

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

**JONATHAN MORGAN,**

**CASE NO.: 2012-CA-1885-O  
WRIT NO.: 12-10**

Petitioner,

v.

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

Respondent.

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Petition for Writ of Certiorari.

William R. Ponall, Esquire,  
for Petitioner.

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

BEFORE BLACKWELL, G. ADAMS, S. KEST, JJ.

PER CURIAM.

**FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

Petitioner, Jonathan Morgan (“Morgan”), 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 for refusing to submit to a blood test. 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 hearing officer's findings, including the testimony from Trooper Daniel Jonas, along with the Charging Affidavit, Affidavit of Refusal to Submit to Breath, Urine, or Blood Test, Morgan's driving record, and other related documents provided at the formal review hearing held on January 3, 2012, the facts were as follows:

On December 3, 2011 at approximately 3:07 a.m., Trooper Jonas of the Florida Highway Patrol was dispatched to the scene of a multiple-vehicle crash. Trooper Jonas met with the only driver involved in the crash who was still at the scene, Anthony Scroggins ("Scroggins"), who described the events of the crash. Scroggins also described the operators of the vehicles involved in the crash and identified by description Morgan as the driver of the maroon SUV. Scroggins also informed Trooper Jonas that the people involved in the crash had been transported to Florida East Hospital.

At the formal review hearing, Trooper Jonas was the only person who testified. According to Trooper Jonas, he discerned the identities of the drivers from the vehicle information in addition to Scroggins' description. He further testified that he went to the hospital, where he first met with Morgan, who was the registered owner of the maroon SUV involved in the crash and who matched the description provided by Scroggins. Trooper Jonas asked Morgan for his version of the crash events and observed that he had the smell of an alcoholic beverage emitting from his facial area and that his speech was lethargic, slow, and thick-tongued and that his eyes were red and glassy. Upon completing the crash investigation, Trooper Jonas explained the results of the crash investigation to Morgan and informed Morgan that he was going to conduct a criminal investigation for DUI based on his signs of impairment that he had observed. Trooper Jonas then read Morgan the Miranda warning and

Morgan agreed to speak with him. Trooper Jonas also informed Morgan that he was going to request a blood test due to the circumstances and uncertainty of when Morgan would be released from the hospital. Morgan was then read the Implied Consent Warning twice, once by Trooper Jonas and once by Trooper Oliver, and he refused twice to submit to the request. Trooper Jonas then continued his criminal investigation. Morgan admitted that he was driving his vehicle and that there was no one else in the vehicle at the time of the crash. Morgan also admitted that he consumed two twelve ounce beers at a bar prior to the crash. After completion of the criminal investigation, Trooper Jonas cited Morgan for careless driving as a result of the traffic cash, DUI with property damage, and refusal to submit to the blood test with two prior refusals. Morgan's license to operate a motor vehicle was suspended for 18 months.

### **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). “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).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver's license was suspended for refusing to submit to a

breath, blood, or urine test, 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 refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat. (2011).

### **Arguments**

In the Petition for Writ of Certiorari, Morgan argues that the hearing officer's decision to sustain his license suspension was a departure from the essential requirements of the law as Trooper Jonas lacked the authority to request a blood test because: 1) The evidence failed to establish that Trooper Jonas had reasonable cause to believe that Morgan was driving or in actual physical control of one of the motor vehicles involved in the crash at the time he requested that Morgan submit to a blood test and 2) The evidence failed to establish that Trooper Jonas had reasonable cause to believe that Morgan was under the influence of alcohol.

Conversely, the Department argues: 1) Morgan's administrative refusal suspension and review hearing adhered to the essential requirements of the law and 2) Competent substantial evidence in the record supports the hearing officer's decision affirming the suspension of his license for refusing to submit to the blood test.

## **Analysis and Findings**

The arguments in this appeal center around section 316.1932(1)(c)(2011), Florida Statutes, that provides:

Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible...

**I. Morgan's argument that the evidence failed to establish that Trooper Jonas had reasonable cause to believe that Morgan was driving or in actual physical control of one of the motor vehicles involved in the crash at the time he requested that Morgan submit to a blood test:**

Morgan argues that his arrest was not lawful because Trooper Jonas did not observe him driving or in actual physical control of the vehicle, but instead only relied upon the information provided by Scroggins. However, law enforcement officers may rely on information provided by non-law enforcement witnesses from a crash if, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person committed any offense under the provisions of chapters 316, 320, or 322 in connection with the crash. *See* section 316.645, Florida Statutes (2011); *see also Perry-Ellis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 942a (Fla. 9th Cir. Ct. 2006) that provides guidance with a similar factual scenario in that it involved a traffic crash that did not occur in the presence of law enforcement officers and the Court held that the officer's investigation, including his personal observations of Perry-Ellis after the accident, constituted

competent substantial evidence to find that she was driving the vehicle while under the influence.

In the instant case, the hearing officer found by a preponderance of the evidence that Morgan was driving or in actual physical control of one of the motor vehicles involved in the crash from Trooper Jonas' testimony and the Charging Affidavit that: 1) Scroggins identified Morgan as the operator of the maroon SUV by description to Trooper Jonas; 2) Trooper Jonas also then verified that Morgan was the registered owner of the vehicle and asked for him by name at the hospital; 3) Further, upon meeting Morgan, Trooper Jonas found that Scroggins' description of Morgan matched Morgan's appearance; and 4) Lastly, Morgan admitted post-Miranda that he had been the driver and sole occupant of the vehicle.

While direct evidence may have been lacking, except for Morgan's admission post-Miranda that he was driving the vehicle and was the sole occupant, this Court finds that there was circumstantial evidence that Morgan was driving the vehicle when it crashed including that: 1) He was the registered owner of the SUV that was involved in the crash; 2) Shortly after the crash Trooper Jonas found Morgan at the hospital with injuries; 3) No other evidence was presented to show that Morgan was in the hospital for another reason other than being injured in a crash; and 4) There was no evidence presented showing that Morgan was a passenger instead of the driver of the SUV involved in the accident. Again *Perry-Ellis*, as discussed above, is on point when addressing the issue of circumstantial evidence. In *Perry-Ellis*, the Court held that even without *Perry-Ellis*' admission, the reasonable inferences from the facts and circumstances of the case were sufficient to place her in apparent control of her vehicle. Accordingly, this Court finds that the hearing officer made a lawful determination that was supported by competent substantial evidence in rejecting Morgan's argument.

**II. Morgan's argument that the evidence failed to establish that Trooper Jonas had reasonable cause to believe that Morgan was under the influence of alcohol:**

At the formal review hearing, the Morgan's counsel argued that the side effects of the medications for pain that were administered to Morgan at the hospital could have caused some of the signs of impairment exhibited by him and that Trooper Jonas should have investigated further. Therefore, Morgan's counsel argued that the odor of alcohol was insufficient by itself as a reason to request a blood test. Counsel also argued that the request for a blood test was not requested before the possibility of a breath or urine test was determined to be impractical.

The hearing officer denied the motion finding that Trooper Jonas testified in his affidavit that the blood test was requested due to the uncertainty of how long Morgan would be hospitalized. Trooper Jonas had also been informed that Morgan was to be transported to a second hospital for a CT Scan. The hearing officer found that that the evidence supported that Trooper Jonas acted prudently and correctly in this request. Further, the hearing officer found that Morgan provided no evidence of when the pain medication was administered to him nor did he or his mother who was present with him inform Trooper Jonas that he had been medicated for pain. In addition, the exhibits provided by counsel listed side effects that could account for drowsiness, but not for the odor of alcohol or the red, glassy eyes that Trooper Jonas observed during the investigation. Accordingly, the hearing officer found that a preponderance of the evidence showed that Morgan's signs of impairment were sufficient to request the blood test.

This Court finds that the testimony and documents submitted by law enforcement provided competent substantial evidence in support of the hearing officer's ruling that

Morgan's signs of impairment combined with the uncertainty as to how long Morgan would be hospitalized and the possibility that Morgan would be transported to a second hospital for a CT Scan was sufficient to request the blood test under section 316.1932(1)(c), Florida Statutes. Further, it is not this Court's function to reweigh the evidence including assessing the credibility of the witnesses. *Dep't of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008) citing *Dep't of Highway Safety & Motor Vehicles v. Marshall*, 848 So. 2d 482 (Fla. 5th DCA 2003); *Dep't of Highway Safety & Motor Vehicles v. Dean*, 662 So. 2d 371 (Fla. 5th DCA 1995).

**Conclusion**

Accordingly, upon review of the hearing officer's order in conjunction with the Charging Affidavit, transcript from the formal review hearing, and the other documents in the record, this Court finds that Morgan was provided due process of law and the hearing officer's decision to sustain his 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, Jonathan Morgan's Petition for Writ of Certiorari is **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 3rd day of October, 2012.

/S/ \_\_\_\_\_  
**ALICE L. BLACKWELL**  
Circuit Court Judge

/S/ \_\_\_\_\_  
**GAIL A. ADAMS**  
Circuit Court Judge

/S/ \_\_\_\_\_  
**SALLY D. M. KEST**  
Circuit Court Judge



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to: **William R. Ponall, Esquire**, Snure and Ponall, P.A., 425 W. New England Avenue, Suite 200, Winter Park, Florida 32789 and to **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, DHSMV-Legal Office, P.O. Box 570066, Orlando, Florida 32857, on this 3rd day of October, 2012.

/S/ \_\_\_\_\_  
Judicial Assistant