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

JASON AKI,
Petitioner,

CASE NO.: 2007-CA-255
WRIT NO.: 07-03

vs.

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

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Jim Kuritz, Hearing Officer.

Neal T. McShane, Esquire,
for Petitioner.

Damaris E. Reynolds, Assistant General Counsel,
for Respondent.

Before POWELL, LAUTEN, G. ADAMS, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Jason Aki timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (Department) Final Order of License Suspension, sustaining the suspension of his driver's license pursuant to section 322.2615, Florida Statutes. This Court has jurisdiction pursuant to section 322.2615, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(C). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

On October 14, 2006, Trooper Brooks of the Florida Highway Patrol arrived at the scene of a traffic crash and made contact with Petitioner, who was later identified as the driver of the vehicle. Trooper Brooks observed that Petitioner's eyes were bloodshot and an odor of alcoholic impurities emitted from his breath. Petitioner refused to participate in field sobriety exercises and later gave breath-alcohol test samples of .252 and .242. The Department suspended Petitioner's driving privileges. Petitioner requested and was granted a formal review hearing pursuant to section 322.2615, Florida Statutes.

On November 22, 2006, the hearing officer held a formal review hearing at which Petitioner was represented by counsel. Petitioner moved to invalidate the license suspension on four grounds: (1) the accident report privilege; (2) the law enforcement officer's misstatement of law regarding the breath test; (3) the law enforcement officer lacked probable cause to arrest Petitioner; and (4) lack of probable cause to believe that Petitioner was driving or in actual physical control of the vehicle. On December 7, 2006, the hearing officer entered an order denying Petitioner's motions and sustaining the suspension of his driver's license finding that the law enforcement officer had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and that Petitioner had an unlawful breath-alcohol level of .08 or higher. Petitioner timely seeks certiorari review by this Court.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and

make findings [of fact] when [undertaking] a review of a decision of an administrative forum." *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

After carefully reviewing the petition and appendix, the response, the cited legal authorities, the record and the transcripts, this Court finds that Petitioner's arguments are without merit. Specifically, we conclude that the hearing officer did not err in refusing to exclude: (1) Petitioner's statements to the law enforcement officers and witnesses; (2) Petitioner's refusal to perform field sobriety exercises, and (3) Petitioner's breath-alcohol test results. Based on the accident report privilege found in section 316.066(7), Florida Statutes, the U.S. Supreme Court case of *Miranda v. Arizona*, 384 U.S. 436 (1996), and its progeny, and *State v. Marshall*, 695 So. 2d 719 (Fla. 3d DCA 1996), we find that the hearing officer properly included those statements and test results.[1] Even disregarding Petitioner's statements to the law enforcement officer and Petitioner's refusal to perform field sobriety exercises, we find that Trooper Brooks had probable cause to believe that Petitioner was operating the vehicle while under the influence of alcoholic beverages. Finally, the hearing officer was correct in finding that Trooper Brook's answers to Petitioner's questions regarding the length of the temporary work permit properly stated the law and did not mislead Petitioner into taking the breath test.

[1] Although not bearing upon our decision, we note in passing that the issues of whether the accident report privilege and the federal and state exclusionary rules apply to administrative proceedings, such as this, have never been decided by the Florida District Courts of Appeal and the Florida Supreme Court. Section 316.066(7), Florida Statutes, appears to confine the accident report privilege to jury and non-jury trials by stating, in pertinent part, that "[n]o such report or statement shall be used as evidence in any *trial, civil or criminal*."(emphasis added). Further, the majority of jurisdictions elsewhere hold that the constitutional exclusionary rules do not apply to administrative driver's license revocation and suspension proceedings except where the officer's actions are shocking or the statutory scheme requires it. S*ee Nevers v. State, Dep't of Administration*, 123 P.3d 958 (Alaska 2005)(holding that the exclusionary rule is inapplicable to search and seizure violations in administrative drivers license revocation proceedings); *State v. Scarlet*, 800 So. 2d 220, 221 (Fla. 2001) (approving the Third District's decision noting that the exclusionary rule is incompatible with the traditional, administrative procedures of parole revocation); *Dep't of Highway Safety & Motor Vehicles v. Grapski*, 696 So. 2d 950 (Fla. 4th DCA 1997) (noting that suspension of a driver's license is an administrative remedy not a punishment); *Valdez v. Dep't of Revenue*, 622 So. 2d 62 (Fla. 1st DCA 1993)(exclusionary rule did not apply in administrative proceeding to challenge tax assessment).

The Court concludes that due process was afforded, the hearing officer did not depart from the essential requirements of the law, and there was substantial competent evidence to support the hearing officer's findings and decision.

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

DONE AND ORDERED at Orlando, Florida this __1___day _____February_____, 2010.

_____/S/_____
ROM W. POWELL
Senior Judge

_____/S/_____
FREDERICK J. LAUTEN
Circuit Judge

_____/S/_____
GAIL A. ADAMS
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 1 day of February, 2010, to the following: **Neal T. McShane, Esquire**, 836 North Highland Avenue, Orlando, Florida 32803 and **Damaris E. Reynolds, Assistant General Counsel,** DHSMV-Legal Office, Post Office Box 540609, Lake Worth, Florida 33454-0609.

_____/S/_____
Judicial Assistant