

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

DAVID JAMES RINALDO,
Petitioner,

REF: 22-000013-AP
UCN: 522022AP000013XXXXCI

v.

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

_____ /

Opinion filed _____.

Petition for Writ of Certiorari for relief
from a final administrative order of the
Department of Highway Safety and
Motor Vehicles

Curtis M. Crider, Esq.
Counsel for Petitioner

Michael Lynch, Esq.
Counsel for Respondent

PER CURIAM

Petitioner, David James Rinaldo, seeks certiorari review of a final administrative order, Findings of Fact, Conclusions of Law and Decision, entered on June 9, 2022 by the hearing officer for the State of Florida Department of Highway Safety and Motor Vehicles (hereafter, "DHSMV").

This Court has appellate jurisdiction pursuant to Art V § 5(b), Fla. Const.,

Fla. Stat. 322.31, Fla. Admin. Code R. 15A-6.019, and Fla. R. App. P. 9.030(c). Following review, we affirm the decision of the lower tribunal.

STATEMENT OF FACTS

On April 30, 2022, Petitioner, David James Rinaldo, was the subject of a traffic stop on suspicion that Petitioner had been operating his motor vehicle under the influence of alcoholic beverages or chemical or controlled substances. When requested by law enforcement, Petitioner refused to perform field sobriety exercises. It was determined that Petitioner had been driving under the influence and he was placed under arrest for driving under the influence. Law enforcement transported Petitioner to a holding facility, where Petitioner refused to submit to a breath analysis test.

Pursuant to Fla. Stat. § 322.2615(a), the Department of Highway Safety and Motor Vehicles suspended Petitioner's driving privileges. Petitioner requested a formal review, and a hearing was held on June 1, 2022. Petitioner had served the arresting law enforcement officer with a subpoena duces tecum to testify at the formal review hearing. The law enforcement officer appeared at the hearing to testify but failed to bring the documents requested within the subpoena duces tecum: namely, video footage of the traffic stop and arrest. The hearing officer with the Department of Highway Safety and Motor Vehicles provided Petitioner with

the opportunity to continue the hearing so that Petitioner could obtain the documents. The Petitioner declined to continue the hearing. Subsequently, the hearing officer affirmed the suspension of the Petitioner's driving privileges by final administrative order dated June 9, 2022.

STANDARD OF REVIEW

Fla. Stat. § 322.31 provides a right of review for the final orders and rulings of the DHSMV when the department denies, cancels, suspends, or revokes such license. The appellate court shall review the decision "in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida Rules of Appellate Procedure." Id.

The Supreme Court of Florida, in City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982), held that where full review of administrative action is given in the circuit court as a matter of right, the circuit court must determine: (1) whether procedural due process is accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

ANALYSIS

Petitioner's sole issue for review is whether Petitioner was accorded procedural due process when, after having received a subpoena duces tecum, the arresting law enforcement officer appeared but failed to bring the documents requested by the Petitioner to the hearing held on June 1, 2022.

First, the requirements of procedural due process pursuant to the United States Constitution, as well as the Florida Constitution, are fair notice and a reasonable opportunity to be heard. Housing Authority of City of Tampa v. Robinson, 464 So.2d 158, 164 (Fla. 2d DCA 1985). "[T]here is ... no single, unchanging test which may be applied to determine whether the requirements of procedural due process have been met." Hadley v. Department of Administration, 411 So.2d 184, 187 (Fla. 1982). These are flexible concepts to be discerned from the facts of each case. Mathews v. Eldridge, 424 U.S. 319 (1976).

This Court notes that a notice of hearing does not appear on the appellate record. However, the record reflects that the hearing was held on June 1, 2022, that the Petitioner was provided an opportunity to examine the witness, and that the hearing officer provided Petitioner with an opportunity to continue the hearing to obtain the missing documentary

evidence. Hr'g Tr. In re: David James Rinaldo at 12. Petitioner declined to exercise his option to continue the hearing. App. To Resp. to Pet. For Writ of Cert. at Ex. R.A. 1. On these facts alone, this Court may conclude that Petitioner was accorded procedural due process.

Second, whether the essential requirements of law have been observed hinges upon the lower tribunal's application of the correct law. Haines City Community Development v. Heggs, 658 So.2d 523, 531 (Fla. 1995). A deviation from the essential requirements of law entails a violation of a clearly established principle of law resulting in a miscarriage of justice.

Id.

Pursuant to Fla. Admin. Code R. 15A-6.013(5), Petitioner had a right "to present evidence relevant to the issues, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against the driver." Further, Petitioner had a right to enforce the subpoena duces tecum to obtain the documents. Fla. Stat. § 322.2615(6)(c). It is clear from the record that the hearing officer provided Petitioner with the opportunity to continue the hearing and retrieve the documents by lawful means, but Petitioner declined.

This Court, and others, have reasoned that the failure of a witness to bring to the administrative hearing the documents requested pursuant to a

lawful subpoena is not always a violation of due process¹. See Dep't Highway Safety and Motor Vehicles v. Lankford, 956 So.2d 527 (Fla. 1st DCA 2007); see Keeven v. Dep't Highway Safety and Motor Vehicles, No. 99-7928 CI-88B (Fla. 6th Cir. Ct. Mar, 27, 2000); see Lewis v. Dep't Highway Safety and Motor Vehicles, 12 Fla. L. Weekly Supp. 550a (Fla. 20th Cir. Ct. Mar. 9, 2005). This reasoning is particularly salient when, as in this case, a litigant is informed of his or her right to enforce the production of evidence by the hearing officer and declines to exercise it. Keeven, 99-7928 CI-88B; Lewis, 12 Fla. L. Weekly Supp. 550a. We conclude that the lower tribunal accorded procedural due process and applied the correct law.

Third, whether the administrative findings and judgment are supported by competent substantial evidence demands an honest look at the evidence. Wiggins v. Florida Dep't of Highway Safety & Motor Vehicles, 209 So. 3d 1165 (Fla. 2017). The evidence cannot be untruthful or nonexistent. Id. Competent, substantial evidence is "such evidence as will

¹ Florida's Second District Court of Appeal certified a very similar issue as one of "great public importance" in Department of Highway Safety and Motor Vehicles v. Robinson, 93 So.3d 1090 (Fla. 2d DCA 2012) but failed to resolve the conflicting rulings within its district. The Supreme Court of Florida declined to exercise jurisdiction. Florida Department of Highway Safety and Motor Vehicles v. Robinson, 112 So.3d 83 (Fla. 2013).

establish a substantial basis of fact from which the fact at issue can be reasonably inferred.” De Groot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957).

Notwithstanding the law enforcement officer’s failure to provide the documents pursuant to a lawful subpoena duces tecum, the majority of the law enforcement officer’s documentary evidence is self-authenticating and sufficient on its own to provide a basis of fact. See Fla. Admin. Code R. 15A-6.013(2). Petitioner had a right to present relevant evidence, examine witnesses, etc., but Petitioner did not take advantage of the opportunity to continue the hearing and obtain such evidence. Even without the video evidence, competent, substantial evidence on the record supports the hearing officer’s Findings of Fact, Conclusions of Law and Decision, entered on June 9, 2022.

DISPOSITION

Affirmed.

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ORDERED in Chambers at Clearwater, Pinellas County, Florida, this

21st day of April, 2023.

Original Order entered on April 21, 2023, by Circuit Judges Sherwood Coleman, George Jirotko, and Keith Meyer.

Copies furnished to:

Curtis Crider, Esq.
1550 South Highland Ave Suite C
Clearwater, Florida 33756

Michael Lynch, Esq.
4104 Clarcona Ocoee Road
Orlando, Florida 32810