

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

STEVIE ESPINOZA,

Petitioner,

v.

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

Respondent.

CASE NO.: 2012-CA-8250-O

Writ No.: 12-34

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

Matthews R. Bark, Esquire,
David H. Novack, Esquire,
for Petitioner.

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

BEFORE SCHREIBER, WHITE, DOHERTY, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Stevie Espinoza (“Espinoza” or “Petitioner”) seeks certiorari review of the Department of Highway Safety and Motor Vehicles’ (“Department” or “Respondent”) final order sustaining the suspension of her driver’s 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).

Facts and Procedural History

On March 9, 2012, Espinoza was arrested for driving under the influence. Espinoza provided breath test results of 0.151 and 0.147 and her license was suspended. She requested a formal review hearing pursuant to section 322.2615, Florida Statutes, and a hearing was held on April 12, 2012.

At the hearing, Espinoza attempted to introduce letters from Laura Barfield FDLE Program Manager dated in 2006 about the Intoxilyzer 8000 with software version 8100.26 and a request for a subpoena for Barfield that the hearing officer denied. On April 16, 2012, the hearing officer entered a written order sustaining Petitioner's license suspension.

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).

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. (2012).

Analysis

In the Petition, Espinoza argues that the letters from Barfield demonstrate that the Intoxilyzer 8000 with the serial number used to administer her breath test had malfunctions and therefore her breath test results are unreliable. Espinoza alleges that she was denied due process when the hearing officer refused to issue the subpoena for Laura Barfield. Espinoza also argues that the Department abused its discretion by ruling that Barfield's letters were not relevant and preventing her from proffering questions to Kelly Melville to show that Barfield's letters and testimony were relevant.

This Court denied Petitions raising this issue in *Klinker v. Dep't of Highway Safety & Motor Vehicles*, 2010-CA-19788, Writ 10-70 (Fla. 9th Cir. Ct. Sept. 10, 2012) and *Morrow v. Dep't of Highway Safety & Motor Vehicles*, 19 Fla. L. Weekly Supp. 704a (Fla. 9th Cir. Ct. Feb. 27, 2012). The Court determined that the Petitioners were not denied due process when subpoenas were not issued for Barfield and other witnesses because the witness and documents were not relevant to the issues before the hearing officer.

As in *Klinker* and *Morrow*, Barfield's letters and testimony were not relevant to the issues before the hearing officer in this case. Barfield's letters dated in 2006 discuss an issue with the Intoxilyzer 8000 using software version 8100.26. Espinoza's breath test was conducted on March 9, 2012 with the Intoxilyzer 8000 using software version 8100.27. Accordingly, Barfield's letters regarding the Intoxilyzer 8000 using software version 8100.26 used to administer tests in 2006 and earlier, are not relevant to the issue of the reliability of the

Intoxilyzer 8000 using software version 8100.27 used to administer Espinoza's test on March 9, 2012. Therefore as expressed in *Klinker* and *Morrow*, the Court finds that Petitioner was not denied due process and the hearing officer did not depart from the essential requirements of the law.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that The Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 11th day of October, 2012.

/S/
MARGARET H. SCHREIBER
Circuit Judge

/S/
KEITH F. WHITE
Circuit Judge

/S/
PATRICIA A. DOHERTY
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Matthews R. Bark, Esq., David H. Novack, Esq.**, Jaeger & Blankner, 217 E. Ivanhoe Blvd., N., Orlando, Florida 32804 and to **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857 on this 11th day of October, 2012.

/S/
Judicial Assistant