

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

SHERRI HAMADEH-GOSSWEILER,

Petitioner,

v.

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

Respondent.

CASE NO.: 2010-CA-24033-O

WRIT NO.: 10-89

Petition for Writ of Certiorari.

William R. Ponall, Esquire and
Michael J. Snure, Esquire,
for Petitioner.

Kimberly A. Gibbs, Esquire,
for Respondent.

BEFORE EVANS, THORPE, EGAN, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Sherrri Hamadeh-Gossweiler (“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 suspension of her driver’s license for having an unlawful breath alcohol level. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

As gathered from the hearing officer's findings of fact and the arrest affidavit, on August 10, 2010, at approximately 10:25 p.m., Deputy Jesse Bourque of the Orange County Sheriff's Office, observed Petitioner fail to obey a traffic control device. Deputy Bourque then initiated a traffic stop and made contact with Petitioner. He smelled alcohol as Petitioner spoke and she was confused and unable to locate her driver license. She also admitted to consuming alcohol prior to driving. Petitioner then agreed to perform the field sobriety exercises and she performed them poorly. Due to the totality of the circumstances, Deputy Bourque arrested Petitioner for driving under the influence and transported her to the Orange County Sheriff's Office Breath Testing Center where she provided two valid breath samples with results of .152 and .142. Accordingly, Petitioner's driver's license was suspended for six months for driving with an unlawful alcohol level.

Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, that was held on September 23, 2010. On September 28, 2010, the hearing officer entered a written order denying Petitioner's motion and sustaining her driver's license suspension. Petitioner now seeks certiorari review of this order.

"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 cases where the individual's license is suspended for an unlawful

breath-alcohol level, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a), Fla. Stat. (2010).

In the Petition for Writ of Certiorari, Petitioner argues that the hearing officer's decision is not supported by competent substantial evidence that the Petitioner's breath test was conducted in substantial compliance with the applicable administrative rules. Specifically, Petitioner argues that the evidence before the hearing officer failed to establish that there were two valid breath samples obtained within 15 minutes of each other as required under Florida Administrative Code Rule 11D-8.002(12). She claims that the breath alcohol test affidavits state that the first breath test was conducted at 11:46 p.m. on August 19, 2010 and the second breath test was conducted at 11:57 p.m. on August 20, 2010.

From review of the court record, this Court concurs with the Department in its Response that the hearing officer properly sustained the suspension where there was competent substantial evidence to support the hearing officer's decision as follows: Deputy Bourque states in the arrest affidavit that upon transporting Petitioner to the Orange County Sheriff's Office Breath Testing Center, a breath technician performed the twenty minute observation. Subsequently, Deputy Bourque read Petitioner the implied consent warning and she agreed to be tested. As stated in the arrest affidavit, the first breath sample was obtained at 23:46 hours (11:46 p.m.) and the second sample was obtained at 23:57 hours (11:57 p.m.). Thus, the breath samples were

obtained within 11 minutes of each other. Further, the reason for the discrepancy in the dates on the breath alcohol test affidavits is that the testing of the first breath sample was completed at 23:53 (11:53 p.m.) on August 19, 2010, while the testing on the second sample began at 23:54 (11:54 p.m.) but did not conclude until 00:09 (12:09 a.m.) on August 20, 2010. In addition, the arrest affidavit shows that Deputy Bourque printed it at 1:12 a.m. on August 20, 2010.

Therefore, Petitioner's argument is meritless because Deputy Bourque would have been unable to report the breath alcohol test results on testing that had not yet occurred.

Accordingly, this Court finds that procedural due process was followed; the essential requirements of law were followed; and the hearing officer's administrative findings were supported by competent substantial evidence.

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

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 1st day of August, 2011.

/S/ _____
ROBERT M. EVANS
Circuit Court Judge

/S/ _____
JANET C. THORPE
Circuit Court Judge

/S/ _____
ROBERT J. EGAN
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, Esquire and Michael J. Snure, Esquire,** Kirkconnell, Lindsey, Snure and Yates, P.A. and to **Kimberly A. Gibbs, Esquire,** Assistant General Counsel, Department of Highway Safety and Motor Vehicles - Legal Office, P.O. Box 570066, Orlando, FL 32857, on this 1st day of August, 2011.

_ /S/ _____

Judicial Assistant