

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

CRYSTAL CUMBERLEDGE,
Petitioner,

**CASE NO.: 2007-CA-9738
WRIT NO.: 07-44**

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,
Mary Varnadore, Hearing Officer.

William R. Ponall, Esquire,
for Petitioner.

Heather Rose Cramer, Assistant General Counsel,
for Respondent.

Before POWELL, DAVIS, and BLACKWELL, JJ.

PER CURIAM.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner Crystal Cumberledge 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 her 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 May 26, 2007, Lieutenant Schardine of the Maitland Police Department observed a vehicle drifting between lanes and contacted Sergeant Harris of the Maitland Police Department to conduct a traffic stop. Sergeant Harris conducted the traffic stop and identified Petitioner as the driver of the vehicle. Sergeant Harris observed that Petitioner's eyes were bloodshot and glassy. Sergeant Harris also observed the strong odor of alcohol on Petitioner's breath. Based on Petitioner's performance on the field sobriety exercises, Petitioner was arrested and read the implied consent warning. Petitioner refused to submit to a breath-alcohol test and the Department suspended her driving privileges. Petitioner requested and was granted a formal review hearing pursuant to section 322.2615, Florida Statutes. When Petitioner attempted service on Mr. Trendafilov, the breath test technician, on June 25, 2007, the Orange County Sheriff's Office refused to accept service of the subpoena. The Affidavit of Non-Service dated June 26, 2007, states that the "deputy will be on vacation on that day."¹

At the July 10, 2007 formal review hearing, Petitioner was represented by counsel and Lieutenant Schardine and Sergeant Harris testified. Petitioner moved to invalidate the suspension due to the refusal of the Sheriff's Office to accept the subpoena for Mr. Trendafilov. The hearing officer denied the motion. Instead, the hearing officer offered to continue the hearing without continuing Petitioner's temporary work permit but Petitioner declined. On July 10, 2007, the hearing officer entered an order sustaining the suspension of Petitioner's driver's license. The hearing officer also denied Petitioner's motion to invalidate the suspension because the hearing officer did not deem Mr. Trendafilov to be a "critical witness." Petitioner timely seeks certiorari review by this Court.

¹ This is not a valid reason for refusal to accept service. See Fla. Admin. Code R. 15A-6.012(a)-(3)(c).

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).

This Court finds that the hearing officer was incorrect about the importance of Mr. Trendafilov as a witness. Mr. Trendafilov was present when Sergeant Harris read the implied consent warning to Petitioner and he authored the two Breath Alcohol Test Affidavits which were admitted into evidence. Further, Mr. Trendafilov could have testified as to how the notation "not a refusal" got onto one of the affidavits and what the notation meant.

We conclude that the actions of the hearing officer and the Sheriff's Office denied Petitioner due process of law. See Curle v. Dep't of Highway Safety & Motor Vehicles, 13 Fla. L. Weekly Supp. 676a (Fla. 9th Cir. Ct. Jan. 17, 2006)(failure of the sheriff's office to accept service of subpoena denied petitioner due process right to meaningful and timely hearing); Homer v. Dep't of Highway Safety & Motor Vehicles, 10 Fla. L. Weekly Supp. 275a (Fla. 4th Cir. Ct. March 20, 2003); Estraviz v. Dep't of Highway Safety & Motor Vehicles, 4 Fla. L. Weekly Supp. 813a (Fla. 4th Cir. Ct. July 15, 1997).

Ordinarily, the disposition of this case would be to grant the petition in part, quash the hearing officer's final order, and direct the balance of hearing to be reset. However, due to the arbitrary actions of the Sheriff's Office and the hearing officer and the delay by this Court in reaching this case for decision, none of which was the fault of Petitioner or her counsel, and the

indirect penalty imposed on Petitioner by the one year license suspension and attorney's fees and costs she paid, we have decided that in the interests of justice we should grant the exact relief Petitioner requests.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **GRANTED**; the hearing officer's Final Order of License Suspension is **QUASHED**; and the Department is directed to reinstate Petitioner's driving privilege.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 7th day of January , 2010.

_____/S/_____
ROM W. POWELL
Senior Judge

_____/S/_____
JENIFER M. DAVIS
Circuit Court Judge

_____/S/_____
ALICE L. BLACKWELL
Circuit Court 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 8th day of January , 2010, to the following: **William R. Ponall, Esquire**, Post Office Box 2728, Winter Park, Florida 32790-2728 and **Heather Rose Cramer, Assistant General Counsel**, DHSMV-Legal Office, 6081 Lake Worth Road, Suite 230, Lake Worth, FL 33467.

_____/S/_____
Judicial Assistant