judge

Robert D. Garcia, Jr. ("Petitioner") seeks certiorari review of the Findings of Fact, Conclusions of Law and Decision of the Department of Highway Safety and Motor Vehicles ("Respondent"), upholding the suspension of his driver's license, entered on July 12, 2018. This Court has jurisdiction pursuant to Article V, section 4 of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(c)(2-3). Petitioner raises three arguments, all of which are predicated on an alleged absence of probable cause for law enforcement to stop Petitioner's car. For the reasons stated herein, the Court finds that substantial competent evidence supports the

Hearing Officer's finding and conclusion that probable cause existed for the traffic stop. Accordingly, the Petition for Writ of Certiorari is denied.

PROCEDURAL HISTORY

At approximately 1:37 a.m. on May 26, 2018, Trooper Fabio Azevedo and Auxiliary Trooper Kevin See responded as backup to a traffic stop conducted by Trooper Christopher Wademan on Michigan Avenue, east of U.S. 441. The Hearing Officer reviewed Trooper Wademan's sworn statement, which outlined the basis for the stop. Trooper Wademan observed a black car without tag light illuminating the license plate. He confirmed that these lights were inoperable when the car stopped at a red light, and thereafter, he activated his lights and sirens and stopped the car. Petitioner was the driver. Upon speaking with Petitioner, Trooper Wademan smelled alcohol. Petitioner, who explained he was driving home from a concert, had bloodshot, glassy eyes and slurred speech. Trooper Wademan then initiated a DUI investigation and wrote a warning citation for Petitioner's tag light.

Trooper Azevedo prepared the arrest affidavit. He also noted that Petitioner had slurred speech and bloodshot, glassy eyes. He also smelled marijuana, and when he asked Petitioner about it, Petitioner showed Trooper Azevedo a clear Ziploc bag with a green, leafy substance and a multicolored pipe. The Petitioner admitted that it was marijuana. Petitioner failed one field sobriety exercise before refusing to participate in any others. Trooper Azevedo placed Petitioner under arrest for DUI.

Law enforcement transported Petitioner to the Orange County Breath Testing Center, where officials observed Petitioner for 20 minutes, read him the Implied Consent Warning, and asked him to submit to a breath test. Petitioner refused to perform the test. Respondent suspended Petitioner's right to operate a motor vehicle for 18 months. This was his second refusal.

Administrative Findings

On July 2, 2018, the Hearing Officer conducted a hearing and entered several items into evidence without objection: a DUI Uniform Traffic Citation; Petitioner's driver's license; a Florida Uniform Traffic Citation; an arrest affidavit prepared by Trooper Azevedo; a sworn witness statement from Trooper Wademan; an implied consent warning; a request for test; a breath alcohol test affidavit; an agency inspection report; a refusal affidavit; an alcohol influence report; a driver transcript; and a cellphone video from the Petitioner's father from the day he went to pick up the Petitioner's car. The Hearing Officer noted the limited scope of the hearing.

Respondent did not present any live testimony supporting Trooper Wademan's stop at the hearing. Petitioner called his father, David Garcia, Sr., to testify. Garcia authenticated a video that he took when he went to pick up the Petitioner's vehicle two days after his arrest. The video showed the tag lights were operational at that time.

On July 12, 2018, the Hearing Officer entered her Findings of Fact, Conclusions of Law and Decision, wherein she affirmed the suspension of the Petitioner's driver's license. The Hearing Officer found that Petitioner's car did not have working tag lights when Trooper Wademan stopped Petitioner. The Hearing Officer found that Petitioner's father's video did not nullify Trooper Wademan's sworn statement establishing probable cause for the traffic stop. She noted that nobody had introduced Trooper Wademan's dashcam video, even though this evidence apparently existed. It is from that decision which the Petitioner filed his timely petition for writ of certiorari.

Legal Standard

"The duty of the circuit court on 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 the 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); *see also Education Development Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is axiomatic that where substantial competent 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 an agency's decision." *Cohen v. School Bd. of Dade Cty., Fla.*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984); *see also Campbell v. Vetter*, 392 So. 2d 6 (Fla. 4th DCA 1980).

In order to obtain a writ of certiorari, "there must exist (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on postjudgment appeal." *Reeves v. Fleetwood Homes of Florida, Inc.*, 889 So. 2d 812, 822 (Fla. 2004) (internal citations omitted). Additionally, "[i]t is neither the function nor the prerogative of a circuit court 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) (finding sufficient evidence to support the administrative decision and concluding the hearing officer afforded procedural and substantive due process rights to the respondent).

LEGAL ANALYSIS

Trooper Wademan's sworn statement establishes competent substantial evidence that Petitioner's tag lights did not work. *See* § 316.221(2), Fla. Stat. (2018) (mandating that "either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear.").

Accordingly, the Court will not disturb the Hearing Officer's determination that probable cause existed for Trooper Wademan to stop Petitioner. As an initial matter, the Court notes the limited scope of its review. It must only determine whether competent substantial evidence existed in support of the hearing officer's findings and final decision. *Dusseau v. Metro. Dade Cty. Of Cty. Comm'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end, because the issue is not whether the hearing officer made the best, right, or wise decision, but whether the hearing officer made a lawful decision).

The Hearing Officer entertained and disregarded a video from Petitioner's father taken two days after the traffic stop. That video does not contradict Trooper Wademan's observations at the time he stopped Petitioner, and Petitioner's reliance on a Florida Supreme Court case involving dashcam video is misplaced. *See Wiggins v. Fla. Dept. of Highway Safety & Motor Veh.*, 209 So. 3d 1165, 1173 (Fla. 2017). The *Wiggins* Court granted certiorari in a situation where dashcam video showing the actual traffic stop "clearly contradicted and totally refuted . . . ." law enforcement testimony. *Id.* This did not happen here, and a video taken two days later of a working tag light does not clearly contradict or totally refute Trooper Wademan's observation at the time of the stop. Of course, the Hearing Officer could have chosen to conclude, based on the video – or anything else – that Trooper Wademan's sworn statement was unreliable, and that no probable cause existed for his stop. But she did not make this conclusion, and the limited scope of this Court's review does not countenance second-guessing this decision. *See id.* at 1175 (Canady, J., dissenting) (concluding that the circuit court, in its appellate capacity, engaged in an improper reweighing of evidence in determining that the video of the stop contradicted the deputy's report, rather than simply determining whether there was competent and substantial

evidence in the record to support the hearing officer's conclusions, and therefore did not apply the correct law). After carefully reviewing the record below, we find that the hearing officer had competent substantial evidence to make her decision, and she did not depart from the essential requirements of the law in determining to continue to suspend the Petitioner's license.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 11th day of September, 2019.

DAN TRAVER
Presiding Circuit Judge

DOHERTY, J., Circuit Judge, concurs.

BLECHMAN, M., Circuit Judge, dissenting

The Petitioner raises three points on appeal, the first two of which address the initial vehicle stop and the last addresses the lawfulness of his arrest.

The facts relevant to the initial stop are contained in a brief written statement authored by Trooper Christopher Wademan of the Florida Highway Patrol and received into evidence at the administrative hearing. According to that statement:

> On May 26, 2018 at approximately 1:36 a.m. [Trooper Wademan] was traveling southbound on US-441 in the left travel lane approaching Michigan Street when [he] observed a black vehicle in front of my marked Florida Highway Patrol vehicle, the black vehicle having *no tag lights illuminating the license plate.* The vehicle then changed lanes into the left turn lane and stopped for the red traffic light at the intersection. [Trooper Wademan] again observed that the vehicle had *no lights that were illuminating the tag.* When the light turned green, the vehicle made a left turn onto Michigan Street and [Trooper Wademan] activated [his] emergency lights and siren and conducted a traffic stop. The vehicle pulled completely off the roadway and onto the grass shoulder of Michigan Street. [Trooper Wademan] approached the driver side of the vehicle and explained [his] reason for the stop…(italics added)

There is no disagreement that the sole reason the Trooper stopped the Petitioner's vehicle was the failure of the tag lights to illuminate the license plate. Obviously the other lights on the vehicle (headlights and taillights) were both operating and on at the time of the traffic stop at 1:36 in the morning since neither a citation was written to the Petitioner for them being off at 1:36 AM, nor was there mention of them being off in the Trooper's statement . At the hearing held on July 2, 2018, Trooper Wademan did not testify (although the D.U.I. investigator and Breath technician did, but both neither was present when the Petitioner's vehicle was stopped by Trooper Wademan). The Petitioner called his father to testify and introduced a video that his father made when he picked up Petitioner's vehicle. The video was authenticated and introduced into evidence at the hearing and according to the hearing officer showed that the tag lights were operational and illuminating.

On July 12, 2018, the hearing offer entered her "Findings of Fact, Conclusions of Law and Decision," wherein she affirmed the suspension of the Petitioner's driver's license. In making her determination, she stated that she relied on Trooper Wademan's statement on the issue of the lawfulness of the Petitioner's vehicle stop. She further noted that she watched the Petitioner's father's video depicting the tag lights of the vehicle as illuminating, but she indicated that Petitioner's father "did not show the handle being turned on and to what degree", of the mechanism that operated the vehicle's lights. She decided that it was reasonable that the Petitioner's vehicle lights were not fully activated at the time of the stop, resulting in the tag lights being off. The hearing officer concluded that there was probable cause to believe that the Petitioner 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, that the Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer subsequent

to a lawful arrest, and that the Petitioner was told that if he refused to submit to such a test his privilege to operate a motor vehicle would be suspended for a period of 1 year, or in the case of a subsequent refusal, for a period of 18 months. She stated that she found all of this by a preponderance of the evidence

In effect, the hearing officer determined, based upon neither testimonial evidence nor video evidence nor documentary evidence, that the headlights of the vehicle and the taillights of the vehicle could be turned on and the tag lights would remain off if the switch was not turned all the way on. I have never heard of, nor viewed such a scenario. I dare say it is a factual impossibility for the headlights and taillights of a vehicle to be on and the tag lights to be off. Regardless of my personal life experiences, this one vehicle may have such a capability. However, there is absolutely no evidence, much less competent evidence, to base a finding upon that. Yet this is exactly what the hearing officer did when she attempted to find a way to negate the probative value of the video showing that the tag lights were functioning, when she wrote that the video "did not show the handle being turned on and to what degree."

The hearing officer's finding that "…it is reasonable that the petitioner's vehicle lights were not fully activated at the time of the stop and as a result the tag lights were not on," is anything but reasonable, but more importantly, it is not supported by any evidence, much less competent substantial evidence. § 316.221(2), Fla. Stat. (2018), is the applicable statue for tag lights and it states, in part, "Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted when ever the headlamps or auxiliary driving lamps are lighted." Not only is the hearing officers finding not reasonable and illogical, it would also be illegal under the statute!

"The duty of the circuit court on 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 the 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); *see also Education Development Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is axiomatic that where substantial competent 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 an agency's decision." *Cohen v. School Bd. of Dade Cty., Fla.*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984); *see also Campbell v. Vetter*, 392 So. 2d 6 (Fla. 4th DCA 1980).

Utilizing the limited scope of our review, and determining whether competent substantial evidence existed in support of the hearing officer's findings, *Dusseau v. Metro. Dade Cty. Of Cty. Comm'rs*, 794 So. 2d 1270(Fla. 2001), there is no competent substantial evidence to support the hearing officer's findings with regard to the fully functioning tag light that appeared on the Petitioner's father's video in evidence. While the hearing officer could have chosen to conclude, based on the video-or anything else-that the trooper's sworn statement was reliable and that a reasonable suspicion existed for the vehicle stop, she did not. She made findings of fact that simply did not exist. As such, she departed from the essential requirements of law in finding that the Petitioner's vehicle was lawfully stopped.

Based upon the foregoing I respectfully dissent from the majority opinion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Michael D. Barber, Esq., Lindsey & Ferry, P.A., Lindsey & Ferry, P.A., P.O. Box 505, Winter Park, Florida 32790, and Mark L. Mason, Esq., Office of General Counsel of Department of Highway Safety and Motor Vehicles, 2900 Apalachee Way, A-432, Tallahassee, Florida 32399, on this 11th day of September, 2019.

Judicial Assistant