

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

COURTNEY ELISE JONES,
Petitioner,

CASE NO.:21-CA-4612

v.

DIVISION: K

STATE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This matter is before the Court on Petition for Writ of Certiorari filed June 4, 2021. The petition is timely. Rule 9.100(c)(2), Fla. R. App. P.; Rule 9.030(c)(3), Fla. R. App. P.; §322.31, Fla. Stat. A second amended petition was filed August 24, 2021, and is the applicable version before the Court. Petitioner seeks review of the Department's final order upholding the suspension of her driving privilege for her refusal to submit to a breath test to determine her breath-alcohol level. Petitioner raises myriad issues, including that the hearing officer lacked competent, substantial evidence for the conclusion that law enforcement had probable cause to arrest. Upon review of the petition, response, reply, appendices, and relevant case law, the Court finds that the Department erred when the hearing officer determined that there was reasonable suspicion to detain Petitioner for a DUI investigation where a material discrepancy in the evidence remains unresolved. Because this issue is dispositive, it is unnecessary to discuss Petitioner's remaining issues.

JURISDICTION AND STANDARD OF REVIEW

A decision by the Department to uphold or invalidate a suspension may be reviewed by a petition for writ of certiorari to the circuit court in the county in which formal or informal review was conducted. §§ 322.31; 322.2615(13), Fla. Stat. This Court, therefore, has jurisdiction to review the Department's decision in this case. This review is not de novo. § 322.2615(13), Fla. Stat.

Rather, the Court “must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.” *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court may not reweigh evidence. *Dep’t of Highway Safety & Motor Vehicles v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012).

FACTS AND PROCEDURAL HISTORY

On January 23, 2021, Officer Portman of the Tampa Police Department observed Petitioner’s vehicle weaving within its lane, touching the fog line on the right side of the lane. Officer Portman initiated a traffic stop for suspicion of DUI. Officer Portman observed that Petitioner had a flushed face and paint on her fingers, and noted in his report that he smelled alcohol on her breath. Petitioner’s statements did not make sense to Officer Portman, though she advised that she did not have anything to drink and that she takes medication. Officer Portman requested assistance from Officer Van Treese to conduct a DUI investigation. Prior to making contact with Petitioner, Officer Van Treese spoke with Officer Portman who advised that he had stopped petitioner for weaving out of her lane and crossing the lane divider, that she appeared lethargic and jittery, and, in contrast to the notes in his report, that he could *not* detect an odor of alcohol on her breath. Officer Van Treese observed that Petitioner had watery, bloodshot eyes, slurred speech, that she was jittery and lethargic, and that she had the distinct odor of alcohol on her breath. Petitioner advised Officer Van Treese that she takes medication in the morning, but that she did not consume any other drugs or alcohol prior to driving. Petitioner told Officer Van Treese that she had been driving home from work. Officer Van Treese requested that Petitioner participate in Field Sobriety Exercises (FSEs), which request Petitioner refused, except for an evaluation of her eyes for nystagmus. Petitioner refused to submit to a breath test (stating that she was willing to submit to a urine test) after being arrested and notified of the consequences of refusal. Petitioner’s driving privilege was administratively suspended as a result.

A formal review hearing of the administrative suspension was continued several times to allow Petitioner to subpoena witnesses. The hearing was held April 20, 2021. Because the suspension was the result of Petitioner's refusal to submit to a breath test, the hearing officer was to determine whether law enforcement had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of drugs or alcohol, whether Petitioner refused to submit to any such test after being requested to do so by law enforcement, and whether Petitioner was told that if she refused to submit to such test her privilege to drive a 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. The Department may not suspend a license for refusal to submit to a breath test if the refusal is not incident to a lawful arrest. *Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2011).

Here, the hearing officer determined that law enforcement had probable cause to arrest Petitioner for DUI, that Petitioner was driving a motor vehicle, and that she refused to submit to a breath test after being read Implied Consent and notified of the consequences of refusal. The hearing officer rendered a written order on May 10, 2021.

DISCUSSION

The petition raises a number of issues. Only one, that the Department lacked competent substantial evidence to find that Petitioner's arrest was lawful, merits discussion. Petitioner contends that the arresting officers' reports conflict on two key matters: whether her vehicle crossed over the lane dividers and whether Officer Portman detected the odor of alcohol on her breath.

When considering whether the hearing officer relied on competent, substantial evidence, this Court must ensure that it does not improperly reweigh the evidence in the record. But the proscription against reweighing evidence does not require unexamined deference to the hearing officer's conclusion when a conflict arises. "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (noting that "sufficiency tests

the adequacy and credibility of the evidence, whereas weight refers to the balance of the evidence”). The constitutionality of a traffic stop “is determined by considering whether the officer who stopped the vehicle had an objective basis to do so” based upon his own observations and logical inferences. *Dobrin v. Fla. Dep’t of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174 (Fla. 2004).

Here, Officer Portman reported that he stopped Petitioner on suspicion of DUI after he observed her tires drifting on and off the fog line on the right side of the road. Officer Van Treese reported that Officer Portman orally conveyed that he observed Petitioner weaving, drifting *out* of her lane, *and* crossing over the divider line, and that after speaking with her believed that she could be impaired. Both sets of facts were cited in separate places in the hearing officer’s decision, with no discussion of the discrepancy. Moreover, Officer Portman also wrote in his report that that he detected the odor of alcohol on Petitioner’s breath, while Officer Van Treese reported that Officer Portman conveyed the opposite: that Officer Portman could *not* detect an odor of alcohol on Petitioner’s breath when he initiated the DUI investigation. The discrepancies in the reports are material because they reflect Officer Portman’s objective observations and inferences, and thus go to the heart of determining whether or not Officer Portman had an ongoing reasonable suspicion to effect a traffic stop and initiate an investigation. *Gregg v. Dep’t of highway Safety & Motor Vehicles*, 25 Fla. L. Weekly Supp. 688b (Fla. 6th Cir. Aug. 8, 2017) (finding a lack of competent substantial evidence where Petitioner had watery, bloodshot eyes and an odor of alcohol, but there was conflicting paperwork regarding the quality of her speech). The substantial evidence rule is not satisfied by evidence which gives equal support to inconsistent inferences. *Dep’t of Highway Safety & Motor Vehicles v. McClung*, 878 So. 2d 480, 480 (Fla. 1st DCA 2004), citing *Dep’t of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1087 (Fla. 1st DCA 2002). The Department is authorized to proceed without witnesses in a formal review, but “it does so at the risk that the documents might contain irreconcilable, material contradictions.” *Dep’t of Highway Safety & Motor Vehicles v. Colling*, 178 So. 3d 2, 5 (Fla. 5th DCA 2014).

Because the hearing officer did not resolve the conflicts, competent, substantial evidence does not support the order upholding Petitioner's administrative license suspension. Accordingly, the petition is GRANTED

and the order upholding the suspension of Petitioner's driving privilege is QUASHED.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 3/8/2022
Caroline Tesche Arkin

CAROLINE TESCHE ARKIN, Circuit Court Judge

Electronic copies provided through JAWS.