

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

MATTHEW JAMES SPRIGGS,

CASE NO.: 2011-CA-4562-O

WRIT NO.: 11-34

Petitioner,

v.

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

Respondent.

Petition for Writ of Certiorari.

William R. Ponall, Esquire and
Michael J. Snure, Esquire,
for Petitioner.

Kimberly A. Gibbs, Esquire,
for Respondent.

BEFORE LAUTEN, MIHOK, THORPE, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Matthew James Spriggs (“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 for refusing to submit to breath-alcohol and urine tests. This Court has jurisdiction under sections 322.2615(13) and 322.31, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

As gathered from the Charging Affidavit, on January 30, 2011, at approximately 4:27 a.m., Trooper Edgardo N. Cruz of the Florida Highway Patrol was traveling northbound on highway US 27 just south of College Drive in Highlands County, Florida where he observed a vehicle traveling at a high rate of speed and changing lanes abruptly heading southbound on US 27. Once the vehicle tracking history was established, Trooper Cruz turned around without losing sight of the vehicle. He observed the vehicle traveling at a speed of 84 mph in a 55 mph zone and weaving violently six times from the inside lane to the outside lane. Also, the vehicle almost collided twice with the left curb of the raised median on US 27. At this point, Trooper Cruz activated his emergency sirens to capture the driver's attention. The driver continued driving southbound on US 27 for approximately 3/4 of a mile before he stopped.

Trooper Cruz then made contact with the driver who was identified as Petitioner. Petitioner had a strong odor of an alcoholic beverage emitting from his mouth as he spoke. He had bloodshot and watery eyes, poor balance, and a flushed face. He swayed and staggered when he exited vehicle. He also admitted to drinking with his friends all night and performed the field sobriety exercises poorly. Accordingly, at 4:42 a.m. that morning, Trooper Cruz arrested Petitioner for driving under the influence.

Trooper Cruz then transported Petitioner to the Highlands County Jail where at 5:20 a.m. that morning he was read Miranda warnings. Petitioner was then asked breath test questions and read the implied consent warning at 5:35 a.m. that morning whereupon he refused to provide a breath sample. At 5:36 a.m. that morning Petitioner was also asked to provide a urine sample and was read the implied consent warning. He also refused to provide a urine sample. Petitioner was charged with driving under the influence and cited for unlawful speed.

Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, that was held on March 11, 2011. On March 14, 2011, 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.

“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 refusing to submit to breath-alcohol and urine tests, 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 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 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. (2010).

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 showing that he refused to submit to a breath or urine test after he was arrested. Specifically, Petitioner argues that the evidence before the hearing officer failed to establish that he was arrested or that his alleged refusal to submit to such tests occurred after he was placed under arrest and after he was read the implied consent warning. Further, Petitioner argues that the hearing officer was not free to conclude that the discrepancies in the record were the result of a clerical error.

The discrepancies in the record are in the Affidavits of Refusal to submit to the breath and urine tests that indicate that Petitioner's arrest occurred simultaneously when he was provided the implied consent warnings and when he allegedly refused to submit to the tests. Petitioner argues that because there was no sworn testimony presented at the hearing to explain the discrepancies, it was impossible for the hearing officer to properly conclude which of the three events occurred first.

From review of the court record, this Court concurs with the Department in its Response that the hearing officer properly sustained the suspension where there was competent substantial evidence to support the hearing officer's decision. Among the competent substantial evidence reviewed by the hearing officer was Trooper Cruz' sworn and notarized Charging Affidavit, the DUI Citation, the Alcohol Influence Report, and the DUI Detection Sheet that confirmed Petitioner was arrested for driving under the influence on January 30, 2011 at 4:42 a.m. Also, the Charging Affidavit, the Alcohol Influence Report, the Implied Consent Warnings for the breath and urine tests, the Detection Sheet, and the Breath Test Operator Notes, in addition to the Affidavits of Refusal to submit to the breath and urine tests, all confirm that Petitioner was read

the implied consent warnings and refused to take the tests on January 30, 2011 at 5:35 a.m. and 5:36 a.m.

Per section 322.2615(11), Florida Statutes, the formal review hearing may be conducted without witnesses upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath test or blood test or a refusal to take either test or the refusal to take a urine test. The hearing officer's responsibility as the trier of fact is to resolve any conflicts in the evidence and determine by a preponderance of the evidence that sufficient evidence exists to sustain a license suspension. The hearing officer may determine that the discrepancy in the affidavits did not rebut the competent substantial evidence demonstrating that Petitioner was first arrested, subsequently refused to submit to tests, read the implied consent warnings, and persisted in his refusal to submit to the tests. *Dep't of Highway Safety & Motor Vehicles v. Dean*, 662 So. 2d 371 (Fla. 5th DCA 1995) and *Satter*, *supra* at 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In support of Petitioner's argument he relies on the case, *Dep't of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084 (Fla. 1st DCA 2002). However, *Trimble* is distinguishable from the case at hand. In *Trimble*, a sworn statement relating the sequence of events was lacking and the documents admitted as evidence presented a "hopeless conflict" because they equally supported two inconsistent conclusions as to the time when the motorist refused to take the breath test. Thus, competent substantial evidence was lacking to support the hearing officer's finding that the warning had preceded the refusal. On the contrary, in the instant case, Trooper Cruz' sworn and notarized Charging Affidavit relating the sequence of events along with the other documents clearly tip the scale in support of the hearing officer's findings. See *Breakell v. Dep't of Highway Safety & Motor Vehicles*, 18 Fla. L. Weekly Supp.

445a, Case No. 2009-CA-26334-O (Fla. 9th Cir. Ct. January 26, 2011), (where the Court stated “Neither Trimble nor any other case from this Court suggests that a single inconsistency found in a single document serves to negate the unanimity of all other documentary evidence.” *Also see Broward County v. G.B.V. International, Ltd.*, 787 So. 2d 838, 846, n. 25 (Fla. 2001), citing *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) and *Educational Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, et al.*, 541 So. 2d 106 (Fla. 1989) (Court noted “On first-tier certiorari review, the circuit court’s task is to review the record for evidence that *supports* the agency’s decision, not that *rebutts* it - for the court cannot reweigh the evidence.”).

Accordingly, this Court finds that procedural due process was followed; the essential requirements of law were followed; and the hearing officer’s administrative findings were supported by competent substantial evidence.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Matthew James Spriggs’ Petition for Writ of Certiorari is **DENIED** and the hearing officer’s Final Order of License Suspension is **AFFIRMED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 13th day of September, 2011.

/S/
FREDERICK J. LAUTEN
Circuit Court Judge

/S/
A. THOMAS MIHOK
Circuit Court Judge

/S/
JANET C. THORPE
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 **William R. Ponall, Esquire and Michael J. Snure, Esquire**, Kirkconnell, Lindsey, Snure and Ponall, P.A., P.O. Box 2728, Winter Park, FL 32790 and to **Kimberly A. Gibbs, Esquire**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles - Legal Office, P.O. Box 570066, Orlando, FL 32857, on this 14th day of September, 2011.

/S/ _____
Judicial Assistant