

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA**

SEAN SIMMONS,

Petitioner,

v.

CASE NO.: 2006-CA-10316-O

Writ No.: 06-88

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY & MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**

Respondent.

Petition for Writ of Certiorari.

William R. Ponall, Esquire,
for Petitioner.

Thomas C. Mielke, Esquire,
for Respondent.

BEFORE PERRY, THORPE, and BRONSON, JJ.

PER CURIAM.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Sean Simmons (“Petitioner”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the order sustained the one year suspension of his driver’s license for refusing to submit to the breath-alcohol test. This Court has jurisdiction under sections 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

On September 22, 2006, the arresting officer observed a vehicle, driven by the Petitioner, twice fail to stop at a stop sign and exhibit an erratic driving pattern. The arresting officer then conducted a traffic stop. The arresting officer observed that the Petitioner smelled of alcohol, his eyes were glassy, bloodshot, and watery, his speech was slurred, and his balance was impaired. The arresting officer then asked the Petitioner to perform field sobriety exercises. The Petitioner performed poorly on the exercises and was placed under arrest. The arresting officer then transported the Petitioner to the breath test center where he refused the breath test.

The Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, and a hearing was held on October 31, 2006. At the hearing, the Petitioner moved to set aside the suspension arguing that there was insufficient evidence that the arresting officer, at the time he requested the Petitioner perform field sobriety exercise, had the necessary reasonable suspicion to detain the Petitioner and request that he perform those exercises. On November 1, 2006, the hearing officer entered a Final Order of License Suspension denying the Petitioner's motions and sustaining the suspension of his driver's license.

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. In order to uphold the suspension of a driver's license for refusal to submit to a test of his or her breath, urine or blood for alcohol or controlled substances, the

hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person was placed under lawful arrest for a violation of s. 316.193.
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
4. Whether the person 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).

The Petitioner argues that the evidence in the record failed to establish that the arresting officer had the reasonable suspicion necessary to detain the Petitioner and request performance of field sobriety exercises. Thus, the Petitioner argues, the results of the exercises should not have been considered by the hearing officer, resulting in a lack of competent substantial evidence that the arresting officer had probable cause to arrest the Petitioner for DUI. Conversely, the Department argues that the arresting officer did have probable cause to arrest the Petitioner for DUI based on competent substantial evidence contained in the arrest affidavit.

At the administrative hearing, the hearing officer is entitled to make his determination entirely on the basis of the written reports submitted by law enforcement. *See Dep't of Highway Safety & Motor Vehicles v. Stewart*, 625 So. 2d 123 (Fla. 5th DCA 1993). In reviewing an

administrative action, the circuit court is prohibited from weighing or reweighing the evidence presented to the hearing officer. *Dep't of Highway Safety & Motor Vehicles v. Smith*, 687 So. 2d 30 (Fla. 1st DCA 1997).

In this case, the only evidence considered by the hearing officer regarding the traffic stop and subsequent arrest is contained in the arrest affidavit submitted by the Department at the hearing. The arresting officer was not subpoenaed and was not questioned at the hearing. The arrest affidavit clearly states that the arresting officer had probable cause to believe that the Petitioner operated his vehicle in violation of section 316.193(1), Florida Statutes. The arrest affidavit indicates that the arresting officer stopped the Petitioner after he ran through two stop signs, and drove erratically in an area where pedestrians were present. Upon making contact with the Petitioner, the arresting officer observed a strong smell of an alcoholic beverage, his watery, bloodshot, and glassy eyes, his slurred speech, and his impaired balance. Based on these observations, the Court finds that the hearing officer had competent substantial evidence to support his findings that the arresting officer had probable cause to arrest the Petitioner for DUI. To evaluate the evidence further would put the Court in the impermissible position of reweighing the evidence presented in the administrative action.

The Petitioner contends that the documentary evidence submitted at the hearing must make clear how the arresting officer arrives at his or her conclusions. *See Roberts v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 27a (Fla. 9th Cir. Ct. 2005) (court concluded that the documentary evidence presented at the hearing must make clear how the arresting officer arrived at his conclusion that the petitioner was exceeding the speed limit); *Clemons v. Dep't of Highway Safety & Motor Vehicles*, 11 Fla. L Weekly Supp. 949a (Fla. 4th Cir. Ct. 2004) (court found that the arresting officer must indicate how he arrived at the

conclusion that the petitioner was driving or in physical control of the vehicle). The Court finds that the observations made in the cases cited by the Petitioner are distinguishable from the observations made by the arresting officer in the present case. In this case, the arresting officer made clear that he had probable cause to order field sobriety exercises because the Petitioner smelled of alcohol, his eyes were glassy, bloodshot, and watery, his speech was slurred, and his balance was impaired. In the cases cited by the Petitioner, the actual observations made by the arresting officers required additional explanation, as it was not obvious from the arrest affidavits how the officers determined that the petitioner was speeding or determined that the petitioner was driving the vehicle. *See Roberts*, 13 Fla. L. Weekly Supp. 27; *Clemons*, 11 Fla. L. Weekly Supp. 949. Additionally, the Petitioner cites no authority requiring that the observations made by the arresting officer appear in chronological order. Because the arrest affidavit clearly states the reasons for the traffic stop and the observations made by the arresting officer, the Court finds that the arresting officer had probable cause to arrest the Petitioner for DUI based on competent substantial evidence contained in the arrest affidavit.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Simmons' Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this __6__ day of __February_____, 2009.

/S/ **BELVIN PERRY, JR.**
Chief Judge

/S/ **JANET C. THORPE**
Circuit Court Judge

/S/ **THEOTIS BRONSON**
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **William R. Ponall, Esq.**, Kirkconnell, Lindsey, Snure, & Yates, P.A., P.O. Box 2728, Winter Park, FL 32790-2728; and to **Thomas C. Mielke, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 2515 W. Flagler St., Miami, FL 33135, on this 9 day of February , 2009.

_____/S/_____

Judicial Assistant