

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION

DARRELL BROWN,  
Petitioner,

APPEAL No.: 08-0037AP-88A  
UCN: 522008AP000037XXCV

v.

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

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**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** came before the Court on Petitioner, Darrell Brown's Petition for Writ of Certiorari. Respondent, "DHSMV" filed their response on December 10, 2008. Upon consideration, this Court finds that the Petition for Writ of Certiorari must be denied as set forth below.

The standard of review is whether the petitioner was afforded procedural due process, whether the essential requirements of law were observed, and whether the Department's findings and judgment are supported by competent substantial evidence. See Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069, 1073 (Fla. 2d DCA 2001).

This appeal stems from the suspension of Petitioner's driver license after his arrest for driving under the influence on July 11, 2008. Brown contends that that DHSMV's findings were not supported by competent substantial evidence. The Findings of Fact, Conclusions of Law dated September 3, 2008, was based on an administrative hearing held on August 29, 2008. The issues presented at the administrative hearing included 1) whether the law

enforcement officer had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence; 2) whether Petitioner refused to submit to a urine test or a breath test or a blood test after being requested to do so; and 3) whether Petitioner was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a year or in the case of a subsequent refusal, for a period of eighteen months.

On July 11, 2008, Brown was stopped by Officer Roberts and Officer Weiskopf for failure to stop at a stop sign. Upon contact with Brown, Officer Roberts noticed a strong odor of an alcoholic beverage. The officer also observed Brown's eyes to be bloodshot, watery and glassy. Brown was asked to perform field sobriety tests which revealed further signs of impairment. Brown was arrested for DUI and escorted to the mobile Breath Testing van which was on scene. Brown was asked to submit to a lawful breath test to which he refused. He was read implied consent and still refused. Brown was then transported to the Pinellas County Jail.

Brown argued in his petition that a demand for a blood sample was illegal as there were no special circumstances for a blood demand and that such a request may mislead people into thinking they might have to submit to a more invasive test. However, Brown neglected to explain when or where in the record a blood sample was actually requested of him.

The Petitioner relied on *Dep't of Highway Safety and Motor Vehicles v. Clark*, 974 So. 2d 416, 417 (Fla. 4<sup>th</sup> DCA 2007), for the proposition that the Petitioner was erroneously informed that her driving privileges would be suspended if she refused to submit to a "breath, blood, or urine test." However, the issue addressed by the Court in *Clark* concerned an implied consent form that stated a "license suspension is for a refusal to take a breath *and* urine *and* blood test," even though there were only grounds to ask for a breath test. The implied consent form in this

case differs from that in *Clark*. The Refusal Affidavit in the instant case reads "... I did request said person to submit to a breath, urine, or blood test to determine the content of alcohol in his or her blood or breath test or the presence of chemical or controlled substances therein..." See Petitioner's Exhibit A, Refusal Affidavit, DDL 4. The key word in the implied consent being *or* instead of *and*.

The thirteenth judicial circuit recently held in *King v. Dep't of Highway Safety and Motor Vehicles*, Case No.: 08-CA-11804 (Fla. 13<sup>th</sup> Cir. Ct. 2008), that a request for a "breath, urine, or blood test" does not render an implied consent warning invalid where there is nothing in the record demonstrating that law enforcement may have misled Petitioner into thinking that a more invasive test was required.

The determination for this Court is whether Brown was afforded procedural due process, whether the essential requirements of law were observed, and whether the Department's findings and judgment was supported by competent substantial evidence. The Court finds that Brown was afforded procedural due process and the DHSMV observed the essential requirements of law. More importantly, this Court holds the hearing officer's findings of fact and conclusions of law dated September 3, 2008 was supported by competent substantial evidence.

Therefore, it is,

**ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby **DENIED** on the merits and Petitioner's Motion for Attorney's Fee's is denied.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida this 11<sup>th</sup> day of ~~February~~ <sup>March</sup>, 2009.

Original opinion entered by Circuit Judges Pamela A.M. Campbell, George W. Greer, & John A. Schaefer.

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