IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

JOSE ZARRALUQUI
Petitioner,

APPEAL No.: 08-00 39AP-88A

v.

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

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on Petitioner, Jose Zarraluqui's Petition for Writ of Certiorari. Respondent, "DHSMV" filed their response on December 4, 2008. Upon consideration, this Court finds that the Petition for Writ of Certiorari must be denied as set forth below.

The standard of review is whether the Petitioner was afforded procedural due process, whether the essential requirements of law were observed, and whether the Department's findings and judgment are supported by competent substantial evidence. See Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069, 1073 (Fla. 2d DCA 2001).

This appeal stems from the suspension of Petitioner's driver license after his arrest for driving under the influence on July 5, 2008. Zarraluqui contends that the DHSMV departed from essential requirements of law by entering its final order. The Findings of Fact, Conclusions of Law and Decision dated September 5, 2008 was based

on an administrative hearing held on September 4, 2008. The issues presented at the administrative hearing included 1) whether the law enforcement officer had probable cause to believe that Petitioner 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 Petitioner refused to submit to a urine test or a test of his breath-alcohol or blood-alcohol level after being requested to do so by a law enforcement officer or correctional officer; and 3) whether Petitioner was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a year or, in the case of a second or subsequent refusal, for a period of eighteen months.

Officer Johnson testifies that on July 5, 2008, he witnessed a 1994 black Acura sedan become involved in a crash with another unoccupied, tan colored vehicle. The driver of the black Acura motor vehicle proceeded to flee the scene of the accident. Officer Vaughan responded to Officer's Johnson's report and Officer Johnson advised him of the location of the described vehicle. Officer Vaughn positively identified the vehicle as being the same black Acura witnessed by Officer Johnson, stopped the vehicle and made contact with Zarraluqui. Officer LeGendre responded to the location. After arrival, he noticed damage to the left rear end of the vehicle and tan paint on the damaged area. After meeting with Zarraluqui, Officer LeGendre noticed that his eyes were glossy, and a strong odor of alcohol on Zarraluqui's person. Zarraluqui's speech was slurred and he was unable to complete a proper sentence. To Officer LeGendre, it appeared as though Zarraluqui was so intoxicated that he was unaware of the incident that had occurred. At that time, Zarraluqui was transported to the police department for a DUI investigation.

Officer LeGendre requested Zarraluqui to complete a breath test. Zarraluqui refused the test twice.

Zarraluqui argued on the administrative level and in his Petition that there is a lack of evidence, specifically that the record did not contain any evidence to demonstrate that any of the law enforcement officers who submitted written reports ever observed the Petitioner seated in the driver's seat or actually operate the motor vehicle in question. However, Officer Johnson, who witnessed the 'hit and run' incident, turned over the DUI investigation to responding officers, including Officer LeGendre, who found there was probable cause to believe that Zarraluqui was driving or in actual physical control of a motor vehicle while under the influence. The arrest affidavit, DDL #3, specifically identifies the Petitioner as the "Defendant" and indicates that the "Defendant attempted to back out of a parking space. Defendant struck a parked vehicle and then left the area. Det. Johnson witnessed [the] accident and defendant flee the scene." This affidavit provides sufficient competent evidence to conclude that Detective Johnson had first hand knowledge that the Petitioner was driving the vehicle.

Second, Zarraluqui argues that hearing officer improperly considered unsworn reports that should not have been admitted into evidence or considered by the hearing officer, specifically portions of DDL #7 (the portions authored by Officer Sanford and Officer Vaughn), as these statements were not included in the law enforcement officer's oath form. This objection was made at the administrative hearing by Petitioner's counsel and considered by the hearing officer. These reports were properly admissible at the administrative hearing because according to Rule 15A-6.013(6), Fla. Admin. Code, "any relevant evidence shall be admitted, provided that it is timely filed as provided in this

rule." Additionally, "the hearing officer may consider any report or photocopies of such report submitted by a law enforcement officer, correctional officer or law enforcement or correctional agency relating to the suspension of the driver, the administration or analysis of a breath or blood test, the maintenance of a breath testing instrument, or a refusal to submit to a breath, blood, or urine test, which has been filed prior to or at the review. [...] No extrinsic evidence of authenticity as a condition precedent to admissibility is required." 15A-6.013(2), F.A.C.

The determination for this Court is whether Zarraluqui was afforded procedural due process, whether the essential requirements of law were observed, and whether the Department's findings and judgment was supported by competent substantial evidence. The Court finds that Zarraluqui was afforded procedural due process and the DHSMV observed the essential requirements of law. More importantly, this Court holds the hearing officer's findings of fact and conclusions of law dated September 5, 2008 were supported by competent substantial evidence.

Therefore, it is,

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is hereby **DENIED**.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 11 day of ~~January~~ March, 2009.

Original opinion entered by Circuit Judges Pamela A.M. Campbell, George W. Greer, & John A. Schaefer.

Copies furnished to:

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