

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

**DEBRA MOREFIELD,**

Petitioner,

v.

**CASE NO.: 2012-CA-1005-O**

**WRIT NO.: 12-8**

**STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR  
VEHICLES, BUREAU OF DRIVER  
IMPROVEMENT,**

Respondent.

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Petition for Writ of Certiorari.

Stuart I. Hyman, Esquire,  
for Petitioner.

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

BEFORE DAVIS, J. KEST, MUNYON, JJ.

PER CURIAM.

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

Petitioner, Debra Morefield (“Morefield”), 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 refusing to submit to a breath, blood, or urine 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 Officer Sharon Wagganer<sup>1</sup>, Officer Shawn Meadows, and other witnesses along with the arrest affidavit, Morefield's driving record, and other related documents provided at the formal review hearing held on December 12, 2011, the facts were as follows: On November 13, 2011 at approximately 2:18 am, Officer Meadows with the Winter Park Police Department was dispatched to assist with a traffic crash. Upon arriving at the crash scene he met with Officer Wagganer who was the first officer on scene. Officer Wagganer advised Officer Meadows that the vehicle was traveling south on Lafayette Avenue in Winter Park when it left the roadway, hit a mailbox, and then continued over the grass and hit a fire hydrant.

Witness Jay Rader ("Rader") provided a sworn statement and testimony about his observations and interaction with Morefield. He informed Officer Wagganer that shortly after he heard the crash he looked out of his living room window and saw the vehicle on top of the fire hydrant. He continued to look out the window for roughly three minutes when he observed Morefield in the driver's seat revving the engine. At that point Rader went outside, approached the vehicle, and noticed Morefield in the driver's seat turning the vehicle's engine and headlights on and off trying to reverse out with no success. Rader then spoke with Morefield and he thought she was intoxicated because she wasn't making any sense. He asked her if she had realized what she had done and she stated that she didn't know. Morefield then exited the vehicle and left the accident scene walking southbound on Lafayette Avenue. Officer Wagganer stopped Morefield who matched the description provided by Rader. Officer Wagganer then walked back with Morefield to the crash scene and conducted the crash investigation. Morefield

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<sup>1</sup> Last name is spelled "Wagganer" in all documents, except hearing transcript where it is spelled "Wagner".

denied that she was driving the vehicle when the crash occurred. There were no other persons stated in the arrest affidavit as being involved in the accident.

When Officer Wagganer advised Officer Meadows that the crash investigation was completed, Officer Meadows in turn advised Morefield that the crash investigation was concluded. At that point, Morefield was sitting on the curb and Officer Meadows made the following observations about her: 1) She did not appear to be injured nor did she complain of any injuries; 2) He smelled the distinct and obvious odor of an alcoholic beverage coming from her; 3) She spoke with a distinct slur, thick tongue, and with great lethargy; 4) She had trouble sitting upright; 5) Her eyes were bloodshot, red, watery and glassy; and 6) Her face was flushed. Officer Meadows then advised Morefield of her Miranda rights and she stated she understood those rights. Morefield again denied operating the vehicle and stated that she did not know who was driving her car. She did however know that the vehicle had been involved in a crash. Morefield also denied consuming any alcoholic beverages.

When Officer Meadows asked Morefield to perform the field sobriety exercises, she initially refused, but then agreed to perform them. Officer Meadows made the following observations about her performance of the exercises: 1) She had difficulty standing; 2) She swayed and staggered as she attempted to stand up; 3) As she walked to the area for the exercises, she staggered and weaved; 4) He again smelled the distinct and obvious odor of alcoholic beverages coming from her as she spoke; and 5) She attempted to perform the field sobriety exercises with poor results as she did not follow directions and had difficulty maintaining her balance. Based upon these observations, Officer Meadows attempted to place Morefield under arrest for DUI but she resisted causing both he and Officer Wagganer to restrain

her in order to place her into the patrol car. Morefield was also charged with resisting an officer without violence.

Upon making the arrest, Officer Meadows transported Morefield to the Winter Park Police Department where a 38 minute observation was conducted. After the observation period was completed, she was taken to the breath testing room where she still had difficulty standing on her own. Officer Meadows read her the Implied Consent Warnings, but she refused to submit to the breath test. Officer Meadows then issued Morefield an 18 month notice of license suspension for refusing to submit to the breath test as this was her second refusal.

Also, at the hearing, David Sheehan (“Sheehan”) testified that he was driving the vehicle when it crashed. He stated that a few seconds after hitting the fire hydrant he got out of the vehicle and walked down the street because he and Morefield were angry with each other and he wanted to walk away and let her cool down. He stated that it was on the next day that he found out that Morefield was arrested at which time he then volunteered to Morefield the fact that he would admit that he was driving the vehicle. Other than Sheehan’s testimony, there was nothing in the record showing that Sheehan was at, near, or leaving the scene of the crash such as observations by witnesses or by the officers. Lastly, Morefield was present at the hearing, but she did not testify.

### *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, Morefield argues: 1) Officer Meadows illegally arrested her without an arrest warrant in violation of section 901.15, Florida Statutes; 2) There was no competent substantial evidence in the record to establish probable cause that she was driving or in actual physical control of a vehicle that was operable; and 3) The evidence failed to establish that she willfully refused to submit to a breath test.

Conversely, the Department argues: 1) Morefield’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 her license for refusing to submit to the breath test.

### *Analysis and Findings*

#### **I. Morefield's argument that Officer Meadows illegally arrested her without an arrest warrant in violation of section 901.15, Florida Statutes:**

Morefield argues that her arrest was not lawful because neither Officer Wagganer nor Officer Meadows observed her driving or in actual physical control of the vehicle, but instead only relied upon the information provided by Rader. Morefield concludes that the arrest violates section 901.15(5), Florida Statutes (2011), that provides that a law enforcement officer may arrest a person without a warrant when:

A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

However, as the Department argues, a law enforcement officer is permitted to arrest the driver of a crashed vehicle who is suspected of driving under the influence pursuant to section 316.645, Florida Statutes (2011), as follows:

A police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash.

Further, *Perry-Ellis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 942a (Fla. 9th Cir. Ct. 2006) 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. Accordingly, this Court finds that Morefield's argument lacks merit.

**II. Morefield's argument that there was no competent substantial evidence in the record to establish probable cause that she was driving or in actual physical control of a vehicle that was operable:**

This Court finds that the hearing officer's denial of Morefield's motion was supported by competent substantial evidence including: 1) Rader's testimony addressing his observations that no one exited the vehicle during the time he watched the vehicle and that the person, who he identified as Morefield, was alone and seated in the driver's seat of the just-crashed vehicle revving the engine and turning the engine and headlights on and off several times; 2) The vehicle was owned by Morefield and her possessions were inside the vehicle; and 3) Sheehan did not return to the vehicle. Therefore, Rader's testimony demonstrated that Morefield had control of the vehicle, that she had the keys to the vehicle (she was revving the engine and turning the engine and headlights on and off), and that the vehicle, while immobile once it was crashed onto the fire hydrant, was operational before the crash.

As for Sheehan's testimony that he was driving the vehicle when it crashed, the hearing officer addressed his testimony in her order and found that the preponderance of the evidence gave greater weight to the testimony of Rader and to the testimony and documents submitted by law enforcement. Accordingly, it is not this Court's function to reweigh the evidence including assessing the credibility of the witnesses. Further, a hearing officer is not required to believe the testimony of any witness, even if unrebutted. *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); *Rodriguez-Havlovic v. Dep't of Highway*

*Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 536b (Fla. 9th Cir. Ct. 2006) (holding that the hearing officer was not required to believe the testimony of the licensee and bartender that licensee was driven away from bar by an unknown man who left her at the scene of the accident).

Lastly, as the Department points out, there was no direct evidence, but there was circumstantial evidence that Morefield was driving the vehicle when it crashed. Specifically, Morefield was observed in the driver's seat of the vehicle immediately after the crash, the vehicle belonged to her and contained her personal effects, and no other persons were observed in or near the vehicle on the night of her arrest. 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 where: 1) The officer observed her walking around her car near the crash; 2) The vehicle was registered to her; 3) The vehicle was resting against a railroad crossing gate pole; 4) No other persons were present at the scene with actual or physical authority over the vehicle; and 5) The officer observed Perry-Ellis' signs of impairment and her failure to perform the field sobriety exercises. See *State v. Benyei*, 508 So. 2d 1258, 1259 (Fla. 5th DCA 1987) (holding that, although the vehicle may have been inoperable at the time the officer arrived at the scene, the circumstantial evidence was sufficient for the jury to find that the defendant was driving while intoxicated when her car went off the highway onto a median). Accordingly, this Court finds that the hearing officer made a lawful determination that was supported by competent substantial evidence in rejecting Morefield's argument.



### **III. Morefield's argument that the evidence failed to establish that she willfully refused to submit to a breath test:**

At the formal review hearing, counsel brought a motion that the refusal affidavit was not properly prepared because there was contradictory evidence in the record as to whether the arrest preceded the Implied Consent Warning. The hearing officer denied the motion finding that the arrest affidavit clearly indicated that Morefield was placed under arrest, transported to the Winter Park Police Department, observed for 38 minutes and then read the Implied Consent Warnings. Counsel also brought a motion that it was improper to claim that a breath sample was not provided based upon the breath test result affidavit. The hearing officer also denied that motion ruling that the arrest affidavit stated that Morefield was given every opportunity to provide the breath samples but refused, therefore no breath sample was provided.

On appeal, Morefield argues that the Department failed to meet its burden as required under section 322.2615(7)(b)2., Florida Statutes, because it did not show by a preponderance of the evidence that she refused to submit to the breath test after being requested to do so by the law enforcement officer. Instead, Morefield argues that the Department improperly relied upon the unfettered discretion of Officer Meadows' interpretation of the breath test affidavit.<sup>2</sup>

Upon review of the record, there was competent substantial evidence in support of the hearing officer's finding that Morefield's failure to provide two valid breath samples was properly construed by law enforcement as a refusal to submit to the breath-alcohol test. Pursuant to Rule 11D-8.002(12), Florida Administrative Code, refusal or failure to provide the required number of valid breath samples constitutes a refusal to submit to the breath test. Morefield could

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<sup>2</sup> Morefield cites the holding in *Cherry v. Dep't of Highway Safety & Motor Vehicles*, 18 Fla. L. Weekly Supp. 1079b (Fla. 9th Cir. Ct. 2011) in support of her argument. However, the facts in *Cherry* are distinguishable from the facts in the instant case because the motorist in *Cherry* provided two breath samples, whereas the record evidence in the instant case demonstrates that Morefield refused to provide breath samples. Further, the opinion of the circuit court in *Cherry* was quashed in *Dep't of Highway Safety & Motor Vehicles v. Cherry*, 37 Fla. L. Weekly D1562a (Fla. 5th DCA 2012).

have testified and rebutted the evidence of refusal, but chose not to do so. Therefore, while counsel argued that Morefield's refusal was not willful, competent substantial evidence was lacking to support that argument.

Morefield also argues that the breath test result affidavit introduced by the hearing officer showed that during the course of her test, the "control test" was out of tolerance, thereby showing a malfunction of the machine. Therefore, Morefield concludes that because the breath testing machine utilized for her test was not working properly, the breath technician should not be given the unfettered discretion to determine that she refused to submit to a breath test.

This Court concurs with the Department that because Morefield refused to submit to breath testing, the issue of whether the breath test device was working properly is irrelevant and falls outside the hearing officer's scope of review. *Conahan v. Dep't of Highway Safety & Motor Vehicles*, 619 So. 2d 988, 989 (Fla. 5th DCA 1993) (holding that a driver who refuses to submit to a breath test may not object to the suspension of his or her license on the basis that the refused test was not approved or did not comply with administrative rules and regulations because these are matters which, although relevant to the admissibility of a breath test, are irrelevant where the test has been refused). Therefore, Morefield's argument regarding the validity of the breath test that she refused to take lacks merit.

### ***Conclusion***

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

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 31st day of August, 2012.

/S/  
**JENIFER M. DAVIS**  
Circuit Court Judge

/S/  
**JOHN MARSHALL KEST**  
Circuit Court Judge

/S/  
**LISA T. MUNYON**  
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 **Stuart I. Hyman, Esquire**, Stuart I. Hyman, P.A., 1520 East Amelia Street, Orlando, FL 32803 and to **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, DHSMV-Legal Office, P.O. Box 570066, Orlando, FL 32857, on this 31st day of August, 2012.

/S/  
Judicial Assistant