

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSE—The record demonstrates no departure from essential requirements of law and contains sufficient evidence to support the order upholding the license suspension and finding that the refusal to submit was incident to a lawful arrest. Petition denied. *Eric Brian Eichler v. State of Florida, Dep't of Highway Safety and Motor Vehicles*, No. 14-CA-2880-WS (Fla. 6th Cir. App. Ct. June 29, 2015).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

ERIC BRIAN EICHLER,
Petitioner,

UCN: 512014CA002880CAAXWS

v.

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

_____/

Petition for Writ of Certiorari,

Curtis M. Crider, Esquire,
for Petitioner,

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

ORDER AND OPINION

The order affirming the suspension of Petitioner's driver's license for refusal to submit to a breath-alcohol test does not demonstrate a departure from essential requirements of law, and is supported by substantial competent evidence that the refusal was incident to a lawful arrest. The Petition is denied.

STATEMENT OF THE CASE AND FACTS

Petitioner was arrested for driving under the influence in violation of § 316.193, Fla. Stat. Petitioner requested a formal administrative review of the license suspension

pursuant to § 322.2615, Fla. Stat. An evidentiary hearing was held before a hearing officer who found sufficient evidence to sustain the suspension. The hearing officer's findings of fact included:

On May 26, 2014, Trooper LaRose was working a crash investigation and his emergency lights were activated. Other deputies were also directing traffic to allow vehicles to pass the crash scene. A vehicle had pulled behind the Trooper's vehicle and stopped.

A deputy made contact with the driver of the stopped vehicle, who exhibited signs of impairment. Trooper LaRose then approached the driver, and detected a strong odor of alcohol from the driver's breath, and noticed the driver's eyes were bloodshot, watery, and his speech was slurred. The driver was identified as the Petitioner.

Petitioner performed field sobriety tests and failed. Petitioner was arrested for DUI and asked to submit to a breath test. Petitioner refused, and was read the implied consent warnings, after which he refused again.

The hearing officer found Petitioner was lawfully arrested for DUI. The hearing officer found sufficient cause to sustain Petitioner's suspension by a preponderance of the evidence. Petitioner contends the refusal was not incident to a lawful arrest, because there was no demonstration of probable cause for Petitioner's original detention, and seeks to quash the order sustaining the suspension on this basis.

STANDARD OF REVIEW

In proceedings conducted pursuant to § 322.2615, Fla. Stat., a hearing officer must determine whether sufficient cause exists to sustain a suspension of driver's license. When the suspension results from a refusal to submit to a breath test, the officer's review is limited to the following issues:

- 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 refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer; and,

- 3) Whether the person was told that if he refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year.

§ 322.2615(7)(b), Fla. Stat. The officer's findings on these issues must be supported by a preponderance of the evidence. This Court's review of the hearing officer's decision is "limited to a determination whether procedural due process was accorded, whether the essential requirements of law had been observed, and whether the administrative order was supported by competent substantial evidence." *Dep't of Highway Safety and Motor Vehicles v. Cherry*, 91 So. 3d 849, 854 (Fla. 5th DCA 2011).

LAW AND ANALYSIS

Petitioner contends the officer lacked probable cause for arrest, and the refusal to submit to breath testing was not incident to lawful arrest and it was error to sustain the suspension. The Trooper's testimony at the hearing was that as he arrived at the crash scene and activated his emergency lights, Petitioner's vehicle pulled up behind the Trooper's vehicle and stopped, while other cars were traveling around the crash scene to avoid it. The Trooper testified that officers from the Sheriff's Department were at the crash scene, and the Trooper asked them to stay with Petitioner. The Trooper testified he observed Petitioner in the vehicle, and that Petitioner never exited the vehicle. The Trooper testified that as the officers were directing traffic around the scene, he thought officers "finally walked up to [Petitioner] and saw that he had some signs of impairment, and I believe they told him to just hang out and wait until I got back." The Trooper spoke to one deputy who indicated Petitioner exhibited signs of impairment. The Trooper could not say with certainty how contact was initiated with Petitioner, but inferred that the officers were trying to direct traffic around the crash scene and Petitioner was not following directions.

A license suspension resulting from refusal to submit to a breath test must be incident to a lawful arrest. *State of Fla., DHSMV v. Hernandez*, 74 So. 3d 1070, 1076 (Fla. 2011). Petitioner contends that no evidence was presented at the hearing as to the basis for Petitioner's initial detention. The probable cause affidavit submitted into

evidence does not clearly indicate at what point the Trooper initiated contact with Petitioner, and the Trooper's testimony at the hearing demonstrated Petitioner was detained by another officer prior to the Trooper making contact, and the Trooper did not specifically state the basis for the initial detention.

The hearing officer's order is supported by competent, substantial evidence. During such administrative review hearings, a hearing officer must accept into evidence documents submitted pursuant to statute as the State's prima facie case. See § 322.2615(6)(b), Fla. Stat; *State of Fla., DHSMV v. Stewart*, 625 So. 2d 123, 124 (Fla. 5th DCA 1993). Once the State has met the initial burden, the Petitioner then has the burden of rebutting the State's evidence. The hearing officer considers the documents along with relevant evidence to determine by a preponderance of the evidence whether to sustain the suspension. See § 322.2615(7); *Klinker v. State of Fla., DHSMV*, 118 So. 3d 835 (Fla. 5th DCA 2013). It is appropriately a question for the hearing officer as to whether the preponderance of the evidence supports a finding of probable cause to detain a driver prior to conducting a DUI investigation.

This Court may not reweigh the evidence, or consider conflicting evidence when determining whether the record contains evidence is legally sufficient to support the action. See *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs*, 794 So. 2d 1270, 1274-76 (Fla. 2001). The arrest affidavit states that the Trooper observed Petitioner stop behind his vehicle, despite the fact that other officers were directing vehicles around the scene, that the Trooper approached Petitioner and observed indicators of impairment, and that Petitioner performed poorly on field sobriety exercises, was arrested for DUI and refused to submit to breath testing. Further, Petitioner's argument that the hearing officer did not consider the issue of probable cause to support the arrest is not supported by the record, which demonstrates that this argument was considered and rejected.

The record does not demonstrate a substantial departure from the essential requirements of law necessary to warrant the requested relief. Such a departure requires "an inherent illegality or irregularity, an abuse of judicial power," which results "in a gross miscarriage of justice." *Haines City Comm. Development v. Heggs*, 658 So.

2d 523 (Fla. 1995). Although Petitioner contends that an unlawful detention occurred prior to the Trooper making contact with Petitioner, the facts and circumstances of this case and the record evidence do not demonstrate a departure from essential requirements of law in upholding the suspension.

CONCLUSION

The record demonstrates competent, substantial evidence to support the finding that Petitioner's refusal was incident to a lawful arrest, and no departure from essential requirements law occurred in this matter. The Petition is denied.

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

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 29th day of June, 2015.

Original order entered on June 29, 2015, by Circuit Judges Daniel D. Diskey, Susan G. Barthle and Shawn Crane.