

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

JORDAN CASTRO,

Petitioner,

v.

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

Respondent.

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CASE NO.: 2013-CA-6471-O

Writ No.: 13-39

Petition for Writ of Certiorari  
from the Florida Department of  
Highway Safety and Motor Vehicles,  
Linda Labbe, Hearing Officer.

Stuart I. Hyman, Esquire,  
for Petitioner.

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

BEFORE MYERS, S. KEST, LEBLANC, J.J.

PER CURIAM.

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

Petitioner, Jordan Castro (“Castro”) seeks certiorari review of the Department of Highway Safety and Motor Vehicles’ (“Department” or “Respondent”) final order sustaining the suspension of his driver license for driving with an unlawful breath alcohol level. This Court has jurisdiction pursuant to section 322.2615(13), Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(3).

On February 17, 2013, Castro was arrested for driving under the influence. Castro provided breath test results of 0.107 and 0.095 and his license was suspended. He requested a formal review hearing pursuant to section 322.2615, Florida Statutes, and hearings were held on March 21, 2013, March 26, 2013, and April 10, 2013. On April 16, 2013, the hearing officer entered a written order sustaining Castro's license suspension.

"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. Where the driver license was suspended for driving with 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 arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages 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 § 316.193.

§ 322.2615(7)(a), Fla. Stat. (2013).

Castro argues that the hearing officer violated his right to due process by failing to set aside the suspension after Trooper Ramirez failed to appear at the hearing on three occasions. Castro contends that it would be improper to continue the hearing to enforce the subpoena

because Florida Administrative Code Rule 15A-6.015(2)(f) [sic] states that no hearing shall be continued for a second failure to appear. Castro also claims that he would not have been able to have a meaningful hearing within 30 days pursuant to section 322.2615 if he attempted to enforce the subpoena.

Prior to the March 21, 2013 hearing, Trooper Ramirez provided the hearing officer notice that he would be unable to attend the hearing because of a previously scheduled appointment and was excused by the hearing officer. Within two days after the second hearing on March 26, 2013, the Trooper informed the hearing officer that he had not received notice of the hearing until the next day and the hearing officer determined that the Trooper demonstrated good cause for his nonappearance. The third hearing was scheduled for 2:30 P.M. on April 10, 2013. The Trooper notified the hearing officer at 2:45 P.M. that he was in court and unable to attend that hearing. Castro declined the hearing officer's offer to continue the hearing for the Trooper's testimony and moved to invalidate the suspension because the Trooper failed to appear. The hearing officer denied Castro's motion to invalidate the suspension and determined that the Trooper failed to appear once at the March 26, 2013 hearing and was excused from the March 21, 2013 and April 10, 2013 hearings.

Although Rule 15A-6.015(2)(c) states that a hearing shall not be continued for a second failure to appear, there is no mention in the Rule that a second failure to appear is grounds to invalidate a suspension. Fla. Admin Code R. 15A-6.015. However, section 322.2615(6)(c) states "The failure of a subpoenaed witness to appear at the formal review hearing is not grounds to invalidate the suspension. If a witness fails to appear, a party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court [.]” § 322.2615(6)(c), Fla. Stat. (2013). Castro decided not to seek enforcement of the subpoena.

Also, section 322.2615(6)(a) states that the Department must *schedule* a hearing within 30 days after the request for a hearing is received, not hold a hearing within 30 days of the request. (Emphasis added) § 322.2615(6)(a), Fla. Stat. (2013). Castro's request for a hearing was received by the Department on February 21, 2013 and the March 21, 2013 hearing was scheduled within 30 days after the request as required by the statute. Therefore, Castro has not demonstrated that he was deprived of due process when the hearing officer did not set aside the suspension.

Castro also argues that: 1) he was deprived of due process when his license suspension was not set aside due to the failure of the hearing officer to issue subpoenas for Roger Skipper, Patrick Murphy, Jennifer Keegan and Laura Barfield; 2) the breath test results were not properly approved because they were obtained by use of an unapproved breath testing machine and provided scientifically unreliable results; 3) the breath test results were inadmissible due to the failure of the record to contain the annual inspection report; 4) the Intoxilyzer 8000 was improperly evaluated for approval; and 5) the Intoxilyzer 8000 was not kept in a secure location and was accessible by unauthorized individuals.

This Court denied Petitions alleging these same arguments in *Klinker v. Dep't of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 1a (Fla. 9th Cir. Ct. Sept. 10, 2012); *Keen v. Dep't of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 15a (Fla. 9th Cir. Ct. Oct. 8, 2012); *Morrow v. Dep't of Highway Safety & Motor Vehicles*, 19 Fla. L. Weekly Supp. 704a (Fla. 9th Cir. Ct. Feb. 27, 2012) and numerous other cases. Furthermore, the Fifth District Court of Appeal denied Klinker's Petition for Writ of Certiorari seeking to quash this Court's opinion. *Klinker v. Dep't of Highway Safety & Motor Vehicles*, 118 So. 3d 835 (Fla. 5th DCA 2013), *review denied*, 123 So. 3d 558 (Fla. 2013). The Fifth District ruled that challenges

to the approval process of the Intoxilyzer machine are beyond the scope of a formal driver's license review proceeding and the Intoxilyzer 8000 is approved for evidentiary use in Florida. *Id.* at 841. The Court also determined that the FDLE Inspection Report is not a document required to be submitted by law enforcement pursuant to section 322.2615(2) and therefore, the driver has no right to request subpoenas for individuals identified in that report. *Id.* Therefore, Castro was not deprived of due process.

Based on the foregoing, there was competent substantial evidence to support the hearing officer's decision and Petitioner Castro was not deprived of due process.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**. Petitioner's Motion to Impose Attorney's Fees is **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 16th day of December, 2013.

/S/ \_\_\_\_\_  
**DONALD A. MYERS, JR.**  
**Presiding Circuit Judge**

S. KEST and LEBLANC, J.J., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to: **Stuart I. Hyman, Esq.**, [shymanlaw@aol.com](mailto:shymanlaw@aol.com), Stuart I. Hyman, P.A., 1520 East Amelia St., Orlando, Florida 32803; **Kimberly A. Gibbs, Assistant General Counsel**, [kimgibbs@flhsmv.gov](mailto:kimgibbs@flhsmv.gov), Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857 on this 17th day of December, 2013.

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