

**Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER’S LICENSES – Suspension – Section 322.2615, Fla. Stat. (2014).** Hearing officer properly admitted refusal affidavit even though there was conflicting evidence regarding which officer signed the refusal affidavit. Law enforcement officers did not proactively misinform Petitioner about the voluntary versus mandatory nature of field sobriety exercises – Petition denied. *Blainey v. Fla. Dep’t of Highway Safety and Motor Vehicles*, No. 14-000031AP-88B (Fla. 6th Cir. App. Ct. December 15, 2014).

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

**FRANCIS BLAINEY,**  
**Petitioner,**

v.

**Ref. No.: 14-000031AP**  
**UCN: 522014AP000031XXXXCI**

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

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**ORDER AND OPINION**

**THIS CAUSE** is before the Court on a petition for writ of certiorari filed by Petitioner, Francis Blainey. Respondent, the Department of Highway Safety and Motor Vehicles, filed a response in opposition, to which Petitioner filed a reply. For the reasons set forth below, the petition is denied.

**Facts**

Petitioner’s license was suspended on October 24, 2013 for refusing to provide a breath sample subsequent to his arrest for DUI. Pinellas County Deputies were responding to a call by concerned citizens who claimed they witnessed drunken behavior by Petitioner—first in a restaurant, and then in his vehicle. When they stopped Petitioner for running two stop signs, deputies reported the strong odor of alcohol on Petitioner’s breath, slurred speech, bloodshot/watery eyes, fumbling, swaying, dozing, and failure to heed a warning to apply the parking brake before exiting the vehicle. Petitioner refused field sobriety exercises (“FSE”) and

the breath test, for which he was read the implied consent warnings<sup>1</sup>, and was placed under arrest. Petitioner's refusals were repeated at the Central Breath Testing facility. Following the license suspension, Petitioner requested a formal administrative review hearing. After hearing, the Department upheld Petitioner's license suspension, and this petition followed.

### **Standard of Review**

In reviewing the Department's order, this court must determine (1) whether procedural due process was accorded, (2) whether the essential requirements of law were observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Vichich v. Department of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001).

### **Issues**

Petitioner asserts that the hearing officer departed from the essential requirements of law by denying his motions to (1) exclude the refusal affidavit over inconsistent evidence of which deputy read the warnings and signed the affidavit; (2) exclude the evidence of refusal of the FSE; and (3) invalidate his license suspension. The latter two motions are both based upon alleged misinformation by the deputy about the voluntary versus mandatory nature of the FSE and the consequences of a refusal. Petitioner claims that misinformation resulted in the mistaken belief that his license was already suspended upon FSE refusal, and therefore the breath test refusal produced no further consequence. Petitioner relies upon this videotape record for support of the latter two issues (*verbatim from hearing officer order, Findings of Fact, Conclusions of Law And Decision at 5:16-20*):

The Petitioner . . . stated "I don't want to follow the tip of the pen." The Petitioner then began to argue with Deputy Segrete. Deputy Boggess asked the Petitioner "what he was doing?" that Deputy Segrete was asking (you) the Petitioner to submit to Road Sobriety Tests. The Petitioner stated "I'm not submitting to anything." At approximately 2:11 A.M., Deputy Boggess stated "well then we'll take your license and place you under arrest." The Petitioner responded "That's fine." Deputy Boggess then stated "Is that what you want to happen?" "Are you going to comply with our tests?" The Petitioner replied "Absolutely not." At 2:12 A.M. the Petitioner was placed under lawful arrest.

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<sup>1</sup> Fla. Stat. §322.1932 is commonly known as the implied consent law. It addresses the requirements for a licensed driver to submit to chemical testing of breath, urine, or blood. Sections 322.1932(1)(a), (1)(b), and (1)(c) in turn for each test repeat the mandate that a person failing to submit must be warned that the refusal will result in suspension of his or her driving privileges.

## Discussion

### Inconsistent Evidence

Per §322.2615(6)(b) Fla. Stat., the hearing officer is broadly empowered to “examine witnesses and take testimony, receive relevant evidence, . . . regulate the course and conduct of the hearing, question witnesses, and make a ruling.” Petitioner asserts that conflicting records of which of two deputies read the implied consent warnings and signed the affidavit is cause for exclusion of the refusal affidavit.

This court may not reweigh evidence, and is limited to determining whether the evidence supports the hearing officer’s application of the law. *Dep’t of Highway Safety & Motor Vehicles v. Stenmark*, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006), *citing State, Dep’t of Highway Safety & Motor Vehicles v. Porter*, 791 So.2d 32, 35 (Fla. 2d DCA 2001).

Petitioner does not contest that he was lawfully arrested and refused a breath test. Rather, he argues that a conflict exists over which deputy read him the implied consent warnings and which deputy signed the refusal affidavit after he unlawfully refused a breath test.

Section 322.2615(2) does not mandate the filing of an affidavit of refusal on a form provided by the Department. It requires only that an affidavit stating the breath, blood or urine test was requested by a law enforcement officer, implied consent warnings were given, and that the person arrested refused to submit. *Dep’t of Highway Safety & Motor Vehicles v. Perry*, 751 So. 2d 1277, 1280 (Fla. 5th DCA 2000).

Further, even if the hearing officer did not consider the refusal affidavit, the remaining arrest documents, including the arrest affidavit, clearly state the implied consent warnings were read and that Petitioner refused the breath test. The hearing officer, with the additional benefit of hearing testimony on this alleged discrepancy, ruled properly.

### Alleged Misinformation

In analyzing the second and third issues, the Court must determine whether the deputy misrepresented the voluntary versus mandatory nature of the FSE and the consequences of a refusal, and whether the hearing officer departed from the essential requirements of law by not correctly applying the law to those facts. Petitioner seeks to elevate one verbal exchange in a brief portion of the arrest record into a dispositive misstatement of the law that overcomes all communication and behavior that follows:

Deputy Boggess asked the Petitioner “what he was doing?” that Deputy Segrete was asking (you) the Petitioner to submit to Road Sobriety Tests.

The Petitioner stated “I’m not submitting to anything.”

At approximately 2:11 A.M., Deputy Boggess stated “well then we’ll take your license and place you under arrest.”

Findings of Fact, Conclusions of Law And Decision at 5:17-20

From the record, it appears that Deputy Boggess is reacting to “not submitting to anything” as Petitioner jumping ahead to state that not only will he not submit to FSE, but also that he will not submit to any breath, urine, or blood tests. Subsequent to this, at the Central Breath Testing facility, Petitioner was offered another opportunity to perform the FSE and refused. He was asked to submit to a breath test, which he also refused. He was then read the implied consent warnings, and once again, refused the breath test. At that reading it was clear, even if it had not been previously, that it was the breath test that must be complied with under penalty of license suspension.

Clearly, Deputy Boggess in the aforementioned exchange did not proactively misinform Petitioner about the voluntary versus mandatory nature of the FSE, and even if the terse exchange opened the possibility of Petitioner’s misunderstanding, it could not have reasonably persisted past the reading of the implied consent warnings for Petitioner to continue to mistakenly believe that his license suspension was irreversible the moment he first refused the FSE. Accordingly, the hearing officer did not depart from the essential requirements of law on these two issues.

**Conclusion**

Because the hearing officer did not depart from the essential requirements of law, and her findings were supported by competent substantial evidence, it is hereby

**ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is DENIED.

**DONE AND ORDERED** in St. Petersburg, Pinellas County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

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**AMY M. WILLIAMS**  
Circuit Judge, Appellate Division

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**JACK DAY**  
Circuit Judge, Appellate Division

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**PAMELA A.M. CAMPBELL**  
Circuit Judge, Appellate Division

Copies furnished to:

EILAM ISAAK, ESQUIRE  
306 EAST TYLER STREET  
2<sup>ND</sup> FLOOR  
TAMPA, FL 33602

JASON HELFANT  
ASSISTANT GENERAL COUNSEL  
DEPT. OF H'WAY SAFETY & MOTOR VEHICLES  
6855 62ND AVE NORTH  
PINELLAS PARK, FL 33781