IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

HAYDEN SANDERS WYNNE,

Petitioner,

vs.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.
_____/

Case No.: 22-CA-8256
Division: K

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI AND QUASHING HEARING OFFICER'S DECISION

THIS MATTER is before the Court on the Petition for Writ of Certiorari ("Petition") filed September 29, 2022 by Petitioner, Hayden Sanders Wynne ("Petitioner" or "Wynne"). Petitioner seeks certiorari review of the "Findings of Fact, Conclusions of Law and Decision" issued by a Hearing Officer of the Bureau of Administrative Reviews within the Department of Highway Safety and Motor Vehicles ("Department" or "DHSMV"). The Hearing Officer upheld the suspension of Wynne's driving privilege based upon Wynne's refusal to submit to a breath test to determine his breath-alcohol level following a traffic stop. The Court has jurisdiction. *See* Art. V, § 5(b), Fla. Const.; § 322.2615(13), Fla. Stat. (2022); Fla. R. App. P. 9.030(c)(3).

Petitioner principally contends that the Hearing Officer's finding that law enforcement had probable cause for his initial traffic stop is not supported by competent, substantial evidence. The Court has carefully reviewed the Petition and Appendix, the response filed by the Department, Petitioner's Reply, the record before the lower tribunal, and applicable law. Because the Court agrees that the Hearing Officer's probable-cause finding as to the initial traffic stop is not

supported by competent, substantial evidence, the Petition is granted and the order that upheld Petitioner's license suspension is quashed.

I. FACTS AND PROCEDURAL HISTORY.[1]

On July 18, 2022, Hayden Sanders Wynne, an out-of-state resident from Arkansas, was visiting his brother in Atlantic Beach, Florida. Around 8:30 p.m., Wynne was returning from spending some time at the beach in his brother's borrowed golf cart. While talking by speakerphone to his friend back in Arkansas, Wynne indicated that he was being pulled over by police and ended the conversation. (App. A34-35, A42.)

The officer that pulled Wynne over was Officer B.T. Jockers ("Officer Jockers") of the Atlantic Beach Police Department. The only record evidence concerning the reason Officer Jockers pulled Wynne over is found in the arrest and booking report containing Officer Jockers' narrative. In it, Officer Jockers stated:

> On 7.18.2022 during routine patrol, I observed a white male driving a 6 person golf cart Northbound on Ocean Blvd. He was at the intersection of 10th st. and ocean when he proceeded through the intersection on his cellphone, head down consistent with texting. I initiated my red and blue emergency lights and conducted a traffic stop on the golf cart at 12th st. and ocean blvd. Once the vehicle came to a complete stop, I made a passenger side approach and came in contact with the driver.

(App. A17.)

The report does not indicate one way or the other whether Officer Jockers told Wynne the reason for the stop. But it is clear from the report that it was not until after Officer Jockers stopped Wynne for being "on his cellphone . . . consistent with texting" that he observed some things that led him to suspect possible impairment. According to the report, for example, Officer Jockers

[1] The facts are drawn from the Arrest and Booking Report, the testimony presented at the hearing, and other documents entered into evidence and included in Petitioner's Appendix (hereinafter, "App. A__").

spotted an open container of a "Truly"-brand alcoholic beverage in the driver's side cupholder as he "walked up to the vehicle" following the stop. (*Id*.)

At the scene, Officer Jockers cited Wynne for "improperly using his mobile device" and for "open container of alcohol." (App. A17.) He then informed Wynne that he intended to investigate him for driving under the influence. Officer Jockers began by reading Wynne his *Miranda* rights—signaling that Wynne was now in a custodial situation. Officer Jockers then asked Wynne if he would participate in field exercises to demonstrate that Wynne was "capable of driving." *Id.* Wynne replied, "yes," but also stated that he would like to speak to his lawyer before continuing. At that response, Officer Jockers handcuffed Wynne, placed him in the back of his patrol car, and had the golf cart towed from the scene.

Wynne was transported to the Duval County Jail for booking. At the station, Wynne declined to take a breathalyzer test to determine his breath alcohol level, and again requested to speak to his lawyer before proceeding further or signing any papers. In addition to the traffic citations he received,[2] Wynne was booked on misdemeanor driving under the influence (DUI) under Florida Statute Section 316.193. Because Wynne refused to submit to the DUI breathalyzer test, Wynne's driving privilege was automatically suspended for one year pursuant to Florida's "implied consent law," found in Section 316.1932, and Section 322.2615, which sets forth the penalties for refusing to submit to a blood, breath, or urine test. (App. A15.)

The State of Florida declined to prosecute Wynne for the misdemeanor DUI charge;[3] thus, Wynne did not have occasion to challenge in a court of law whether he was in fact driving under

[2] Wynne was cited for texting while driving under Florida Statute § 316.305(3)(a) and for possession of an open container of alcohol in a motor vehicle under § 316.1936(2)(a).

[3] Petitioner in his Petition that the State of Florida ultimately declined to prosecute the misdemeanor charge in Duval County Case No. 2022-CT-9878 (*see* Pet., p. 3, n.1), and while the record contains no evidence regarding this, the Department does not contend otherwise.

influence. Regarding the suspension of his driving privilege, Wynne sought review in an administrative proceeding before the DHSMV, Bureau of Administrative Reviews, as provided by statute. *See* § 322.2615(6).

A telephonic hearing was conducted on August 18, 2022 before James S. Garbett, Jr., Esq., a DHSMV Field Hearing Officer (herein, "Hearing Officer"). Among other things, Wynne argued that the initial traffic stop was not supported by probable cause. Because Officer Jockers did not appear or testify at the hearing, the only information before the Hearing Officer concerning the initial traffic stop of Wynne was that contained in Officer Jockers' written report, indicating that Officer Jockers stopped Wynne for being "on his cellphone, head down consistent with texting."[4]

For his part, Wynne testified that he was not texting at the time that Officer Jockers stopped him. Rather, he presented evidence that he was speaking to his friend, Bobby Emerson, using the phone's speaker. Both the phone records and Emerson's testimony supported Wynne's testimony in this regard. (App. A11-14; A33-43.) Following the testimony and evidence concerning Wynne's cell phone usage, Wynne moved to invalidate his license suspension on the basis that Officer Jockers did not have sufficient cause to conduct a traffic stop in the first instance.[5]

The Hearing Officer took the matter under advisement and thereafter sustained the Department's suspension in an order dated August 29, 2022. (App. A6-8.) Relevant here, the

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[4] Certain documents surrounding administrative license suspensions are considered self-authenticating by law. *See* Florida Statute § 322.2615(2); Rule 15A-6.013(2), Fla. Admin Code. The documents admitted into evidence and considered by the Hearing Officer include: (1) the Florida DUI uniform traffic citation; (2) the Arrest and Booking Report; (3) the Affidavit of Refusal to Submit to Breath and/or Urine Test; (4) Jacksonville Sheriff's Office Constitutional Right and Implied Consent; (5) Breath Test Operator Narrative; and (5) Atlantic Beach Police Department Field Sobriety Report. (App. A15-26.)

[5] Petitioner also moved to invalidate the suspension based upon lack of probable cause with respect to the DUI arrest. Petitioner does not challenge here the denial of his second motion to invalidate. (Pet., p. 4, n.2.)

Hearing Officer concluded that the arrest was lawful because Officer Jockers had probable cause both to make the initial stop and as to his belief that Wynne was driving under the influence.[6] Wynne timely filed the instant Petition, seeking certiorari review of that order. *See* §322.31, Fla. Stat. (2022).

II. STANDARD OF REVIEW.

On certiorari review of a hearing officer's findings and judgment in an administrative license-suspension proceeding, a circuit court is tasked with determining "(1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *See Moore v. Dep't of Highway Safety & Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2nd DCA 2015) (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995)).

Upon such review, the circuit court may neither reweigh evidence, nor substitute its judgment for that of the hearing officer's; rather, it may only review the evidence to determine whether competent substantial evidence in the record supports the hearing officer's findings. *See Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So. 2d 1247, 1249 (Fla. 2d DCA

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[6] In determining whether sufficient cause exists to sustain, amend, or invalidate a license suspension, a hearing officer is tasked with determining three statutory elements, including:

> 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 being 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 or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat.

2006) (citing *Dep't of Highway Safety & Motor Vehicles v. Porter*, 791 So.2d 32, 35 (Fla. 2d DCA 2001)). "Competent substantial" evidence has been described as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

III. ANALYSIS.

The central question presented by the instant certiorari petition is whether competent, substantial evidence in the record supports a determination that Officer Jockers had probable cause to believe that Wynne was committing a traffic infraction so as to justify Officer Jockers' initial stop of Wynne. Resolution of that issue requires an examination of both Florida statutory law and Fourth Amendment principles, discussed in turn below.

A. The "Florida Ban on Texting While Driving Law."

In 2013, the Legislature passed the "Florida Ban on Texting While Driving Law," with the stated intent to improve roadway safety, prevent crashes, and reduce injuries, deaths, and other harm. As the name suggests, at its core, the law prohibits motorists from "texting while driving," and authorizes law enforcement officers to stop motor vehicles and issue citations to persons who use their electronic devices in a way that the statute prohibits. *See* § Section 316.305(2), Fla. Stat. (2022).[7]

Stated broadly, under Section 316.305, a person may not use an electronic device while driving to type, transmit, or read a text message or an electronic-mail message. *See* § 316.305,

[7] When the law was first passed, texting while driving was a secondary offense; meaning, a person could be stopped and cited for a violation of the law only if the driver committed some other infraction while also violating the texting while driving law. *See* Laws Ch. 2013-58, creating the *"*the Florida Ban on Texting While Driving Law," and codified at Section 316.305(1)(d), Florida Statutes (2013). Several years later, in 2019, the law was amended to make texting while driving a primary offense. With this change, law enforcement is now permitted to pull motorists over and issue a citation solely for texting while driving.

Fla. Stat. (2022). Subsection (3)(a) sets forth in more specific terms what the law prohibits with respect to the use of a cell phone while driving. It provides that:

> [a] person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging.

Id. § (3)(a). Under the plain language of the statute, the manual typing or entering of multiple letters, numbers, symbols, or other characters is prohibited only "for the purpose of nonvoice interpersonal communication." The statute does not prohibit a motorist from speaking on a cell phone while driving.

The law also sets forth a list of activities to which Section 316.305(a) does not extend. These include:

- reporting an emergency or criminal or suspicious activity to law enforcement authorities;
- receiving messages that are related to the operation or navigation of the motor vehicle; safety-related information, including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio broadcasts;
- using a device or system for navigation purposes;
- conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.
- conducting wireless communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

See § 316.305(3)(b), Fla. Stat. (2022). As the above list suggests, there are a number of situations in which it would be lawful for a driver to both read and type on an electronic device while driving.

B. Florida's Implied Consent Law.

Florida's "implied consent law" is found in Florida Statute Section 316.1932. Stated generally, any person who accepts the privilege of operating a motor vehicle within Florida is deemed to have given his consent to submit to a urine test or a test of his or her breath-alcohol or blood-alcohol level upon arrest for suspicion of DUI.[8] A refusal to submit to such a test triggers an automatic suspension of one's driver license for a specified period of time, depending on the circumstances. For a first refusal—as was the case with Wynne—the length of suspension is 12 months. *See* §§ 322.2615(1)(a) & 1(b)1.a.

The implied consent law, however, is not without limits. Relevant here, the Florida Supreme Court in *Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011) held that a license suspension can result from a refusal to take a breath test, but only if the refusal is incident to a lawful arrest. *Id.* at 1074. In this regard, the Court later observed that, in essence, "[e]very case involving a license suspension 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 Vehicles*, 209 So. 3d 1165, 1172 (Fla. 2017). And built into the determination surrounding the probable-cause element contained in Section 322.2615(7)(b) is also

[8] The law provides in part, that:

> [a] person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test . . . for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.

§ 316.1932(1)(a)1.a., Fla. Stat. (2022).

the determination of whether the initial stop was lawful. *See id*. at 1167; *see also, e.g*., *Department of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d 304, 307 (Fla. 5th DCA 2008) (in the license-suspension context, whether a law enforcement officer has probable cause for an arrest is a concept that is often inextricably intertwined with the lawfulness of the initial detention) (citing *Indialantic Police Dep't v. Zimmerman*, 677 So. 2d 1307, 1309 (Fla. 5th DCA 1996)).

C. Fourth Amendment Analysis In the Texting While Driving Context.

The stop of a vehicle by police for a traffic violation constitutes a seizure under the Fourth Amendment. *See Whren v. U.S*., 517 U.S. 806, 809–10 (1996); *see also Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997).[9] To justify a warrantless stop, an officer must have an articulable, reasonable suspicion that a violation of the law has occurred. *See, e.g., Hunter v. State*, 660 So. 2d 244, 249 (Fla. 1995) (suspicion must have some factual foundation in the circumstances observed by the officer; "mere" or "bare" suspicion will not suffice); *State v. Teamer*, 151 So. 3d 421, 425–426 (Fla. 2014) (a "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" an investigatory stop) (citing and quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

With respect to the specific facts presented in this case, the Court has located no Florida decision that has considered or tested the parameters surrounding probable cause for traffic stops based upon violations of Florida's texting while driving law. A number of other courts, however, provide persuasive guidance with respect to vehicular stops for texting under a Fourth Amendment analysis. Principal among these is *United States v. Paniagua-Garcia*, 813 F.3d 1013 (7th Cir.

[9] The Florida Constitution provides that the right to be free from unreasonable searches and seizures "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." *See* art. I, § 12, Fla. Const.

2016), a federal appeals decision that explored the issue of probable cause surrounding Indiana's texting while driving statute—a law that, at the time, had features similar to Florida's.

In *Paniagua-Garcia*, an Indiana police officer passed a car on an interstate highway and saw that the driver was holding a cellphone in his right hand, that his head was bent toward the phone, and that he "appeared to be texting." The driver denied that he was texting and told the officer that he was just searching for music—which was a lawful use under Indiana's statute. An examination of the cellphone revealed that it had not been used to send a text message at the time the officer saw him handling the cellphone, and the officer never explained what created the appearance of texting as distinct from any one of the multiple other lawful uses of a cellphone by a driver. *Id*. at 1014.

As part of its analysis, *Paniagua-Garcia* observed that almost all of the lawful uses permitted by the statute would create the same appearance as texting, *e.g*., where one has a cellphone in hand, the head of the driver is bent toward it, and a finger or fingers are touching an app on the cellphone's screen. This would include the making of a phone call, using GPS, or "doing any number of things other than texting or emailing." *Id.*

Given the circumstances, the *Paniagua-Garcia* court concluded that "[n]o fact perceptible to a police officer glancing into a moving car and observing the driver using a cellphone would enable the officer to determine whether it was a permitted or a forbidden use" under Indiana's statute. *Id.* (citing cases). In this regard, the court rejected the notion that a mere possibility of unlawful use is enough to create a reasonable suspicion of a criminal act. To allow a "suspicion so broad," it observed, "would permit the police to stop a substantial portion of the lawfully driving public," which would not be reasonable. *Id.* at 1014-1015 (citing cases).

D. The Hearing Officer's Probable Cause Determination Is Not Supported By Competent, Substantial Evidence.

Applying Fourth Amendment principles to the facts of this case, the Court finds no competent, substantial evidence to support the Hearing Officer's conclusion that probable cause existed to justify the initial stop of Wynne for using his phone in a manner that violated Section 316.305. The only evidence on the issue—found in Officer Jockers' arrest and booking report—is contained in a brief narrative that states that Officer Jockers observed Wynne proceeding through an intersection "on his cellphone, head down consistent with texting." (App. A17.) No further elaboration is offered in either the arrest report or in any of the documents admitted into evidence. Under the principles of law set forth above, this bare statement is insubstantial and does not articulate any fact that would support a finding of reasonable suspicion on the part of Officer Jockers that Wynne was violating the texting while driving law.

Further, examining each component of the statement raises many unanswered questions. It is not known, for example, what Officer Jockers meant when he said he observed Wynne "on his cellphone," which could mean a number of things as that term is colloquially understood. It should be noted that the Department twice asserts in its response that Wynne had his cellphone "in his hand," but that contention finds no support in the record, and the Department provides no accompanying citation. (Resp., pp. 7 & 9.) But even assuming Wynne had his cell phone in his hand, there is nothing about that circumstance that would lead a police officer to conclude that the texting statute was being violated.

Other questions surround Officer Jockers' notation that Wynne had his "head down," as the report provides no further detail as to why this would arouse suspicion that Wynne was violating the texting while driving law. Did Officer Jockers see Wynne merely glance down at the phone for a fleeting second, or was his head down for an appreciable amount of time? Moreover,

while having one's head down may be "consistent with texting," it is also consistent with any number of things the statute does not prohibit, such as looking at the phone for navigation purposes, checking an emergency traffic or weather alert, and so on.

The Department essentially takes the position that, so long as what Officer Jockers perceived could support a finding that *something* unlawful was *possibly* taking place, the stop was justified and the suspension should be upheld. But such a position is out of step with established Fourth Amendment principles that counsel against permitting such broad "reasonable suspicion" that would subject "a very large category of presumably innocent travelers" to "virtually random seizures." *Reid v. Georgia*, 448 U.S. 438, 441 (1980). Here, as in *Paniagua-Garcia*, what Officer Jockers did see—according to his report—was not just "consistent with texting," but also consistent with any one of a number of lawful uses of cellphones under Florida's statute.[10] In sum, Officer Jockers' report does not support the Hearing Officer's finding that probable cause or reasonable suspicion existed for the initial traffic stop of Wynne.

Here, because Wynne's refusal to take a breath test was not incident to a lawful stop, the invalidation of Wynne's license suspension was warranted. *See Hernandez*, 74 So. 3d at 1074; *see also Dobrin v. Dep't of Highway Safety & Motor Vehicles*, 874 So. 2d 1171 (Fla. 2004) (where facts observed by officer and contained in officer's arrest report did not provide objectively reasonable basis for initial traffic stop, circuit court correctly quashed hearing officer's decision

[10] Although the uncontroverted evidence presented at the hearing demonstrated that Wynne was speaking on his cell phone rather than texting when he was pulled over (*see* App. A11-13, A34-35, A42-43), such evidence is not relevant to the determination surrounding the existence of probable cause; *i.e.*, whether a reasonable basis existed for Officer Jockers' suspicion that Wynne was texting. *See Dobrin v. Dep't of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174-75 (Fla. 2004) (the appropriate consideration for circuit court on certiorari review is whether the facts contained in the arrest report provided an objective basis to stop the vehicle for the reasons stated in officer's report). It does, however, illustrate the fine line between perceptible lawful and unlawful uses of electronic devices in the texting-while-driving context.

upholding license suspension for refusal to take a breath test); *Pelham*, 979 So. 2d at 307 (circuit court properly granted petition for certiorari and quashed hearing officer's upholding of license suspension where detention that preceded respondent's arrest for driving under the influence had been unlawful); *Goudie v. Dep't of Highway Safety & Motor Vehicles*, No. 15-000064AP-88A, 2016 WL 11770149, at *4 (Fla. 6th Cir. Ct. Apr. 1, 2016) (quashing hearing officer's decision in a breath-test refusal case where no substantial, competent evidence supported a determination that police officer had probable cause for the traffic infraction that triggered the initial stop).

IV. CONCLUSION.

Because no competent, substantial evidence supports a finding of probable cause for the initial traffic stop of Wynne, the suspension of Wynne's license based upon his refusal to submit to a breath-alcohol should have been invalidated.

It is therefore **ORDERED** and **ADJUDGED** that:

1. The Petition for Writ of Certiorari, filed September 29, 2022, is **GRANTED**.
2. The Hearing Officer's "Findings of Fact, Conclusions of Law and Decision," entered August 29, 2022, is **QUASHED**.[11]

DONE and **ORDERED** in Chambers in Tampa, Hillsborough County, Florida, on the _____ of ~~October, 2024~~ November 2024.

22-CA-008256 11/12/2024 11:32:20 AM
Lindsay Alvarez
22-CA-008256 11/12/2024 11:32:20 AM

HONORABLE LINDSAY M. ALVAREZ
CIRCUIT JUDGE

Copy Furnished Via JAWS To:
All Counsel of Record

[11] The additional relief sought in the Petition is beyond the scope of this certiorari proceeding. This does not preclude Petitioner from obtaining such relief from the Department based upon this Order.

