IN THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

[redacted]
Petitioner,

CASE NO.: 25-CA-004400

vs.

DIVISION: D

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Respondent.
_____/

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the court on [redacted] Petition for Writ of Certiorari. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat. Petitioner contends that the Department's decision departed from the essential requirements of the law by misapplying Florida Statute § 316.1985 and that the Department lacked competent, substantial evidence to find that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest because Petitioner alleges that there was no evidence that his driving backwards to change lanes violated any statute or interfered with traffic and therefore there was no evidence to support the conclusion that law enforcement had a reasonable suspicion to justify conducting a traffic stop. After reviewing the petition, response, appendices, and applicable law, the court finds that the hearing officer lacked competent, substantial evidence when determining that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest because there are no facts in the record to support the conclusion that law enforcement had a reasonable suspicion to initiate a traffic stop and thus lacked evidence to find that the subsequent arrest was lawful. Accordingly, the petition is granted.

On March 15, 2025, Petitioner was stopped by Deputy Douglas of the Hillsborough County Sheriff's Department (HCSO) for backing down the wrong way on the road. Deputy Liggins arrived after the initial stop, conducted a DUI investigation, and found that Petitioner displayed multiple signs of impairment. Petitioner was arrested for Driving Under the Influence (DUI) and refused to submit to a breath alcohol test.

Petitioner timely requested an administrative hearing, which was held on April 15, 2025, to challenge the lawfulness of the suspension of his driving privilege. The hearing officer reviewed the relevant police report. Petitioner states that no witness testimony was given at the hearing but does not allege that he subpoenaed any witnesses to appear. At the hearing Petitioner argued that the record lacked evidence to indicate that his driving was unsafe or interfered with traffic, thus there was no indication that his driving violated Florida Statute § 316.1985, thus the initial traffic stop was unlawful, making the subsequent arrest was unlawful, and therefore his refusal to submit to a breath alcohol test was not incident to a lawful arrest. The hearing officer rejected this argument, finding that "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."

Petitioner asserts that the hearing officer lacked competent, substantial evidence to support the finding that the initial stop was lawful because there was nothing in the record to support the conclusion that Deputy Douglas had a reasonable suspicion to conduct the initial traffic stop that ultimately lead to Petitioner's arrest. When circuit courts review license revocation hearings, the analysis inherently "contains 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. Fla. Dep't of Highway Safety & Motor Vehicle*s, 209 So. 3d 1165, 1172 (Fla. 2017). While the court may not reweigh evidence or substitute its findings of fact for those of the hearing officer, the court is tasked with reviewing the record to determine whether any competent, substantial evidence exists to support the hearing officer's conclusion. *See id*. While the Department is permitted to conduct a hearing and base its findings of fact solely on the documents furnished to the Department by law enforcement, doing so may result in a lack of competent, substantial evidence where the documents do not contain a description of factual observations sufficient to support the conclusion that the initial stop or subsequent arrest were lawful. *See DHSMV v. Colling*, 178 So. 3d 2, 5 (Fla. 5th DCA 2014).

In this case, Petitioner is correct that the documents submitted to the Department do not contain competent, substantial evidence of objective factual observations to support the conclusion that the initial traffic stop was lawful. The only objective factual observation in the record related to the initial traffic stop states "[Deputy Douglas] observed [Petitioner's

vehicle] reversing eastbound in the westbound lane to turn northbound on Heritage Greens Pkwy. [Deputy Douglas] activated [his] emergency equipment (lights and siren) and conducted a traffic stop on Heritage Greens Pkwy / Big Bend Rd." Petitioner is correct that "reversing eastbound in the westbound lane to turn northbound" on its own is not sufficient to establish a reasonable suspicion to justify a traffic stop. Driving in reverse, on its own, is not unlawful and does not indicate anything usual or suspicious about the driver's behavior—to the contrary, the relevant statute explicitly allows for circumstances where driving in reverse may be done safely and lawfully. Fla. Stat. § 316.1985 ("The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic."); *Nelson v. State*, 922 So. 2d 447, 450 (Fla. 2d DCA 2006) (finding that a traffic stop cannot be found to be lawful where driving backwards briefly, without interfering with traffic, is the only justification for the stop). Because the record does not contain any evidence or objective, factual observations to support the conclusion that the initial stop was lawful, the record lacked competent, substantial evidence to support the conclusion that the subsequent arrest was lawful, which in turn precludes the conclusion that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest.

It is therefore ORDERED that the petition is GRANTED in Tampa, Hillsborough County, Florida, on September 19, 2025.

Electronically Conformed 9/19/2025
Emily A. Peacock

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EMILY A. PEACOCK, Circuit Court Judge

Copies to:

Petitioner

Respondent

Additional copy(ies) provided electronically through JAWS