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

DALTON CANUP DOWNS APPELLATE CASE NO: 2018-CA-010540-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

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Before WOOTEN, MYERS, MUNYON, JJ.

PER CURIAM.

Dalton Canup Downs ("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. *See* § 26.012(1), Fla. Stat. (2018); 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 (2018). An evidentiary hearing was held for that purpose on August 21, 2018, and was held open until 4:00pm on August 23, 2018, to allow counsel time to provide additional documents and to make additional argument. Subsequently, the Department hearing officer who presided over the case made the following findings of fact in a written final Order:

> On July 23, 2018, at approximately 2:42 a.m., Trooper J. Simpson was dispatched to an accident. Upon arriving at the scene, the trooper observed two men, a security officer, and a man wearing a white tee shirt and blue shorts, standing next to a tan vehicle. Trooper Simpson asked the men what had happened and Mr. Dalton Canup Downs, later identified by his Florida driver license, stated that he didn't know what was going on. The trooper requested Mr. Downs provide his driver license and proof of insurance. The security officer handed Mr. Downs' driver license to the trooper while Mr. Downs continued to search for the insurance. Trooper Simpson asked Mr. Downs if he was okay or injured and Mr. Downs stated he was fine. Mr. Downs appeared to be disoriented and took some time to answer. Trooper Simpson was able to smell the odor of the impurities of an alcoholic beverage coming from Mr. Downs' mouth area, and Mr. Downs' speech was slurred. The trooper asked Mr. Downs for his insurance again, and noticed that while Mr. Downs was standing, he exhibited a very prominent sway. After approximately three minutes of searching his wallet, Mr. Downs stated that his insurance was in his car. Mr. Downs went to his vehicle and came back, stating that he was unsure of where it was and attempted to hand his wallet to Trooper Simpson, saying take anything you want. The trooper again asked for Mr. Downs' vehicle insurance and Mr. Downs replied that his mother had his health insurance card. The trooper advised Mr. Downs that he needed his vehicle insurance information at which time Mr. Downs said that it was in his vehicle. Mr. Downs again went to his vehicle and this time, returned with the vehicle insurance information. Trooper Victor Rivera arrived on the scene and took the witness statement of Mr. Justin David Humphreys, the security officer. Trooper Simpson advised Mr. Downs that he had completed the crash investigation and was now conducting a criminal DUI investigation. Trooper Simpson read the Miranda Warning to Mr. Downs and Mr. Downs said that he understood.
>
> Trooper Simpson asked Mr. Downs what had caused the accident and Mr. Downs stated that he hit a little bump or something. The trooper asked Mr. Downs if he had anything to drink and Mr. Downs stated he had not. The trooper asked Mr. Downs if he would be willing to perform Field Sobriety Exercises and Mr. Downs said that he would. Trooper Simpson explained and demonstrated each of the Field Sobriety Exercises before Mr. Downs attempted the exercise. Trooper Rivera also

demonstrated the Walk and Turn exercise to assist Mr. Downs in understanding how to perform the exercise. Mr. Downs became argumentative during the Field Sobriety Exercises and accused the trooper of harassment. Trooper Simpson advised Mr. Downs that the exercises are used to determine if he was impaired and are not meant to harass him. Mr. Downs performed poorly on the Field Sobriety Exercises by displaying an unsteady balance and failing to follow instructions. Trooper Simpson placed Mr. Downs under arrest for DUI and transported him to the Orange County DUI Testing Center. Mr. Downs was observed for twenty minutes and then escorted into a breath testing room. Trooper Simpson read the Implied Consent Warning to Mr. Downs and requested he submit samples of his breath for testing. Mr. Downs agreed and provided two breath samples with results of 0.190g/210L and 0.206g/210L. Mr. Downs' privilege to operate a motor vehicle was suspended for driving with an unlawful breath alcohol level.

Trooper Victor Rivera testified that he did not write a report. He arrived during the crash investigation which was being conducted by Trooper Simpson. The trooper stated that he spoke with Mr. Downs, but any conversation prior to Miranda being read would be covered under the Accident Report Privilege. Trooper Rivera stated he reviewed the packet prior to the hearing and had an independent recollection of Mr. Downs having red, glassy eyes, the odor or an alcoholic beverage coming from his person and breath, mood swings, failing to follow instructions, and rambling conversation. Trooper Rivera stated that he demonstrated the walk and turn exercise to assist Mr. Downs in understanding the exercise. The trooper stated that at one point, Mr. Downs accused the troopers of harassing him and stated he was recording everything and held out his hand as if he were holding a cell phone. Mr. Downs did not have a cell phone in his hand. Trooper Rivera asked Mr. Downs what kind of phone he had in his hand and Mr. Downs responded that he had an IPhone in his hand. Trooper Rivera made an independent statement and said that from his observations, he believed that Mr. Downs was under the influence of alcohol at the time of the crash.

Justin David Humphreys testified that he is a supervisor for a security company that provides security services for the property where the crash occurred. Mr. Humphreys currently holds a Class D security license. Mr. Humphreys stated that he was patrolling the property when he observed an abandoned vehicle in the bushes. Approximately two to three minutes later, Mr. Humphreys came into contact with two unknown males, one of which identified himself as the owner of the vehicle, Dalton C. Downs. Mr. Downs' demeanor was erratic, ranging from calm to aggressive. Mr. Downs accused Mr. Humphreys of running him off the road and stated that he was going to sue him. A few minutes later, Mr. Downs stated that he had hit a pebble in the road and that is why he went off the road. Mr. Humphreys requested Mr. Downs give him his driver license. Mr. Downs gave his driver license to Mr. Humphreys approximately ten minutes later. At one point, Mr. Downs attempted to leave and asked Mr. Humphreys if he was being detained, to which Mr. Humphreys stated he was not being detained at that time, but he advised Mr. Downs it would be best to stay at the scene until law enforcement arrived. Mr.

> Humphreys stated that Mr. Downs admitted to driving the vehicle. Mr. Humphreys did not make an independent statement.

At the hearing held on August 21, 2018, Trooper Simpson stated that he wrote the Petitioner's arrest report after arresting him. In response to counsel's questions, Trooper Simpson testified that he generally writes his arrest reports from memory and only copies and pastes the arrestee's name so that he does not misspell it. In the instant case, he testified that he did not copy and paste the arrest report from a prior one. In the arrest report, Trooper Simpson wrote, "I then told Mr. Downs to stand at the front of my vehicle and told Mr. Downs that he is under arrest for DUI, I then also made Mr. Bambei's parents aware that he was being arrested." When asked who Mr. Bambei was, Trooper Simpson testified that he did not know and the following testimony transpired:

> Q: Okay. Well, why did you write in your report, I then also made Mr. Bambei's parents aware the [sic] he was being arrested?
>
> A: I, you know, I may have—now that I'm reading it, I may have—I do keep a pad and paper. And the pad—and now I'm looking back at my pad and paper that I have and everything.
>
> . . .
>
> And the previous DUI from that was—was an actual person named Mr. Bambei. So as I was typing and just looking at things and gathering my thoughts as I was typing I may have—I put Mr. Bambei's—the little note that I wrote down, I looked at the wrong page as in Mr. Bambei's—Mr. Bambei's shouldn't have never been on there.
>
> . . .
>
> Q: Okay. And in this particular case you had a prior DUI where there was a Mr. Bambei. And you wrote—in your police report you copied from that—those notes that you had?
>
> A: From my notepad, yes.
>
> . . .

> Q: Okay. And so when you were writing—were there—was Mr. Downs' parents on the scene on July 23rd?
> A: No. There wasn't.
>
> . . .
>
> Q: If I told you that a lot of the exact same language in your report was identical to the report that you drafted for Mr. Bambei two days earlier, would that surprise you?

At this point, counsel attempted to impeach the testimony of Trooper Simpson by alleging that he had copied and pasted portions of a narrative he had previously drafted in a DUI arrest of another individual identified as Mr. Bambei. Counsel pointed out the same typo in each document as well as other similarities. Trooper Simpson opined that he may have typed into the arrest report his handwritten notes from another case in error. Counsel for the Petitioner offered the arrest report of Mr. Bambei into evidence on the basis that it impeached the testimony of Trooper Simpson because it established that he lied about copying and pasting a prior arrest report. In support of this, counsel argued the following: Trooper Simpson had left Mr. Bambei's name and mentioned his parents in Mr. Downs report; the statement in Mr. Downs' report, "during the exercise, Mr. Downs stopped to steady himself, took incorrect number of steps 11 steps [sic] forward and 10 steps back and could not keep balance while listening to the instructions" is identical to the same portion in Mr. Bambei's report—including the lack of space between "11" and "steps;" and Mr. Bambei is referred to as "Mr. Lewis" in Mr. Bambei's report. Thus, he concluded that Mr. Bambei's arrest report was relevant to show that Trooper Simpson, the officer who made the determination as to whether or not there was probable cause, lied in this hearing. The hearing officer found that the arrest report was not relevant and, on that basis, did not admit the report into evidence.

In the Order, the Department hearing officer held that Trooper Simpson had taken into consideration the totality of the circumstances, and Trooper Rivera had also corroborated his sworn testimony, based on his own independent recollection, that the Petitioner had demonstrated sufficient indicators of impairment to provide probable cause for the arrest. On this basis, the hearing officer denied all motions by Petitioner's counsel related to the similarities between the arrest report of Mr. Bambei and the arrest report of the Petitioner and stated that "counsel's argument included reference to the document which was not admitted into evidence and therefore, counsel's argument is not considered." The Petition filed in this Court timely followed.

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. *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. (2018). 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. (2018). 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, the hearing officer is limited to the following questions, which must be established by a preponderance of the evidence:

> 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.[1]

[1] In the instant case, the hearing officer's scope of review was limited to this issue and the issue of whether the Petitioner had an unlawful alcohol level as provided in section 316.193, Florida Statutes.

> 2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
>
> 3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b). 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 single contention presented in the instant Petition is that it was error for the hearing officer to refuse to admit Mr. Bambei's arrest report into evidence and to preclude counsel from presenting argument on the same to show that Trooper Simpson lied when he denied copying and pasting the report. While we find that the hearing officer erred in refusing to admit the prior arrest report as impeachment evidence and to allow counsel to make argument on the same, we find that the errors were harmless and affirm. *See Dep't of Highway Safety and Motor Vehicles v. Corcoran*, 133 So. 3d 616, 622 (Fla. 5th DCA 2014) ("Where the hearing officer makes an error, but the error is harmless, the circuit court should affirm.") (citing to *Goodwin v. State*, 751 So. 2d 537 (Fla. 1999)); *see also* §§ 924.051(7), 924.33, Fla. Stat. (2018).

Petitioner argues that the hearing officer violated his procedural due process rights when she prevented his counsel from introducing Mr. Bambei's arrest report as impeachment evidence to prove that Trooper Simpson lied under oath when he denied copying and pasting arrest affidavits, and also prevented counsel from cross-examining Trooper Simpson by disallowing questions regarding the similarities between the two arrest reports. He argues that the issue of

Trooper Simpson's credibility was relevant because, as the arresting officer, he was essentially the only witness who could testify about reasonable suspicion and probable cause in this case. He asserts that the proffered evidence would have undermined Trooper Simpson's determination of reasonable suspicion and probable cause—issues that are unquestionably relevant when the hearing officer is charged with determining whether there was probable cause for the Petitioner's arrest and whether he was lawfully arrested. He argues that, although Trooper Simpson mentioned slurred speech in his arrest report, he testified—with arrest report in hand to refresh his memory—to the entirety of his observations and never once mentioned slurred speech. In fact, he argues that the trooper testified that the odor of alcohol was the "biggest" indicator of impairment to him, which provided valid grounds for impeachment. As such, he posits that the hearing officer was entitled to weigh the evidence, but it was error to disregard his arguments when doing so and it was error to refuse to admit the other arrest report. For support, he cites *Lillyman v. Dep't of Highway Safety and Motor Vehicles*, 645 So. 2d 113 (Fla. 5th DCA 1994), *Dep't of Highway Safety and Motor Vehicles v. Auster*, 52 So. 3d 802 (Fla. 5th DCA 2010), and *Shi v. Dep't of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 620a (Fla. 9th Cir. Ct. 2014).

The Department asserts that the record evidence provided competent substantial evidence supporting the hearing officer's conclusions that the arrest was lawful, and that the impeachment evidence submitted by the Petitioner was insufficient to overcome this evidence. Thus, it contends that, while the hearing officer erred in failing to admit Mr. Bambei's arrest report as impeachment evidence and erred in refusing to consider argument on same, the errors were harmless for the following reasons: Trooper Simpson testified very specifically regarding his personal observations, which were corroborated by Trooper Rivera; competent substantial evidence existed through the independent testimony of security officer Mr. Humphreys and Trooper Rivera to

sustain the suspension; and the hearing officer heard argument regarding the similarities in the two arrest reports and argument challenging the accuracy of the sworn narrative, and by extension, Trooper Simpson's testimony.

Pursuant to section 322.2615(6)(b), a hearing officer has the authority to perform certain functions at the formal review hearing including examining witnesses, taking testimony, receiving relevant evidence, and regulating the course and conduct of the hearing. Further, a hearing officer, as the finder of fact, has discretion as to determining the relevance of the evidence including the testimony presented.[2] However, that discretion is not unfettered. A witness's credibility is always open to impeachment. *Tracy v. Kellner*, 697 So. 2d 932 (Fla. 2d DCA 1999); *see also* Fla. Admin. Code r. 15A-6.013(5) ("The driver shall have the right to present evidence relevant to the issues, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against the driver."); *Mendez v. State*, 412 So. 2d 965 (Fla. 2d DCA 1982) (determining that whenever a witness takes the stand, he ipso facto places his credibility in issue). As such, we find that the hearing officer erred in: refusing to admit Mr. Bambei's arrest report as impeachment evidence; preventing counsel from cross-examining Trooper Simpson regarding Mr. Bambei's arrest report; and precluding counsel from making any argument using Mr. Bambei's arrest report. However, we find that the hearing officer's evidentiary errors were harmless.

The harmless error test requires an appellate court to determine whether the error had a "substantial influence" on the outcome of a case, or whether the court is left with "grave doubt" as to its influence. *See Goodwin*, 751 So. 2d at 539. If the court cannot say with "fair assurance" that the error had no substantial effect on the outcome of a case, reversal is required under this standard

[2] Relevant evidence is defined as "evidence tending to prove or disprove a material fact." § 90.401, Fla. Stat. (2018). Additionally, the Florida Evidence Code states that "[a]ll relevant evidence is admissible except as provided by law." § 90.402, Fla. Stat. (2018).

because it is "impossible to conclude that substantial rights were not affected." *Id*. We find the cases Petitioner cited are distinguishable. In *Shi*, we held that procedural due process includes the right to cross-examine the Department's witnesses and granted the licensee's petition because the hearing officer cut the hearing short and refused to continue the hearing to a later date, thereby limiting the licensee's ability to cross-examine the arresting officer concerning Shi's performance on the sobriety exercises. 21 Fla. L. Weekly Supp. 620a. In *Lillyman*, the Fifth District Court of Appeal held that the hearing officer reversibly erred by limiting the licensee's cross-examination and prevented counsel from proffering evidence; however, the cursory opinion does not contain any discussion of the pertinent facts of the case and is therefore unhelpful to our analysis here. 645 So. 2d at 114. In *Auster*, the licensee requested a hearing on her license suspension for allegedly refusing a breath test and attempted to subpoena the breath technician to question him about whether she tried to retract her refusal; however, the hearing officer refused the subpoena. 52 So. 3d at 803. The Fifth District Court of Appeal found that the hearing officer reversibly erred in refusing to subpoena the breath technician because the question of whether she timely rescinded her refusal is a relevant issue when a license is suspended for refusing a breath test. *Id.* at 804.

Unlike in *Shi* where the hearing officer refused to allow the petitioner to finish cross-examining the arresting officer concerning Shi's performance on the sobriety exercises, here, counsel was able to fully cross-examine Trooper Simpson regarding the details of the DUI investigation. These provided probable cause for the arrest, including: the Petitioner's actions; his demeanor, such as red glossy eyes, slurred speech, the odor of alcohol emanating from his breath, mood swings, orbital sway, and an inability to follow instructions or obtain requested documentation; and his poor performance on the sobriety exercises. All of this exhibited indicia of impairment.

Additionally, we do not find *Auster* dispositive for several reasons. First, this is not a case where there was a refusal to issue any subpoenas; as previously noted, the Petitioner was able to subpoena and cross-examine all relevant witnesses to the DUI investigation. Second, the Petitioner did not refuse to take a breath test, whereby the issue of a timely recantation would have been directly relevant. Instead, the issue here was one of Trooper Simpson's credibility. But, the hearing officer heard other testimony from Mr. Humphreys and Trooper Rivera, both of which independently corroborated Trooper Simpson's testimony. Though we think the analysis in *Auster* could be applicable to the instant case, we do not find that the hearing officer's errors in this case rose to the level of reversible error, like those in *Auster*.

Even if Trooper Simpson's testimony was partially impeached by the errors in his sworn narrative, his personal observations that provided probable cause for the arrest were independently corroborated by Trooper Rivera and by Mr. Humphreys, who observed the Petitioner and recalled the events of that night. Trooper Simpson may have drafted a sworn narrative without properly reviewing and revising its content and may have incorrectly opined that the errors were caused by transcribing his handwritten notes from another case as opposed to copying and pasting a previously drafted sworn narrative without sufficiently revising its content. However, he also independently recalled the events surrounding the Petitioner's arrest. This was enough to resolve the credibility issues raised in the Petition and at the formal hearing, thus constituting competent substantial evidence for the hearing officer to conclude that the arrest was lawful.

Trooper Rivera independently recalled events without relying solely on Trooper Simpson's arrest report. He stated the following: his role in the arrest was as a secondary officer; the Petitioner had red blotchy eyes and the odor of an alcoholic beverage coming from his breath; the Petitioner was very talkative and kept jumping from topic to topic and failed to follow instructions regarding

the field sobriety exercises; and at one point, he had to demonstrate the Walk and Turn exercise for the Petitioner because of the Petitioner's inability to understand instructions previously given by Trooper Simpson. He testified that the Petitioner held his empty hand out as though he were holding a cell phone and claimed that he was recording everything. Then, upon questioning, the Petitioner insisted that he had an iPhone in his empty hand. He also confirmed that Trooper Simpson stated that he smelled alcohol on the Petitioner, the Petitioner's train of thought was all over the place, and the Petitioner could not locate his vehicle insurance information, so instead he handed Trooper Simpson his entire wallet to find it. Lastly, Trooper Rivera confirmed and witnessed that the Petitioner admitted to driving both during the initial crash investigation and again after Trooper Simpson had read him his *Miranda* rights. All of these facts were independently provided in testimony by Trooper Rivera and were consistent with the arrest report.

There was sufficient testimony at the formal hearing in this case to provide the hearing officer with competent substantial evidence that probable cause existed for the arrest for DUI. The hearing officer was not required to completely ignore the testimonies of Trooper Rivera, Mr. Humphreys, and Trooper Simpson simply because the arrest report may have contained some errors. The presence of borrowed language from a previous sworn narrative may have cast some doubt on the content of the arrest report, but the hearing officer could simply determine that the sworn testimony of the three witnesses sufficiently demonstrated a legal basis for the Petitioner's arrest. Contrary to the suggestion in the Petition, it was never demonstrated that Trooper Simpson lied in his testimony as to the cause of the error. Upon being presented with the error, Trooper Simpson stated twice in his testimony that he may have mistakenly input notes from his notepad into the typed narrative. The hearing officer was not required to find that Trooper Simpson intentionally lied, especially given that Trooper Simpson admitted he might have made an error.

Regardless of the reason the error occurred, it was not an incurable defect that invalidated every piece of documentary evidence and sworn testimony. This Court is not tasked with determining the credibility of Trooper Simpson's testimony. We are not entitled to reweigh the evidence, and instead, may only review the evidence to determine whether it supported the hearing officer's findings. *Dep't of Highway Safety and Motor Vehicles v. Stenmark*, 941 So. 2d 1247, 124 (Fla. 2d DCA 2006).

In this case, there was record evidence establishing that the Petitioner had been in actual physical control of the motor vehicle at the time of the crash. The Petitioner also exhibited various indicia of impairment, including red, glassy eyes, slurred speech, the odor of alcohol emanating from his breath, mood swings, an orbital sway, an inability to follow instructions or obtain requested documentation, and poor performance on field sobriety exercises. The Petition does not allege that these indicators of impairment were not supported by competent substantial evidence, nor was there any possibility all this record evidence could be stricken from consideration based on similarities in two arrest reports. The hearing officer's refusal to admit into evidence Mr. Bambei's arrest report for impeachment purposes, while made in error, is not sufficient to refute all the above facts supporting the hearing officer's conclusion. As such, because we find that the errors complained of in the instant case had no substantial effect on the outcome, the hearing officer's evidentiary errors were harmless.

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 High. Saf. & Motor Veh. 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 February, 2019.

/S/
WAYNE C. WOOTEN
Presiding Circuit Judge

MYERS and MUNYON, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order has been furnished to **Joel N. Leppard, Esq. and Joseph G. Easton, Esq.**, Attorney for Petitioner, **Leppard Law, PLLC.**, 638 Broadway Ave., Orlando, Florida 32803; 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 February, 2019.

/S/_____
Judicial Assistant