

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

ASWAN K. HARDEO,

CASE NO.: 2010-CA-24501

WRIT NO.: 10-99

Petitioner,

v.

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

Respondent.

Petition for Writ of Certiorari.

Tad A. Yates, Esquire,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel
for Respondent.

BEFORE EVANS, O’KANE, EGAN, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Aswan K. Hardeo (“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 his driver’s license. 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.

Findings of Fact

As gathered from the charging affidavit, the crash report, and the hearing officer's findings of fact, on August 29, 2010, Trooper Barbi Myers of the Florida Highway Patrol was dispatched and responded to the scene of a vehicle crash at State Road 408 and State Road 551.¹ Trooper Myers made contact with the driver identified as Petitioner and requested him to produce his driver's license, registration, and proof of insurance. Petitioner fumbled through his paperwork in a very slow manner and was unable to pick out his registration that he was looking at in his hand. Petitioner received help from the passenger in his vehicle to locate some of the documents. After Petitioner made multiple attempts to retrieve his driver license out of his wallet, he eventually provided it to Trooper Myers. Petitioner was then positively identified by his driver's license. Trooper Myers observed that Petitioner had very blood shot eyes that were red rimmed and he emitted a very strong odor of an alcoholic beverage from his mouth as he spoke with slurred speech.

Trooper Myers then advised Petitioner that she was no longer conducting a crash investigation and was now conducting a criminal investigation for driving under the influence. Trooper Myers requested Petitioner to submit to field sobriety exercises and he agreed to do so. In the charging affidavit, Trooper Myers stated in detail Petitioner's poor performance of the field sobriety exercises and the numerous times throughout the exercises where he had trouble following instructions.

Based on Trooper Myers investigation, she took Petitioner into custody for driving while impaired by alcohol. After placing Petitioner in the back of the patrol car, Trooper Myers

¹ Per amendments to section 322.2615(2), Florida Statutes, in 2006, hearing officers shall consider crash reports in rendering decisions. In the instant case, the crash report was among the evidence considered by the hearing officer.

walked around the patrol car, opened the driver side door and noticed the strong smell of an alcoholic beverage in the patrol car that was not present prior to placing him inside. Trooper Myers then transported Petitioner to the Orange County DUI Testing Center. While at the testing center, a twenty minute observation period was conducted. Petitioner then provided two breath-alcohol samples with results of 0.205 and 0.205.

In the crash report, Trooper Myers concluded that Petitioner was the driver of vehicle #1 that crashed into two other occupied vehicles that had slowed for traffic on State Road 408. The crash report indicated that there were seven occupants/witnesses involved in the crash who were seated in the vehicles struck by Petitioner, including the drivers of vehicles # 2 and #3, Rachel Reiner and Steven Hornik. Accordingly, in the charging affidavit, Trooper Myers listed Rachel Reiner and Steven Hornik as wheel witnesses along with Officer Susan Brown of the Orlando Police Department. The crash report also stated that Petitioner was cited for careless driving, DUI/property damage/personal injury, and failure to provide proof of insurance. Petitioner's privilege to drive was suspended for six months for driving with an unlawful blood alcohol level.

Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, that was held on September 29, 2010. On October 8, 2010, the hearing officer entered a written order denying Petitioner's motion and sustaining his driver's license suspension.

Petitioner now seeks certiorari review of this order.

Standard of Review

“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).

Arguments

In the Petition for Writ of Certiorari, Petitioner argues that the hearing officer’s decision to sustain his license suspension was not supported by competent substantial evidence because the charging affidavit did not include facts that were the basis for Trooper Myers’s determination establishing that she had probable cause to believe that Petitioner was either driving or in actual physical control of a motor vehicle.

Conversely, the Department argues that the charging affidavit, the crash report, and Petitioner’s spontaneous admissions provide competent substantial evidence to support the hearing officer’s determination that the arresting officer had probable cause to believe that Petitioner was driving a motor vehicle while under the influence of alcohol.

Court's Analysis and Findings

The charging affidavit and the crash report provide competent substantial evidence to support the hearing officer's determination that Trooper Myers had probable cause to believe that Petitioner was operating a motor vehicle while under the influence of alcohol. The charging affidavit demonstrates that Petitioner was still seated in the driver's seat of his crashed vehicle when Trooper Myers arrived on the scene. Both the crash report and charging affidavit demonstrate that a crash investigation was conducted. The crash report further indicates that witnesses were interviewed who identified Petitioner as the driver of vehicle #1 in the crash. Therefore, it was reasonable for Trooper Myers and the hearing officer to conclude that Petitioner was driving the vehicle that had caused the crash. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (holding that competent substantial evidence is relevant evidence as a reasonable mind would accept as adequate to support a conclusion). Accordingly, this Court finds that the hearing officer's decision to sustain Petitioner's license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence.

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

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 24th day of January, 2012.

/S/

ROBERT M. EVANS
Circuit Court Judge

/S/

JULIE H. O'KANE
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 **Tad A. Yates, Esquire**, Law Offices of Tad A. Yates, P.A., 3117 Edgewater Drive, Orlando, Florida 32804 and to **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles - Legal Office, P.O. Box 570066, Orlando, Florida 32857, on this 24th day of January, 2012.

/S/ _____

Judicial Assistant