NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

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

LAWRENCE WAYNE AMBURGEY,
Petitioner,
v.

Ref. No. 18-000032AP-88B
UCN: 522018AP000032XXXXCI

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

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles ("DHSMV") sustaining the suspension of his driving privilege for refusing to submit to a blood test pursuant to § 322.2615, Florida Statutes. Petitioner contends that the DHSMV's final order was not supported by competent, substantial evidence and departed from the essential requirements of law because the request for a blood test was unlawful. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

In the DHSMV's final order, the Hearing Officer found the following facts to be supported by a preponderance of the evidence:

> On February 11, 2018 Officer Couch was dispatched to a crash involving a motorcycle. On arrival Officer Couch found a motorcycle down on one side of a dividing wall and the rider, identified as Lawrence Wayne Amburgey, the Petitioner, on the other side of the wall with injuries. The Petitioner was transported to Bayfront Hospital due to the injuries he sustained.
>
> Officer Couch spoke to the Petitioner at the hospital, where he completed his crash investigation. During the crash investigation, Officer Couch observed that the Petitioner had an odor of an alcoholic beverage on his breath, bloodshot, watery eyes and slurred speech and therefore began a DUI investigation. Field Sobriety Tasks were not conducted due to the Petitioner's injuries. Officer Couch

> requested that the Petitioner submit to a voluntary blood test and the Petitioner refused. The Petitioner was read Implied Consent and refused again. The Petitioner was admitted to the hospital and an arrest affidavit was completed.

Based on Petitioner's refusal to provide a blood sample, his license was suspended. After a hearing, the license suspension was upheld. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

"[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence." *Wiggins v. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017).

Discussion

Section 316.1932(1)(c), Florida Statutes, states:

> Any person who accepts the privilege . . . 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 blood test for the purpose of determining the alcoholic content of the blood . . . if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages[,] . . . and the person appears for treatment at a hospital, clinic, or other medical facility[,] and the administration of a breath or urine test is impractical or impossible.

Petitioner asserts the Hearing Officer erred in sustaining the license suspension because the "record did not contain the necessary preponderance of the competent substantial evidence that breath and urine tests were impossible or impractical."[1] Section 322.2615(7), Florida Statutes, requires the Hearing Officer to "determine by a preponderance of the evidence whether sufficient

[1] Petitioner also asserts several tangential arguments related to the legality of the blood draw request. The Court has carefully considered all of those arguments, and we reject them without discussion.

cause exists to sustain, amend, or invalidate the suspension." The Court must determine if the hearing officer's decision is supported by competent, substantial evidence. In determining if competent, substantial evidence exists, this Court may only decide "whether the record contains the necessary quantum of evidence." *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). A reviewing court "is not permitted to go farther and reweigh that evidence . . . or to substitute its judgment about what should be done." *Id.; Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) ("As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.").

Here, Officer Couch's Case Narrative indicates that he responded to a single-vehicle crash at 7:29 pm. Upon his arrival, he determined Petitioner had crashed his motorcycle and sustained injuries. Petitioner was transported to the hospital, and Officer Couch spoke with him in the emergency room. At 8:15 pm, Officer Couch told Petitioner that the crash investigation was over and he was going to conduct a criminal DUI investigation. Shortly thereafter, Petitioner was taken for a CT scan. Officer Couch testified that after Petitioner was taken for the CT scan, the nurse informed him that Petitioner may or may not be admitted because it was a decision that a doctor had to make after reviewing the scan. Officer Couch further testified that, "I knew he wasn't going to get released at 8:55 [pm]. It was going to be some time way down the road, [i]f at all." In the Affidavit of Refusal to Submit to Blood Test, Officer Couch avers that a breath or urine test was impossible or impractical. Accordingly, the final order is supported by competent, substantial evidence.

Petitioner also challenges the final order for violating the essential requirements of law by allowing the admissibility of a "warrantless blood draw requested pursuant to the Implied

Consent warnings without exigent circumstances." Petitioner relies on *Birchfield v. North Dakota*, which held in part that a state cannot impose criminal penalties for refusal to submit to a blood test under implied-consent laws. 136 S. Ct. 2160, 2185-86 (2016). This argument is misplaced. *See id.* at 2185 ("Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply . . . and nothing we say here should be read to cast doubt on them." (citations omitted)). Accordingly, the final order did not depart from the essential requirements of law.

Conclusion

Because the DHSMV's final order is supported by competent, substantial evidence and did not depart from the essential requirements of law, it is

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

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this _____ day of _____, 2018.

Original Order entered on December 21, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies furnished to
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