

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

[REDACTED],
Petitioner,

vs.

CASE NO:

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

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner, [REDACTED],
by and through undersigned counsel, and respectfully petitions this
Honorable Court, pursuant to Rule 9.100(c) and 9.030(c), Florida
Rules of Appellate Procedure, and Section 322.31, Florida Statutes,
for a writ of certiorari to review the decision of the Florida
Department of Highway Safety and Motor Vehicles, Bureau of
Administrative Reviews (“Department”), rendered April 18, 2025,
which affirmed the administrative suspension of Petitioner’s driving
privileges for his regular and CDL driver licenses.

JURISDICTION

Jurisdiction to review this matter is based upon Chapters 322.31 and 322.2615(13), Florida Statutes; Rule 9.030(c)(2) and Rule 9.100, Florida Rules of Appellate Procedure; Rule 15A-6.019, Florida Administrative Code and Article V, Section 5(b) of the Florida Constitution.

PARTIES

Petitioner, [REDACTED] (hereinafter referred to as “Petitioner”), is a resident of Hillsborough County, Florida, and was the subject of a driver’s license suspension (regular and CDL) imposed by the Department following a refusal to submit to a breath test on March 15, 2025. Respondent, State of Florida, Department of Highway Safety and Motor Vehicles (hereinafter referred to as “Respondent”), is a state agency of the State of Florida and is headquartered in Tallahassee, Florida, and maintains a local Bureau of Administrative Review (BAR) office in Tampa, Florida.

STATEMENT OF THE CASE AND FACTS

1. On March 15, 2025, Petitioner was stopped by Deputy Chad Douglas of the Hillsborough County Sheriff's Office.

2. According to Deputy Douglas' report: "On 03/15/2025, at approximately 2009 hours, I was patrolling westbound on Big Bend when I observed a gray Lexus RC350 (bearing FL tag UUFFFF) reversing eastbound in the westbound lane to turn northbound on Heritage Greens Pkwy." See Exhibit A, BAR Packet, P10.

3. According to the sworn Criminal Affidavit authored by Deputy A. Liggans, "On 3/15/2025, at approximately 2009 hours, Deputy C. Douglas ABN 263169 conducted a traffic stop at Heritage Greens Pkwy/Big Bend Rd on a silver Lexus, bearing FL tag UFFFF (VIN: JTHHE5BC7F5000774), for backing down the wrong way on the road." See Exhibit A, BAR Packet, P28.

4. After being stopped for the reasons stated in paragraphs 2 and 3 above, Petitioner was investigated by DUI Deputy Alan Liggans, who noted alleged signs of impairment and recorded a refusal to submit to field sobriety and breath tests. See Exhibit A, BAR Packet, P11-18; P28-31.

5. Petitioner timely contested the administrative suspension under Section 322.2615, Florida Statutes, filing a Prehearing Statement challenging both the basis for the stop and the implied

consent warnings applicable to his CDL and non-CDL licenses. See Exhibit B, Driver's Prehearing Statement, P35.

6. At the April 15, 2025, hearing, Petitioner submitted a Motion to Invalidate the suspension and to Suppress all evidence obtained after the allegedly unlawful stop ("the motion"). See Exhibit C, Motion to Invalidate and Suppress, P36-40.

7. The **only** evidence presented at the April 15, 2025, hearing was Exhibit A, the BAR Packet. See Exhibits D and E, hearing transcripts, P41-64.

8. Petitioner's oral arguments and written arguments in the motion to invalidate emphasized that the record lacked any indication that his brief backing maneuver interfered with traffic or was unsafe, as required by Section 316.1985, Florida Statutes, and relevant case law. See Exhibits C, P36-40; D and E, hearing transcripts, P41-64.

9. The hearing officer denied the motion and upheld the suspension, making findings well beyond the evidence presented in the record, including the conclusion that: "Lastly, I find Petitioner's driving pattern was sufficiently great that it exceeded the normal fluctuations which occur routinely in most driving patterns, was

greater than would be practicable and as such, the initial stop was lawful, notwithstanding the lack of effect on traffic. Accordingly, both the motion to invalidate the suspension and motion to suppress are denied.” See Exhibit F, Findings of Fact, Conclusions of Law and Decision, P69, L12-16.

10. The complete record before the hearing officer lacked **any** factual support for that conclusion. See Exhibits A, D and E.

STANDARD OF REVIEW

This Petition is brought pursuant to Rules 9.030(c)(2) and 9.100, Florida Rules of Appellate Procedure. This Court’s review is confined to three issues:

1. Whether the Petitioner was afforded procedural due process;
2. Whether the essential requirements of law were observed;
3. Whether the administrative findings are supported by competent substantial evidence.

See *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Dep’t of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457

(Fla. 1st DCA 2014). This Petition challenges only the last two areas of review.

ARGUMENT

I. THE HEARING OFFICER DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW BY SUSTAINING THE SUSPENSION BASED ON AN UNLAWFUL STOP.

Petitioner was stopped for reversing briefly on a public roadway in order to make a right hand turn. Section 316.1985, Florida Statutes, explicitly prohibits backing **only** when it cannot be done safely or interferes with other traffic.

316.1985 Limitations on backing.—

(1) The driver of a vehicle shall not back the same **unless such movement can be made with safety and without interfering with other traffic.**

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access facility.

(3) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. (emphasis added).

Reversing a vehicle is, by definition, a temporary movement against the normal direction of travel. Yet section 316.1985 does not prohibit such a maneuver unless it is done unsafely or interferes with traffic.

The DUI report, criminal affidavit, and entire BAR Packet are silent as to any danger or interference with traffic, including with the deputy's vehicle. Because reversing a vehicle is not per se unlawful under section 316.1985, the hearing officer could not presume or infer illegality—particularly where the maneuver was the sole basis for the stop. To sustain the suspension, the hearing officer needed either testimony showing the maneuver was unsafe or interfered with traffic, or evidence of such facts within the four corners of the BAR Packet. Neither exists in this case.

In *Nelson v. State*, 922 So. 2d 447 (Fla. 2d DCA 2006), the court held that backing up without causing interference does not establish reasonable suspicion or probable cause and reversed the denial of a motion to suppress. Similarly, in *Walker v. Grant*, 314 F. Supp. 442 (S.D. Fla. 1970), the court explained that the duty of a driver backing on a state road is to do so safely and without interfering with traffic, using caution to protect others. Here, there

is no evidence that the maneuver was unsafe or that anyone was in Petitioner's path as he briefly reversed to make a right turn.

The hearing officer's finding that Petitioner's driving exceeded "normal fluctuations" is unsupported by the record. No testimony or evidence established that conclusion, nor any illegality or unsafe operation. It is unclear where that finding came from—but it is not in the record before this Court.

II. THE HEARING OFFICER'S FINDINGS WERE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.

"Every case involving a license suspension contains a *Fourth Amendment* analysis on 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." See *Wiggins v. State of Florida, DHSMV*, 209 So.3d 1165, 1172 (Fla. 2017). In the present case, the stop was not based on suspected DUI, but for backing the vehicle to make a right-hand turn.

Under *Wiggins*, a first-tier review by the Circuit Court requires a close examination of the factual record to determine whether the hearing officer's findings were supported by competent, substantial evidence. *Id.* Importantly, this legal analysis cannot be reduced to

mere deference to the hearing officer—particularly when that officer is an employee of the very department whose actions are under review. *Id.* An impartial judicial review is essential. *Id.*

Here, a close review reveals that no witness testified, and the BAR Packet contains no evidence that Petitioner’s driving was unsafe or interfered with traffic. At the hearing, defense counsel directly challenged these deficiencies, both in writing and orally, relying on statutory authority and case law. The observed backing maneuver—brief and uneventful—did not provide reasonable suspicion under Florida law.

Nonetheless, the hearing officer relied on speculation and made unsupported factual findings, effectively rewriting the record. These findings are not grounded in testimony or documentary evidence and fall far short of the standard required to uphold a license suspension.

III. AN UNLAWFUL STOP CANNOT SERVE AS A LAWFUL PREDICATE FOR LICENSE SUSPENSION FOR REFUSAL TO PROVIDE A BREATH TEST

At the March 15, 2025, hearing, Petitioner squarely challenged the lawfulness of the stop, citing both statutory authority and

relevant case law. No evidence was presented to rebut that challenge. The complete record fails to establish reasonable suspicion or probable cause to justify the stop.

As the Florida Supreme Court has held, “DHSMV cannot suspend a driver’s license for refusal to submit to a breath test if the refusal is not incident to a lawful arrest.” *FDHSMV v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2001). Where the initial stop is invalid, any alleged refusal is inadmissible as it constitutes the fruit of the poisonous tree.

Here, the Department failed to meet its burden. Without lawful grounds for the stop, the suspension of Petitioner’s regular and CDL licenses cannot stand.

RELIEF REQUESTED

Petitioner respectfully requests that this Court issue a Writ of Certiorari quashing the decision of the Department of Highway Safety and Motor Vehicles entered on April 22, 2025, and remanding for entry of an order invalidating the suspension and disqualification of Petitioner’s driving privileges and CDL license. See *Dep’t of Highway Safety & Motor Vehicles v. Azbell*, 154 So. 3d

461, 462-63 (Fla. 5th DCA 2015) (holding that remand for an additional hearing where the Department fails to present competent and substantial evidence is impermissible).

CERTIFICATE OF FONT AND WORD COUNT

I CERTIFY that the font is Bookman Old Style 14 point and that the petition complies with the word count requirement (1803 words).

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this petition was furnished through the Florida Courts E-filing Portal to the Department of Highway Safety and Motor Vehicles at OGCfiling@flhsmv.gov and TampaBAR@Flhsmv.gov this 13th Day of May, 2025.

Respectfully submitted,

/s/ Rocky Brancato

Rocky Brancato

Florida Bar No. 191213

Brancato Law Firm, P.A.

1600 E. 8th Ave Ste A200

Tampa FL 33605

(813) 727-7159

rocky@brancatolawfirm.com

Attorney for Defendant