

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

NANCY CONLEY,

CASE NO. 2014-CA-8286-O

Petitioner,

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY & MOTOR
VEHICLES,**

Respondent.

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

Matthew Olszewski, Esq.
Attorney for Petitioner

Jason Helfant, Esq.
Senior Assistant General Counsel
Department of Highway Safety and Motor Vehicles
Attorney for Respondent

Before O’KANE, APTE, ROCHE, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner seeks review of a Department of Highway Safety and Motor Vehicles order sustaining her license suspension following a DUI arrest. Where her contention is that the record before the hearing officer does not support his findings of fact, the Court does not reweigh the evidence but determines whether the order is supported by competent substantial evidence. *Dep’t of Highway Safety & Motor Vehicles v. Wigger*, 152 So. 3d 773, 776 (Fla. 5th DCA 2014).

Petitioner contends that the record did not demonstrate the traffic stop occurred within the arresting officer’s jurisdiction and the arrest was therefore not shown to be lawful. On the speeding ticket and the DUI citation issued to her, the County blank is filled in as Orange; the City blank is

filled in as Windermere. Windermere Police Officer Miller's arrest affidavit, which contains the heading Windermere Police Department, states that he was patrolling the Windermere/Conroy area when he spotted Petitioner speeding. The burden of proof for the Department is only a preponderance of the evidence and the evidence includes non-affidavit documents such as traffic citations. *State Dept. of Highway Safety v. Edgell-Gallowhur*, 114 So. 3d 1081, 1087 (Fla. 3d DCA 2013). To accept the argument that the documentation in this case is insufficient to establish the site of the arrest by a preponderance of the evidence would be to require every officer to state specifically in every arrest affidavit that the arrest was made within his or her jurisdiction. That the arrest occurred in Windermere is supported by competent substantial evidence and was entirely un rebutted.

Petitioner also argues that the evidence does not support the finding that she refused a breath test. The breath test operator's affidavit reports that Petitioner was asked multiple times if she would take the test but she "continued to run circles around whether she would take it" and "continued to talk and not make a choice." The breathalyzer timed out twice with "no sample provided." While Petitioner may not have said, "I refuse," her conduct could reasonably be construed by the hearing officer as a deliberate refusal. *Dep't of Highway Safety & Motor Vehicles v. Cherry*, 91 So. 3d 849, 855 (Fla. 5th DCA 2011). Again, Petitioner offered no evidence in rebuttal.

IT IS THEREFORE ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 27th day of March, 2015.

/S/

JULIE H. O'KANE
Presiding Circuit Judge

APTE and ROCHE, J.J., concur.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to **Matthew Olszewski, Esq.** FL DUI Group, 200 East Robinson Street, Suite 1150, Orlando, Florida 32801-1970, and to **Jason Helfant, Esq.,** Senior Assistant General Counsel, Department of Highway Safety and Motor Vehicles, P.O. Box 540609, Lake Worth, Florida 33453, on this 27th day of March, 2015.

/S/ _____
Judicial Assistant