

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

Matthew O'Neil Martinez,

CASE NO.: 2014-CA-12390-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
Department of Highway Safety and Motor
Vehicles, Donna Robinson, Hearing Officer.

Tyler C. Snure, Esq., for Petitioner.

Stephen D. Hurm, General Counsel, and Jason
Helfant, Senior Assistant General Counsel,
for Respondent.

Before EGAN, H. RODRIGUEZ, and MUNYON, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Matthew O'Neil Martinez seeks certiorari review of his driver's license suspension for refusing to take a breath test. We have jurisdiction. § 322.2615(13), Fla. Stat. (2015); Fla. R. App. P. 9.030(c)(3). Certiorari is denied because there was competent substantial evidence before the hearing officer that the police officer had probable cause to believe that a traffic violation was committed, and thus the stop was lawful.

On September 6, 2014, Martinez was arrested for driving while under the influence. Martinez refused to take a breath test, and his license was suspended. Martinez sought formal review of the suspension.

At the formal review hearing, the arrest report was entered into evidence, and the police officer that stopped and arrested Martinez testified. In the arrest report, the officer stated three impossibilities: 1) that Martinez, while eastbound, made a left turn from Fairbanks Avenue onto Ward Avenue and then traveled south on Ward Avenue; 2) that Martinez made a right turn from traveling south on Ward Avenue onto South Kentucky Avenue; and 3) that Martinez's front wheels passed the white stop bar at the stop sign at South Kentucky Avenue onto Denning Drive. These are impossible because 1) if one is traveling eastbound on Fairbanks, one would have to make a right turn to travel south on Ward Avenue; 2) Ward Avenue bends to the left to turn into South Kentucky Avenue, not the right; and 3) there is no white stop bar at the stop sign at South Kentucky Avenue onto Denning Drive. The arrest report also states that Martinez's left turn cut off two vehicles. The officer testified at the hearing that he switched the directions of his car and Martinez's car when describing the driving on Fairbanks Avenue in the arrest report.

Martinez moved to invalidate the suspension based on the mistakes in the arrest report. The hearing officer denied the motion and upheld the license suspension. The hearing officer found that Martinez "made an abrupt left turn without signaling, cut off two vehicles, drove on the opposite side of the road, almost hit the curb and failed to make a proper stop." (Pet. Writ Cert. App. A 3:6-10.) Additionally, she found that "the Officer's testimony cleared up any inconsistencies as to the accuracy of the stop and arrest." (*Id.* at 4:8-9.) Petitioner then filed this certiorari proceeding on December 1, 2014, to challenge the hearing officer's decision.¹

¹ The Court was not notified of the pending petition until over one year later, on December 30, 2015.

In a certiorari proceeding, the circuit court is limited to determining whether the lower tribunal's decision was supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Dep't of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008).

Martinez's arguments rest on whether competent substantial evidence supports the hearing officer's determination that probable cause or reasonable suspicion existed for the stop. In arguing that no such evidence exists, Martinez points to the statements in the arrest report that are clearly incorrect.

Only two of the hearing officer's findings are affected by the mistakes in the arrest report: that Martinez made a left turn without signaling that cut off two drivers and that he failed to make a proper stop. The left turn that cut off the other drivers was made off of Fairbanks Avenue, and the only improper stop alleged was the one that occurred at the stop sign without the white bar line.

At the hearing, the law enforcement officer explained the mistake regarding the turn off of Fairbanks Avenue. The officer stated that he switched the direction of travel in the arrest report, and he was actually going eastbound and Martinez was going westbound. The hearing officer accepted this explanation.

In *Department of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457, 460 (Fla. 1st DCA 2014), *review granted*, 168 So. 3d 231 (Fla. 2014), the video contradicted the law enforcement officer's report and portions of his testimony. The hearing officer upheld the license suspension, but the circuit court found that competent substantial evidence did not support that decision due to the contradictory video. *Id.* at 460-61. The First District held that the circuit court

departed from the essential requirements of the law because it reweighed the evidence. *Id.* at 464. Instead, the circuit court must focus on whether any portions of the evidence support the hearing officer's findings. *Id.* "The existence of inconsistencies or contradictions in the overall evidentiary record does not negate a hearing officer's findings . . ." *Id.* As long as portions of the record support the hearing officer's decisions, then the competent substantial evidence standard is met. *Id.* at 465. "Unlike the circuit court, the hearing officer could evaluate the credibility of the officer and make a determination, for example, that he was truthful in his explanation of what he saw, and what his report said, regarding the vehicle's driving pattern." *Id.* The court held that the definition of competent substantial evidence "requires culling through the record for whatever bits and pieces of evidence . . . support an administrative order's factual findings." *Id.* at 466.

Under *Wiggins*, this Court must uphold the hearing officer's determination if there is a portion of the evidence supporting it. In the arrest report, the officer states that he saw Martinez, while traveling eastbound on Fairbanks, "make an abrupt left turn without signaling onto Ward Avenue." (Arrest Report 1.) At the hearing, the officer testified that he switched the direction of travel in the arrest report, which explains the impossibility of the statement that a left turn was made while traveling eastbound on Fairbanks Avenue onto Ward Avenue heading south. As the impossibility was explained by the officer's testimony at the hearing, and the hearing officer was entitled to believe the officer, there is competent substantial evidence to support her finding that Martinez made a left turn without signaling that cut off two vehicles.

Failing to use a turn signal is a traffic infraction when "another vehicle would be affected by the turn." *State v. Riley*, 638 So. 2d 507, 508 (Fla. 1994); § 316.155(1), Fla. Stat. (2014). The arrest report states that Martinez's left turn cut off two vehicles and was made without a signal.

Thus, there is competent substantial evidence that Martinez turned without using a signal and affected other vehicles, thereby committing a traffic infraction.

A stop “is reasonable where a police officer has probable cause to believe a traffic violation has occurred. The test is whether a police officer could have stopped the vehicle for a traffic violation.” *Hurd v. State*, 958 So. 2d 600, 601 (Fla. 4th DCA 2007) (citations omitted). Here, there is competent substantial evidence that Martinez committed the traffic violation of making a turn that affected other cars without using a signal. The officer’s stop of Martinez was reasonable because the officer had probable cause to believe Martinez committed a traffic violation. As there was probable cause to stop Martinez, and Martinez’s arguments for granting the petition are based on the legality of the stop, the Petition is denied.

Accordingly, 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 18th day of February, 2016.

/S/

ROBERT J. EGAN
Presiding Circuit Judge

H. RODRIGUEZ and MUNYON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Tyler C. Snure, Esq.**, Michael J. Snure, P.A., 425 W. New England Ave., Ste. 200, Winter Park, FL 32789; and **Stephen D. Hurm, General Counsel, and Jason Helfant, Senior Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 540609, Lake Worth, FL 33454, on this 19th day of February, 2016.

/S/

Judicial Assistant