

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

**LAURA TYLER,  
Petitioner,**

v.

**CASE NUMBER: 2021-CA-000068**

**STATE OF FLORIDA, DEPT. OF  
HIGHWAY SAFETY & MOTOR VEHICLES,  
Respondent.**

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Petition for Writ of Certiorari

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**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** came before the Court on remand from the Mandate, entered April 21, 2023, from the Second District Court of Appeal, Case No. 2D22-1686. As set forth in its Order and Opinion, entered April 5, 2023, the above-styled Petition for Writ of Certiorari is not moot as the “capable-of-repetition-but-evading-review exception to mootness applies.” The Second District Court of Appeal clarified its earlier holding, set forth in *McLaughlin v. Dep’t of Highway Safety & Motor Vehicles*, 128 So.3d 815 (Fla. 2d DCA 2012), which concluded that because the suspension had expired, the issue of the validity of the suspension of the petitioner’s driver license was moot.<sup>1</sup> Hence, upon review of the briefs, record, and being otherwise fully advised, the Court finds that the Petition for Writ of Certiorari must be denied.

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<sup>1</sup> The Florida Supreme Court, on December 9, 2021, declined to accept jurisdiction to resolve the inter-district conflict between *McLaughlin* and other cases on this matter. See *Cordaro v. Dep’t. of Highway Safety & Motor Vehicles*, 2021 WL 5853778 (Fla. Dec. 9, 2021).

## **STANDARD OF REVIEW**

The circuit court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent and substantial evidence. *Haines City v. Heggs*, 658 So.2d 523, 530 (Fla. 1995)(*citations omitted*). This Court, sitting in its appellate capacity, is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and decision. *Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So.2d 1247, 1249 (Fla. 2d DCA 2006)(*citations omitted*). “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.” *Dusseau v. Metro. Dade Cty. Bd. of Cty. Commrs.*, 794 So.2d 1270, 1276 (Fla. 2001).

## **BACKGROUND FACTS**

Petitioner, Laura Tyler (“Tyler”), appeals the Findings of Fact, Conclusions of Law and Decision (“DMV Order”), entered December 11, 2020, by Samantha Simpkins, Field Hearing Officer (“Hearing Officer”), affirming the license suspension imposed by the Respondent, State of Florida, Department of Highway Safety and Motor Vehicles (“DMV”). The Hearing Officer upheld Tyler’s driver’s license suspension, effective October 25, 2020, for driving under the influence after Tyler refused to submit to a breath test as requested by the Florida Highway Patrol (“FHP”). Tyler was informed that if she refused to submit to a breath test her driving privilege 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.<sup>2</sup>

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<sup>2</sup> This was Tyler’s second DUI.

The underlying traffic investigation began on the early morning hours of October 25, 2020, around 4:45 a.m., after Tyler left her southbound lane of traffic and crashed head-on into a vehicle traveling in the northbound lane of traffic. The driver of the northbound vehicle was transported to the hospital with life-threatening injuries. After an investigation, Tyler was arrested for felony DUI with serious bodily injury to another and DUI property damage.<sup>3</sup>

Tyler timely requested an administrative hearing before the DMV's Bureau of Administrative Reviews ("BAR") to challenge the lawfulness of her license suspension. A telephonic hearing was held on December 2, 2020, with the Hearing Officer placing the call from Tallahassee.<sup>4</sup> The Hearing Officer admitted ten documents received from the FHP into evidence, without objection. As set forth in the transcript of the administrative hearing, the following exhibits were admitted:

DDL-1 – Florida DUI UTC A76YO7E and Notice of Suspension;

DDL-2 – Photocopy of Florida Driver License;

DDL-3 – Arrest Report;

DDL-4 – FHP Incident Report;

DDL-5 – Affidavit of Refusal to Submit to Breath and/or Urine Test;

DDL-6 – Alcohol and Drug Influence Report;

DDL-7 – Florida Traffic Crash Report;

DDL-8 – Breath Alcohol Test Affidavit;

DDL-9 – Florida Uniform Traffic Citations;<sup>5</sup> and,

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<sup>3</sup> These criminal charges remain pending, Pasco County Case No. 2020-CF-004892.

<sup>4</sup> Laura Tyler did not appear for this hearing, but was represented by counsel. While Tyler had the right to request the presence of a witness, no witnesses were subpoenaed for this hearing. See § 322.2615(6)(b), Fla. Stat.

<sup>5</sup> The transcript shows that these two citations, ACF7J8E and ACF7J9E, were for DUI property damage personal injury and driving on wrong side of roadway.

DDL-10 – Vehicle Tow Receipt.

The transcript shows that the Hearing Officer listened to Tyler's objections and case law argument. The Hearing Officer also heard Tyler's oral motion to invalidate the license suspension arguing that there was insufficient evidence in the record to show that Tyler was driving, or in actual physical control of, the vehicle at the time of the crash. The Hearing Officer stated she would reserve ruling on Tyler's oral motion until she had a chance to review all the documentation submitted by Tyler. After the hearing, the Hearing Officer took the matter under advisement before entering the DMV Order on December 11, 2020, affirming Tyler's license suspension.

### **ISSUES RAISED**

Before this Court, Tyler raises the following issues which are consolidated as follows:

(1) Tyler was denied due process of law when the telephonic hearing originated in Tallahassee instead of Tampa;

(2) The DMV Order departs from the essential requirements of law, and is not supported by competent substantial evidence, as there is not record evidence that Tyler was driving or in actual physical control of the vehicle involved in the head-on collision.

The DMV counters these arguments with citations to the record and case law.

### **LAW AND ANALYSIS**

In addressing the first issue, the Court finds that Tyler was not denied due process because the telephonic hearing originated from Tallahassee instead of Tampa. Florida Administrative Code Rule 15A-6.009, location of hearings, requires that hearings be held at the nearest BAR office to

the arresting county. The Court finds this section applies only to in-person hearings.<sup>6</sup> The hearing also occurred during a pandemic wherein the Florida Supreme Court issued several orders permitting the use of telephonic hearings. Lastly, section 322.2615(6)(b), Fla. Stat., specifically provides that “[t]he hearing officer may conduct hearings using communications technology.”

In addressing the second issue, the Court finds that the entry of the DMV Order adheres to the essential requirements of law and is supported by competent substantial evidence. Under section 322.2615(7)(b)1.-3., Fla. Stat., the Hearing Officer was required to determine, by a preponderance of the evidence, the following to sustain a license suspension for the refusal to submit to a breath test:

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.

Tyler’s argument focuses on the first prong of inquiry arguing that Trooper Galloway, of the FHP, did not have sufficient probable cause to establish that Laura Tyler was driving or in actual physical control of the vehicle involved in the head-on collision. However, the Court finds that the record, to include the FHP Arrest Report, FHP Incident Report and Florida Traffic Crash Report,<sup>7</sup> provide competent substantial evidence to support the DMV Order.

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<sup>6</sup> At least one other circuit court, sitting in its appellate capacity, has also concluded that Rule 15A-6.009 applies only to in-person hearings. See *Celaj v. Dept. of Highway Safety and Motor Vehicles*, Case No. 2021-CA-000240 (Fla. 7th Cir. Ct. Oct. 4, 2021).

<sup>7</sup> These documents were properly admitted into the record and are deemed self-authenticating. See 322.2615(2)(b), Fla. Stat.; Rule 15A-6.013(2), Fla. Admin. Code

As set forth in the FHP Arrest Report, Trooper Galloway was dispatched to the scene of a motor vehicle collision at U.S. 41 and Malabar Ave. in Spring Hill. When Trooper Galloway arrived on the scene, at approximately 4:45 a.m., he observed two vehicles, a blue Hyundai Sonata and red Nissan Altima, with damage consistent with a head-on collision. Trooper Galloway was informed that the driver of the Altima had been transported to Bayonet Medical facility with life threatening injuries.

As Trooper Galloway approached, he observed the driver of the Sonata, identified as Tyler by her Driver's License, standing on the east shoulder of U.S. 41. Trooper Galloway asked Tyler if she had any injuries to which she responded that her left side was sore and her left arm had an abrasion. Trooper Galloway found these injuries consistent with Tyler sitting in the driver's seat. Trooper Galloway observed several signs of Tyler's impairment to include bloodshot/watery eyes, fumbling with her Driver's License, mumbled/slurred speech, an orbital sway, and a strong odor of alcohol emitting from her breath. At approximately 6:08 a.m., Trooper Galloway informed Tyler that he was finished with the crash investigation and was now switching to the criminal investigation for DUI. Tyler was read Miranda warnings and refused to speak any further to Trooper Galloway. Tyler was then placed under arrest for DUI, and subsequently refused to provide two breath samples.

The FHP Incident Report mirrors the FHP Arrest Report, and contains additional information about the injuries sustained by the driver of the Altima.<sup>8</sup> The Florida Traffic Crash Report, also completed by Trooper Galloway, states: "Upon Trooper's arrival, Trooper spoke with a witness-1.<sup>9</sup> Witness-1 stated that Vehicle 1 [Sonata] began to travel south in the northbound

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<sup>8</sup> The driver of the Altima was later interviewed at the hospital and only recalled a vehicle coming into her northbound lane just before the collision.

<sup>9</sup> There was only one witness listed in the report, a one Leroy Vickers of Floral City.

lanes of US-41. Witness-1 statement was consistent with the damage to the vehicles. Driver 2 was transported to Bayonet Regional Medical facility with serious bodily injuries.” Attached to the Florida Traffic Crash Report is a diagram of the crash details.

The Hearing Officer was charged with reviewing the record and determine, by a preponderance of the evidence, whether sufficient cause existed to sustain, amend, or invalidate the license suspension. *See* § 322.2615(7), Fla. Stat. The record shows that there was one witness to the accident and this witness observed that Tyler was the driver of the Sonata at the time of the collision. So, notwithstanding the Hearing Officer’s finding that there was “no one on scene besides the Petitioner [Tyler] when Trooper Galloway arrived,” there is still competent substantial evidence in the record to support the DMV Order. *See Stenmark*, 941 So.2d at 1249 (Fla. 2d DCA 2006)(*citations omitted*).

Further, it is inconsequential as to when FHP determined that Tyler was the registered owner of the vehicle, since the inquiry before the Hearing Officer was whether Trooper Galloway had probable cause to believe that Tyler was driving, or in actual physical control of, the Sonata while under the influence at the time of the accident. *See* § 322.2615(7)(b)(1), Fla. Stat. A probable cause determination can be made from reasonable inferences drawn from the surrounding facts and circumstances, as analyzed from the officer’s knowledge and practical experience. *Dept. of Highway Safety and Motor Vehicles v. Silva*, 806 So.2d 551, 554 (Fla. 2d DCA 2002)(*citations omitted*). This Court is prohibited from reweighing the evidence and substituting its judgement for that of the Hearing Officer. *Id.* at 553. Accordingly, the Court finds that the DMV Order is supported by competent substantial evidence and adheres to the essential requirements of law, and that there is no basis to grant certiorari relief under the facts of this case.

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

**DONE AND ORDERED** in Chambers at New Port Richey, Pasco County, Florida on this \_\_\_\_ day of \_\_\_\_\_ 2023.

Original Order entered on October 16, 2023, by Circuit Judges Susan Barthle, Daniel Diskey, and Lauralee Westine.

*Copies furnished to:*

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