

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

CASE NO.: 2022-CA-008375-O

JOSHUA RAYMOND SUTTON,
Petitioner,

v.

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.

Petition for Writ of Certiorari
from the decision of the Department
of Highway Safety and Motor Vehicles
Kenneth Russell, Hearing Officer.

Alan E. Rosner, Esquire, for Petitioner.

Michael Lynch, Esquire, for Respondent.

Before RODRIGUEZ, BLECHMAN, and BEAMER, J.J.

Petitioner, Joshua Raymond Sutton (“Petitioner”), seeks review of the “Findings of Fact, Conclusions of Law and Decision” issued by a hearing officer of the Department of Highway Safety and Motor Vehicles (“DHSMV” or “Respondent”) affirming the suspension of Petitioner’s driving privilege for refusal to submit to a breath, blood, or urine test under section 322.2615, Florida Statutes (2022).

FACTUAL SUMMARY

On April 29, 2022, Petitioner was arrested for driving under the influence (DUI) in violation of section 316.193, Florida Statutes. At that time, Petitioner was also served notice of the suspension of his driver’s license for refusing to submit to a lawful breath, blood, or urine test

under section 322.2615, Fla. Stat. On August 4, 2022, hearing officer Kenneth Russell held a hearing at the request of Petitioner regarding the lawfulness of his driver's license suspension.

At the hearing, the hearing officer took into evidence the arrest report, an incident report, and an affidavit of refusal. Arresting officer Deputy Danielle Jarousse also provided testimony regarding the arrest and DUI investigation. Petitioner was observed to have bloodshot and watery eyes, had slurred speech, was slow to respond to questions, and became argumentative with officers. Deputy Jarousse also detected an odor of alcohol coming from Petitioner. Petitioner was placed under arrest for DUI and Deputy Jarousse requested Petitioner to submit to a breath test, which Petitioner refused.

Counsel for petitioner questioned Deputy Jarousse at the hearing, and ultimately filed a motion to invalidate the suspension on the basis that the affidavit of refusal "states Petitioner was requested to submit to a breath and/or urine test" without any basis to request a urine test. The hearing officer ultimately denied this motion and concluded that only a lawful request for a breath test was made by Deputy Jarousse, and affirmed the suspension.

Standard of Review

"The duty of the circuit court on 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 the 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); *see also Education Development Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Analysis

Petitioner's sole argument is that the hearing officer departed from the essential requirements of law by concluding that Deputy Jarousse requested only a lawful breath test. In support of this argument, Petitioner points exclusively to the refusal affidavit signed by Deputy Jarousse which states, "I requested that the driver submit to a breath and/or urine test to determine his or her blood alcohol level and/or the presence of chemical or controlled substances." In addition, the affidavit includes checked boxes next to both "breath" and "urine" tests.


On the other hand, the narrative portions of the arrest report, the incident report, and Deputy Jarousse's testimony at the hearing refer solely to a request for a breath test which was denied. Petitioner does not make any argument regarding his refusal, instead suggesting only that if he was requested to take a urine test such a request was unlawful and should invalidate his driver's license suspension.

The hearing officer is the sole decision maker as to the weight, relevance, and credibility of any evidence presented. Fla. Admin. Code R. 15A-6.013(7). It is a well-established rule that "the circuit court in a first-tier certiorari proceedings is not permitted to reweigh the evidence presented to the hearing officer." *Dep't of Highway Safety & Motor Vehicles v. Kamau*, 253 So. 3d 781, 782 (Fla. 1st DCA 2018). In this case, the hearing officer determined and made a factual finding that Deputy Jarousse requested a breath sample which was refused. This Court cannot reweigh the evidence, and can only consider whether competent, substantial evidence exists to support the conclusion of the hearing officer. Because the arrest report, incident report, and Deputy Jarousse's testimony reflect a request for a breath test alone, the hearing officer's conclusion is

based on competent, substantial evidence.

Accordingly, the Court **DENIES** Petitioner's Petition for Writ of Certiorari.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on the date in the electronic signature below.


12/05/2024 14:18:43
eSigned by Heather Pinder Rodriguez 12/05/2024 14:18:43 rCCIEoSF

HEATHER PINDER RODRIGUEZ
Presiding Circuit Judge

BLECHMAN and BEAMER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court on the date set forth in the electronic signature below by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

If there are parties not receiving service through the Florida Courts eFiling Portal, counsel will serve a copy of the order via U.S. Mail to the non-eFiling parties and file a certificate of service in the court file no later than 3 days from the date of this order.


12/05/2024 14:18:43
eSigned by Heather Pinder Rodriguez 12/05/2024 14:18:43 rCCIEoSF

Circuit Judge