

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER’S LICENSE – Suspension. Petitioner’s driver’s license was suspended pursuant to a DUI arrest following a vehicle crash investigation. Petitioner contends it was a violation of due process to detain Petitioner at the scene of the accident and to prevent him from speaking with an attorney. The Court found Petitioner was afforded due process; Petitioner had no established right to counsel prior to deciding whether to submit to testing; and the officer’s observations were sufficient to support a finding of probable cause. The order is supported by competent, substantial evidence. Petition denied. *Brock v. Fla. Dep’t of Highway Safety & Motor Vehicles*, No. 16-CA-1460-ES (Fla. 6th Cir. App. Ct. Oct. 4, 2016).

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**

CARSON H. BROCK,
Petitioner,
v.

UCN: 512016CA001460CAAXES
Case No.: 2016-CA-1460-ES

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

_____/

Petition for Writ of Certiorari,

P. Hutchison Brock, Esq.,
for Petitioner,

Monique L’Itlalien, Esq.,
for Respondent.

ORDER AND OPINION

Petition failed to demonstrate a departure from essential requirements of law or a denial of due process in this matter. The order is supported by substantial, competent evidence. 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., and refusal to submit to testing in violation of § 322.2615, Fla. Stat. Petitioner requested formal administrative review of the license suspension pursuant to §

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

On February 8, 2016, Officer Amatruda and Officer Montieth responded to a traffic crash observed by Pasco County Deputies. Upon making contact with the deputies Officer Amatruda was informed that the driver of one of the vehicles involved was the Petitioner, later identified by his Florida driver license as Carson Hutchison Brock. While Officer Montieth conducted the crash investigation Officer Amatruda observed the Petitioner to exhibit what he believe to be indicators of impairment.

Officer Amatruda observed the Petitioner to be unsteady on his feet and have an orbital sway, bloodshot, watery eyes and an odor of alcoholic beverage on his breath. Pete Brock, whom the Petitioner called after the accident, testified that his son told him he was in an unavoidable accident and had hit a tractor and the air bags deployed.

Mr. Brock observed the Petitioner from approximately thirty yards away and saw him moving in a manner as if to warm himself due to the night being cold and him wearing light clothing. He also said he could tell the Petitioner was hurt with what appeared to be a twisted ankle.

After Officer Montieth concluded the crash investigation Officer Amatruda informed Petitioner he was beginning a criminal investigation for DUI. Officer Amatruda read Petitioner Miranda and the Petitioner advised he did not wish to speak to the officer and wanted to speak to his father and attorney. Petitioner refused to perform Field Sobriety Tasks and was arrested for DUI. Petitioner refused to provide breath samples after being read Implied Consent. Petitioner was transported to the hospital where he was medically cleared for incarceration and then transported to the Land O'Lakes Jail.

Based on these facts, the hearing officer found Petitioner was lawfully arrested for DUI. The hearing officer found the evidence sufficient to sustain Petitioner's suspension. The hearing officer denied Petitioner's motion to invalidate the suspension based on lack of probable cause to believe the Petitioner was driving, and denied Petitioner's motion to invalidate suspension based on lack of probable cause to believe Petitioner was under the influence of alcohol or controlled substances. Petitioner now seeks review in this Court of the order sustaining the suspension.

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. 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). See *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs*, 794 So. 2d 1270, 1275–76 (Fla. 2001); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

LAW AND ANALYSIS

Petitioner contends it was a violation of due process to detain Petitioner at the scene of the accident and to prevent him from speaking with an attorney despite Petitioner's request for an attorney. Petitioner acknowledges that a suspect is not entitled to speak with an attorney to discuss a request for a breathalyzer test post DUI arrest. See *DHSMV v. Farr*, 757 So. 2d 550 (Fla. 5th DCA 2000). Petitioner contends that the hearing officer deprived Petitioner of due process by admitting the Reporting Officer Narrative into evidence when the narrative was not initially provided to the hearing officer as part of the body of work the law enforcement agency submitted to demonstrate probable cause for arrest. The narrative was presented to support the finding of probable cause, and Petitioner alleges that absent the report there is a lack of evidence to support the arrest.

Petitioner contends there is no documentary evidence that implied consent was explained to Petitioner, in the form of a written explanation signed by Petitioner or a video recording of Petitioner's refusal. Petitioner contends the hearing officer's decision not to issue subpoenas for the sheriff deputies involved in this case resulted in a deprivation of due process because it prevented exculpatory evidence from being introduced, and deprived Petitioner of the opportunity to confront his accusers. Petitioner contends there is a lack of evidence to support the suspension. Petitioner contends there is no evidence placing Petitioner behind the wheel, and that statements by Petitioner during the traffic investigation were inadmissible pursuant to § 316.066(4),

Fla. Stat. Petitioner contends Officer Amatruda's observations of an odor of alcohol, Petitioner swaying and having bloodshot, watery eyes, can be explained by circumstances other than impairment by alcohol. The suspension should therefore be invalidated because the refusal was not incident to lawful arrest. See *DHSMV v. Hernandez*, 74 So. 3d 1070 (Fla. 2011).

Respondent contends it was proper to sustain the suspension. When the suspension is the result of refusal to submit to testing, the scope of the hearing is limited to the following three issues:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat. The hearing officer's determination of these issues must be supported by a preponderance of the evidence. This Court may not reweigh the evidence or make factual findings in its review of the hearing officer's determination. See *DHSMV v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989). The hearing officer is the trier of fact and may properly weigh the evidence, determine witness credibility and resolve any conflicts in the evidence. See *id*; *DHSMV v. Dean*, 662 So. 2d 371, 373 (Fla. 5th DCA 1995). Respondent contends that the order did not amount to an essential departure from the requirements of law, and that the order is supported by the evidence. "Evidence contrary to the agency's decision is outside the scope of inquiry" of this Court, which must sustain the order if supported by "competent substantial evidence." *Dusseau*, 794 So. 2d at 1275.

Petitioner was afforded due process in this matter. Petitioner had no established right to counsel prior to making the decision whether to submit to testing pursuant to the

implied consent law. See *Pastori v. State*, 456 So. 2d 1212 (Fla. 2d DCA 1984); *State v. Burns*, 661 So. 2d 842 (Fla. 5th DCA 1995). Petitioner was not deprived of due process by the admission of the Reporting Officer Narrative. Fla. Admin. Code Rule 15A-6.013(2) authorizes hearing officers to consider any report submitted by law enforcement relating to the administrative suspension which has been filed prior to or at the review hearing. The Rule provides that “extrinsic evidence of authenticity” is not a condition precedent to the admissibility of such documents. See *id.*; §§ 322.02(6), 322.2615, Fla. Stat. See also *Scritchfield v. DHSMV*, 648 So. 2d 1246 (Fla. 2d DCA 1995). And, the officer’s failure “to submit materials within the 5-day period specified in this subsection or in subsection (1) shall not affect the department’s ability to consider any evidence submitted at or prior to the hearing.” § 322.2615(2)(a), Fla. Stat.

Officer Amatruda’s observations of indicators of impairment were sufficient to support a finding of probable cause in this case. See *DHSMV v. Possati*, 866 So. 2d 737 (Fla. 3d DCA 2004). Although Petitioner suggests other possible explanations for the indicators of impairment observed by the officer, this Court may not reweigh the evidence or consider conflicting evidence. It was not a violation of due process not to issue the subpoenas for additional officers involved in this case. The deputies in question allegedly observed the traffic accident and stopped to render assistance, but were not directly involved in the DUI investigation or Petitioner’s arrest. And, the deputies’ observations could be imputed to Deputy Amatruda pursuant to the fellow officer rule. See § 901.15(5), Fla. Stat.

The order is supported by competent, substantial evidence that Petitioner was driving the vehicle. § 322.2615(2)(b), Fla. Stat., specifically authorizes a hearing officer to consider an accident report which may be submitted by law enforcement, notwithstanding the privilege provided in § 316.066(4). The written documents submitted into the record support the hearing officer’s determination. See §§ 322.2615(2) and (7), Fla. Stat. The documentary evidence demonstrated Petitioner was the driver of the vehicle involved in the accident, and that the investigating officer made sufficient observations to conduct a DUI investigation and had probable cause to make the arrest. The evidence supports the finding that Petitioner was properly read the

implied consent warning. The arrest report states that Officer Amatruda read Petitioner the implied consent warning from the card and the implied consent form was read into the record by the hearing officer and was part of the record submitted by the Department. The record contains competent substantial evidence to support the hearing officer's finding on this issue.

CONCLUSION

Petitioner failed to demonstrate a departure from essential requirements of law or denial of due process in this matter. The order is supported by substantial, competent evidence. The Petition is denied.

It is ORDERED AND ADJUDGED that the Petition is hereby DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this 4th day of October, 2016.

Original order entered on October 4, 2016, by Circuit Judges Daniel Diskey, Susan Barthle, and Kimberly Campbell.