

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

THOMAS WEST,
Petitioner,

CASE NO.: 2019-CA-002937-O

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition for Writ of Certiorari
from the Department of
Highway Safety and Motor Vehicles,
Donna Robinson, Hearing Officer.

Jessica A. Travis, Esq.,
for Petitioner.

Mark L. Mason, Assistant General Counsel,
for Respondent.

Before BLACKWELL, CALDERON, and TENNIS, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER comes before the Court for consideration of Thomas Scott West's ("Petitioner") Petition for a Writ of Certiorari Jurisdiction filed on March 6, 2019, seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' ("Respondent") Findings of Fact, Conclusions of Law and Decision upholding the suspension of his driver's license. This is filed pursuant to Florida Rules of Appellate Procedure 9.030(c)(2) and (3).

Arguments on Appeal

Petitioner argues that the Hearing Officer departed from the essential requirements of law by: 1) using statements in the crash report in making a probable cause determination of physical control, and 2) denying Petitioner due process in presenting witnesses and evidence.

Respondent argues that: 1) the crash report privilege does not apply because this was an administrative proceeding, not a criminal or civil proceeding, and other evidence showed Petitioner was in control of the vehicle; and 2) the Hearing Officer allowed Petitioner's witness to testify despite his absence at the scene.

Standard of Review

"The duty of the circuit court on a 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 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).

Further, because the scope of the Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decisions, the Court's review cannot go further to reweigh the evidence presented. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines that there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end as the issue is not whether the hearing officer made the best, right, or wise decision; instead, the issue is whether the hearing officer made a lawful decision).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver's license was suspended for refusing to submit to a

breath, blood, or urine test, the Hearing Officer must find that the following elements have been 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.
2. Whether the person whose license was suspended refused to submit to any such test after 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 refused to submit to such test his privilege to operate a motor vehicle would be suspended for a period of one year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat.

Discussion

Petitioner argues that the Hearing Officer lacked competent substantial evidence to find he was in actual physical control of the motor vehicle in question and could not use statements in the crash report to make this finding. However, pursuant to § 322.2615(2)(b), Florida Statute, a hearing officer can properly consider the crash report in such a hearing. Further, the offense report did not include Petitioner's statements; it included statements by the eyewitnesses and observations by the officers. Therefore, the privilege against self-incrimination is not violated by the introduction of the offense report, to which the crash report privilege does not apply. *See State v. Jones*, 283 So. 3d 1259, 1262 (Fla. 2d DCA 2019).

At the hearing, the Hearing Officer listened to testimony from Officer Schoen and reviewed the offense and crash reports admitted into evidence along with written statements and affidavits from the women whose vehicles were struck. In the offense report, Officer Yovino wrote that Ms. Duguay and Ms. Bessa told him they witnessed an older white male driving a truck and striking their vehicles. Offense Report, 3. Officer Yovino saw the offending vehicle and found it occupied by a white male and female. *Id.* Ms. Duguay and Ms. Bessa told Officer Yovino that Petitioner exited the truck, spoke with them both, and apologized for hitting their vehicles. *Id.* They also said

the male in the car was the only driver of the vehicle and was operating the truck when it struck their vehicles. *Id.* In the crash report, Officer Yovino wrote that he made contact with Petitioner, who advised he was backing up and did not realize he struck the vehicles. Florida Traffic Crash Report ("Crash Report"), 3. The Hearing Officer heard testimony to the contrary from Juan Diaz who testified he was the individual operating the vehicle, but that he left out of fear because he has a criminal record and believed he would go back to prison for this accident. Hearing Transcript, 36-37. No reports or testimony mentioned another man leaving the scene or in the truck.

This Court finds that the offense report revealing that Petitioner was the driver of the truck that crashed into two stationary vehicles as evidenced by his presence in the truck and the eyewitness testimony of two people was competent substantial evidence for the Hearing Officer to find that Petitioner was driving or in physical control of the vehicle.

Additionally, Petitioner argues that the Hearing Officer denied his due process rights by not allowing him to present evidence and testimony, specifically from Mr. Diaz. This is contrary to the record. The Hearing Officer allowed Mr. Diaz to testify even though he was not present at the scene, and there is competent substantial evidence that she gave his testimony the same consideration and weight as any other evidence in this case.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the Petitioner's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this ____ day of _____, 2020.

Alice L. Blackwell
Presiding Circuit Judge

CALDERON and TENNIS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Hearing Officer Donna Robinson**, 425 N. Orange Avenue, Orlando, Florida 32801; **Jessica A. Travis, Esq.**, Jessica Travis, P.A., at 1513 E. Livingston St., Orlando, Florida 32803, as counsel for Petitioner; and **Mark L. Mason, Assistant General Counsel**, Office of General Counsel, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, A-432, Tallahassee, Florida 32399-0504, as counsel for Respondent on the _____ day of _____, 2020.

Judicial Assistant