

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

CASE NO.: 2010-CA-1080-O
WRIT NO.: 10-47

DANIELLE S. GOLDSTEIN,
Petitioner,
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.

Richard J. Preira, Esq.
for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

Before POWELL, LEBLANC, and J. KEST, J.J.

FINAL ORDER DENYING AMENDED PETITION FOR WRIT OF CERTIORARI

Petitioner seeks certiorari review of an order of a hearing officer after a formal review hearing sustaining the suspension of her driver's license. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We have carefully considered the amended petition and appendix, the Department's response, and the applicable legal authorities.

We conclude there is competent record evidence to support the hearing officer's finding that the officer had probable cause to believe that the 19 year old Petitioner was driving with "any blood or breath-alcohol level," and thus to lawfully request that she submit to a breath alcohol test which she refused. *See* § 322.2616(8)(b), Fla. Stat. (2009); *Kreda v. State*, 16 Fla. L.

Weekly Supp. 489a (Fla. 9th Cir. Ct. March 19, 2009) (odor of alcohol sufficient to establish probable cause that under-age motorist was driving with “any blood- or breath-alcohol level”); *Kubala v. State*, 17 Fla. L. Weekly Supp. 1008a (Fla. 9th Cir. Ct, June 23, 2009) (same). It was for the hearing officer as the finder of fact – not this appellate court – to judge the credibility of the witnesses and resolve the conflict in the evidence. *See Department of Highway Safety v. Satter.*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

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

DONE AND ORDERED at Orlando, Florida this __2nd__ day of _June_____, 2011.

/S/
ROM W. POWELL
Senior Judge

/S/
BOB LEBLANC
Circuit Judge

/S/
JOHN MARSHALL KEST
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished by mail, this __2nd__ day of __June_____, 2011 to: **Richard J. Preira, Esq.**, 777 Arthur Godfrey Road, 4th Floor, Miami Beach, Florida 33140; and **Richard M. Coln, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857.

/S/
Judicial Assistant