

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
Case No.: 2016CA007775

BRAHIM J. FRANKLIN,  
Petitioner,

v.

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

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Opinion filed: JUN 06 2017

Petition for Writ of Certiorari from the Department of Highway Safety and Motor Vehicles;  
Hearing Officer Donna George.

For Petitioner: William Barry Paul, Esq.  
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PER CURIAM.

Brahim J. Franklin (“Petitioner”) seeks relief from a Department of Highway Safety and Motor Vehicles (“DHSMV”) hearing officer’s order that affirmed Petitioner’s driver license suspension. Petitioner argues the decision departs from the essential requirements of the law because Petitioner’s arrest for Driving Under the Influence (“DUI”) was preceded by an unlawful traffic stop. Thus, Petitioner argues the order affirming the suspension based upon his refusal to submit to a breath test must be quashed. We agree and grant the Petition.

Gibson requested a formal review hearing of the driver license suspension pursuant to section 322.2615, Florida Statutes. The hearing officer heard testimony from the arresting officer and considered documentary evidence, including the probable cause affidavit. Although the hearing officer found that the arresting officer initially followed Petitioner's vehicle based upon a "be on the lookout" ("BOLO"),<sup>1</sup> the hearing officer found that the traffic stop was based upon the arresting officer's observation that Petitioner's license plate was obstructed. The arresting officer wrote in the probable cause affidavit that the "top part of the license plate including the state of Florida was obstructed by a plate cover." The hearing officer found that this was a lawful arrest, and Petitioner seeks review of this decision.

On certiorari review of an administrative action, this Court asks only "(1) whether procedural due process was followed, (2) whether there was a departure from the essential requirements of the law, and (3) whether the administrative findings and judgment are supported by substantial evidence." *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

Section 322.2615(1)(b)(1), Florida Statutes provides that an individual may have their driver license suspended for refusing to submit to a "lawful" breath test. A "lawful" breath test "is one that is requested incident to a lawful arrest." *DHSMV v. Hernandez*, 74 So. 3d 1070, 1076 (Fla. 2011). Therefore, "the DHSMV cannot suspend a driver's license under section 322.2615 for refusal to submit to a breath test . . . if the refusal is not incident to a lawful arrest. *Id.*

A police officer may initiate a traffic stop for a traffic violation if the officer "has probable cause to believe a traffic infraction has occurred." *D.A. v. State*, 10 So. 3d 674, 676

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<sup>1</sup> The BOLO was for a woman driving a gray car; the Petitioner, a man, was driving a silver car.

(Fla. 3d DCA 2009). In relevant part, section 316.605(1), Florida Statutes provides that a license plate shall be affixed to a vehicle so that

all letters, numerals, printing, writing, the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front.

In *State v. St. Jean*, 697 So. 2d 956, 957 (Fla. 5th DCA 1997), the Fifth District Court of Appeal held that section 316.605(1) does not require “the name of the state and county at the top and bottom” of a license plate be unobstructed. The court reasoned that the “overall statutory scheme [of section 316.605] suggests that the ‘identification marks’ that must be visible and legible are those that ‘identify’ the ‘registration.’” *Id.*; *c.f. English v. State*, 191 So. 3d 448 (Fla. 2016) (holding that section 316.605(1) was violated when wires hanging over license plate obscured one letter of the tag number).

This case is indistinguishable from *St. Jean*. The officer in this case lacked probable cause to stop Petitioner’s vehicle based upon the frame obstructing the name of the state on his license plate. Therefore, the traffic stop was unlawful. Although the DHSMV alternatively argues that the stop was lawful based upon the BOLO, we find this argument meritless. *See Pantin v. State*, 872 So. 2d 1000, 1001 (Fla. 4th DCA 2004); *Walker v. City of Pompano Beach*, 763 So. 2d 1146, 1147 (Fla. 4th DCA 2000); *Hunter v. State*, 660 So. 2d 244, 249 (Fla. 1995).

Because the traffic stop that led to Petitioner’s arrest was unlawful, Petitioner did not refuse to submit to a breath test incident to a lawful arrest. Accordingly, the hearing officer departed from the essential requirements of the law in suspending Petitioner’s driver license. *Sarmiento*, 989 So. 2d at 693. The Petition for Writ of Certiorari is **GRANTED** and the final order of the hearing officer is **QUASHED**.

ROWE, BLANC, and BARKDULL, JJ., concur.

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Petition for Writ of Certiorari from the  
Department of Highway Safety and Motor Vehicles

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

Petition filed: July 9, 2016

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DATE OF PANEL: MAY 15, 2017

PANEL JUDGES: ROWE, BLANC, BARKDULL

AFFIRMED/REVERSED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With Opinion	)	With/Without Opinion	)
<u>Rowe</u>	)		)		)
<u>6/6/17</u>	)		)		)
J.	)	J.	)	J.	)
<u>Blanc</u>	)		)		)
<u>6/6/17</u>	)		)		)
J.	)	J.	)	J.	)
<u>Blank</u>	)		)		)
<u>6/6/17</u>	)		)		)
J.	)	J.	)	J.	)