

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

JARED DAVIDSON,
Petitioner,

CASE NO.: 23-CA-014017

v.

DIVISION: K

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

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on Amended Petition for Writ of Certiorari filed September 8, 2023. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat. Petitioner contends that the Department's decision to suspend his driving privileges was not supported by competent, substantial evidence of a lawful arrest because there is video evidence that Petitioner argues directly conflicts with the arresting officer's testimony presented at the license suspension hearing. After reviewing the petition, response, reply, appendix, relevant statutes, and case law, the court finds that the hearing officer's decision was supported by competent, substantial evidence because video evidence is not hopelessly in conflict with the officer's testimony.

On April 2, 2023, Tampa Police Officer Baden stopped Petitioner after observing Petitioner fail to stop at a stop sign and then weave within his lane after making a left turn. Petitioner displayed multiple signs of impairment and admitted to having consumed three beers. Petitioner performed poorly on multiple field sobriety exercises, was arrested for DUI. His driving privileges were administratively suspended as a result of the arrest. Petitioner requested a hearing to challenge the lawfulness of the suspension, which was held June 21, 2023. The hearing officer considered written reports, video evidence, photographic evidence, and the arresting officer's testimony. Specifically, the hearing officer watched the video of Petitioner driving prior to being stopped, looked at photographs of the intersection where Petitioner was stopped, and Petitioner's counsel had an opportunity to argue that the video directly conflicted with the other evidence

presented. The Department affirmed Petitioner's license suspension the following day.

Petitioner correctly states that reasonable suspicion is required to justify a warrantless stop where the driver is suspected of a misdemeanor offense, that an arrest as the result of an unlawful stop is likewise unlawful, and that a license suspension subsequent to an unlawful arrest must be overturned. *See Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2011); *Arenas v. Dep't of Highway Safety & Motor Vehicles*, 90 So. 3d 828, 832 (Fla. 2d DCA 2012). Petitioner asserts that the hearing officer lacked competent, substantial evidence to support a finding of a lawful arrest because the video evidence taken prior to Petitioner's arrest shows a brief period where the headlights of Petitioner's vehicle were out of sight of the officer's camera, and thus out of sight of the officer. Petitioner's argument primarily relies on *Wiggins v. Department of Highway Safety and Motor Vehicles*, which states that, in the limited context of a DUI license suspension, a circuit court is correct to reject "officer testimony as being competent, substantial evidence when that testimony is contrary to and refuted by objective real-time video evidence." 209 So. 3d 1165, 1175 (Fla. 2017). This case is distinguishable from *Wiggins*. In that case, the video showed Wiggins driving "totally within the proper lines" but the officer testified that Wiggins' vehicle "appeared to swerve from one lane to another." In this case, Petitioner is asking the Court to accept a negative as proof of a positive.

The Court need not reweigh evidence to reach its conclusion. Based on Petitioner's own arguments, the testimony in this case is not contrary to or refuted by objective real-time video evidence. First, Petitioner submitted screenshots of photos of the intersection taken from an online map. Those photographs may constitute competent evidence, and they were considered by the hearing officer, but they are not objective real-time video evidence. Second, Petitioner submitted objective real-time video evidence, which shows Petitioner's vehicle approaching the intersection, the headlights of Petitioner's vehicle becoming obscured for a few seconds, and then Petitioner's vehicle turning into the intersection. Petitioner and the Department agree that Petitioner's vehicle did not stop in the time between the headlights becoming visible and the vehicle entering the intersection. The position of the officer's vehicle on the intersecting roadway is not contested.

As the Department points out, where there is a stop sign but no clearly marked stop line, Florida law requires drivers to stop "at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the

intersecting roadway before entering the intersection.” Fla. Stat. § 316.123(2)(a). Petitioner argues that it is impossible to say with certainty that the officer saw Petitioner fail to stop before entering the intersection because the headlights were obscured for a few seconds. In its response, the Department cites section 316.123, arguing that even if Petitioner stopped while his headlights were obscured, he still failed to stop at the point nearest the intersecting roadway where he had a clear view of traffic on the intersecting roadway, making the logical inference that if the officer’s view of Petitioner’s vehicle was completely obscured, Petitioner’s view of the officer’s vehicle on the intersecting roadway was likewise obscured, meaning Petitioner should have stopped after his headlights became visible and before entering the intersection.

The officer in this case testified that he observed Petitioner fail to stop before entering the intersection, and the video evidence does not contradict his testimony. If Petitioner stopped while the officer’s view of the vehicle was totally obscured, Petitioner’s view of traffic on the intersecting roadway was likewise obscured and Petitioner should have stopped once his view was clear. If Petitioner stopped while his headlights were obscured but he had a clear view from his vantage point in the upper half of the vehicle, this Court cannot say with certainty that the officer did not likewise have a clear view of the upper half of Petitioner’s vehicle despite the headlights being obscured. To find otherwise, the Court would have to impermissibly reweigh the evidence.

Hearing officers and circuit courts are required to reject testimony that is contrary to and refuted by objective real-time video evidence. *Wiggins*, 209 So. 3d at 1175. That requirement does not extend to unverified screenshots taken from the internet or video evidence that, based on Petitioner’s own argument, merely suggests a possibility that the testimony was incorrect.

It is therefore ORDERED that:

1. The Petition is DENIED, and;
2. Petitioner’s Request for Oral Argument is DENIED.

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

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Lindsay M. Alvarez
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LINDSAY M. ALVAREZ, Circuit Court Judge

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