

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

CASE NO.: 2009-CA-10038-O
WRIT NO.: 09-08

MATTHEW GRIFFIN,

Petitioner,

v.

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

Respondent.

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

William R. Ponall, Esq.,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,
for Respondent.

Before POWELL, LUBET, and O'KANE, J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Matthew Griffin appeals by way of Petition for Writ of Certiorari the decision of a hearing officer after formal hearing affirming the suspension of his driver license. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and deny the Petition.

In brief, Petitioner points to the Breath Alcohol Test Affidavit, which states that the test was conducted at 3:16 a.m. on January 20, 2009, and the Charging Affidavit, which states in one

place that the officer did not arrive at the scene and first encounter Petitioner until January 20, 2009 at 11:58 p.m. – some 20 hours later. He maintains that since the evidence showed that he was not arrested until after the breath test, and there was no live testimony as required by *Dep't of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084 (Fla. 1st DCA 2002) and its progeny explaining this inconsistency, there was not sufficient competent evidence to support the hearing officer's finding that he was arrested before the test.

Petitioner overlooks the other reliable evidence in the record which supports the finding.

Further down on page 2, bottom paragraph in the Charging Affidavit the officer says:

I had probable cause to believe that the defendant [sic] normal faculties were impaired, and I placed the defendant under arrest for DUI and leaving the scene. I transported the defendant to the Orange County DUI Testing Center. The defendant underwent a 20 [sic] minutes observation conducted by BTO Caner. Then, I read implied consent and requested the defendant to consent to a lawful test of breath. He agreed and provided two samples of (.232) and (.217) grams of alcohol per 210 liters of breath.

We conclude that where, as here, there is other reliable evidence upon which the hearing officer can find that a single date-time inconsistency was obviously a scrivener's error, then *Trimble* does not apply and no explanatory testimony is necessary. *See Blinkov v. Dep't of Highway Safety & Motor Vehicles*, No. 2009-CA-75 (Fla. 9th Cir. Ct. March 29, 2010); *Miller v. Dep't of Highway Safety & Motor Vehicles*, 14 Fla. L. Weekly Supp. 941a (Fla. 14th Cir. Ct. June 26, 2007); *Sweat v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L Weekly Supp. 413a (Fla. 4th Cir. Ct. Oct. 3, 2005). A hearing officer has the sole prerogative to resolve conflicts in the evidence, *Dep't of Highway Safety & Motor Vehicles v. Dean*, 662 So. 2d 371 (Fla. 5th DCA 1995), and this Court cannot disturb the hearing officer's reasonable inference of fact made from substantial competent evidence to resolve such fact. *Sweat*, 13 Fla. L Weekly Supp. 413a.

Consequently, the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 24th day of
 February , 2012.

 /S/
ROM W. POWELL
Senior Judge

 /S/
MARC L. LUBET
Circuit Judge

 /S/
JULIE H. O’KANE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 24th day of February , 2012, to the following: **William R. Ponall, Esq.**, Kirkconnell, Lindsey, Snure, and Yates, P.O. Box 2728, Winter Park, Florida 32790; and **Kimberly A. Gibbs, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857.

 /S/
Judicial Assistant