

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

AARON HEATH EDGIN,

Petitioner,

v.

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

Respondent.

Case No.: 2007-CA-001690-O

Writ No.: 07-13

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Gary Bowen, Hearing Officer.

Jason A. Shepelrich, Esquire,
for Petitioner.

Jason Helfant, Esquire,
for Respondent.

Before WHITEHEAD, MUNYON AND McDONALD, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

I. NATURE OF CASE

Petitioner, Aaron Edgin (“Petitioner” or “Edgin”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’s (“the Department”) Final Order of License Suspension, sustaining the suspension of his driving privileges pursuant to section 322.2615, Florida Statutes, for refusing to submit to the breath-

alcohol test. This Court has jurisdiction. §§ 322.2615, 322.31, Fla. Stat. (2005); Fla. R. App. P. 9.030(c)(3); 9.100.

II. FACTS

Deputy Saulo Medina (“Medina”) of the Osceola County Sheriff’s Office observed the Petitioner’s Ford Explorer traveling west on W. Irlo Bronson Highway. Medina noted that Petitioner’s vehicle was weaving between lanes and he also determined that Edgin was speeding. After watching Edgin continue in this manner, Medina stopped Petitioner’s vehicle. According to his report, Medina smelled an odor of an alcoholic beverage as he stood near the driver’s window and saw beer bottles inside the Explorer. Medina called a DUI investigator, Deputy Michael Hilley (“Hilley”). Upon arrival at the scene, Hilley asked Petitioner to submit to standard field sobriety tests. Edgin did so, performed poorly and was placed under arrest. Petitioner was transported to the Osceola DUI Testing Center where, after being read the implied consent warning, he refused to submit to an Intoxlyzer Breath Alcohol Content test.

Edgin’s driving privileges were suspended pursuant to section 322.2615, Florida Statutes (2005). He requested a formal hearing pursuant to that same statute and chapter 15A-6, Florida Administrative Code. A hearing was held before Hearing Officer Gary Bowen (“the Hearing Officer”) at which the following documents were moved into evidence, some over Petitioner’s objection:

DDL#1 Florida Driver's License E325008761880 - Aaron Heath Edgin;

DDL#2 Florida DUI Uniform Traffic Citation Notice Of Suspension 0950-XDM;

DDL#3 Probable Cause Affidavit;

DDL#4 Breath Alcohol Test Affidavit;

DDL#5 Refusal Affidavit;

DDL#6 Department Inspection Report Intoxilyzer 8000 dated 02/02/2006;

DDL#7 Department Inspection Report Intoxilyzer 8000 dated 10/17/2006; and

DDL#8 Agency Inspection Report Intoxilyzer 8000 dated 11/16/2006.

(App. 1 - 15.)

Neither the Department nor the Petitioner called a live witness. The objections raised by Petitioner were as follows: 1) Petitioner objected to the introduction of page 5 of DDL#3, the Osceola County Sheriff's Office Implied Consent form. The basis for this objection was the "absence of Petitioner's signature on the form" (Pet. Cert. 4); 2) Petitioner objected to the introduction of, and "moved to dismiss," DDL#4, FDLE Breath Alcohol Test Affidavit. The basis for the objection was the "failure of the arresting agency to properly notarize the document" (Pet. Cert. 4); and 3) Petitioner advanced a two part objection to the introduction of, and moved to dismiss, DDL#5, DHSMV Refusal to Submit to Breath, Urine or Blood Test Affidavit. The first basis for this objection was the Department's "failure to establish Jurisdiction as the arresting officer failed to indicate the county on the form." (Pet. Cert. 4.) The second part of the objection/motion was the "failure of the arresting agency to properly notarize the document." (Pet cert. 4.)

The Hearing Officer overruled all of these objections and upheld the suspension while finding that: 1) The arresting officer had probable cause to believe the Petitioner was driving or

in actual physical control of a vehicle while under the influence; 2) The Petitioner refused to submit to a breath-alcohol test after being requested to do so by a law enforcement officer; and 3) The Petitioner was told that if he refused to submit to such test his 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.

III. STANDARD OF REVIEW

A circuit court's review of the decisions of lower tribunals "is limited to a determination of whether procedural due process has been accorded, whether the essential requirements of law have been observed, and whether the decision is supported by substantial competent evidence." *Campbell v. Vetter*, 392 So. 2d 6, 7-8 (Fla. 4th DCA 1980).

IV. PARTIES' ARGUMENTS

Petitioner reasserts the objections to the admission of three documents which he made at the administrative hearing. He claims that if those objections had been sustained, the remaining documentary evidence would have been insufficient to prove the Department's case.

The Department counters that all documentary evidence was properly admitted and provides competent substantial evidence supporting the Hearing Officer's conclusion.

V. DISCUSSION

Florida Rule of Appellate Procedure 9.100 provides that a petition for a writ of certiorari must contain, among other things, "argument in support of the petition and supporting authorities." Fla. R. App. P. 9.100(g)(4).

1. The Implied Consent Form

Petitioner first argues that the absence of his signature from the Implied Consent Form

“creates a presumption that cannot be rebutted by further evidence from the Department.” (Pet. Cert. 6.) Edgin cites no authority in support of this proposition and makes no argument as to why such a presumption is justified.

It is the duty of counsel to prepare appellate briefs so as to acquaint the Court with the material facts, the points of law involved, and the legal arguments supporting the positions of the respective parties. When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy. Again, it is not the function of the Court to rebrief an appeal.

Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958, 960 (Fla. 4th DCA 1983).

In the absence of any authority supporting Petitioner’s conclusory first argument, the Court must reject it.

2. The Breath Alcohol Test Affidavit

In his second point, Edgin argues that “[b]ased on the failure of the arresting agency to properly execute and notarize the [Breath Alcohol Test Affidavit], the hearing officer improperly considered the exhibit in determining the validity of the suspension.” (Pet. Cert. 6.)

Specifically, Petitioner notes that this document “lacks a signature where provided for a notary public as well as a printed identification of notary.” (Pet. Cert. 6.) In opposition to this argument, the Department points to section 117.10, Florida Statutes which, it contends, provides “that a law enforcement officer engaged in official duty may notarize a document such as the arrest affidavit and that officer is exempt from the technical requirements of a notary.” (Resp. Pet. Cert. 6.)

The Department correctly describes the content of section 117.10. That enactment does not apply here because although a police officer may witness a document in place of a notary, the Breath Alcohol Test Affidavit was not witnessed by *anyone*. The last sentence of section 117.10

provides that “[a]n officer may not notarize his or her own signature.” §17.10, Fla. Stat. (2006). The only one to sign the Breath Alcohol Test Affidavit was the breath test operator, Deputy DeLeon. Therefore, Edgin is correct to assert that the Breath Alcohol Test Affidavit was not properly notarized. This conclusion, however, does not end the inquiry. The question next arises as to the significance of the lack of notarization.

The Breath Alcohol Test Affidavit records breath test results. Inasmuch as Edgin refused to take the breath test, there was nothing to record. The offense charged here does not depend on the results of the test but rather the refusal to even take the test in the first place. In this case, therefore, the Breath Alcohol Test Affidavit is a meaningless document and its exclusion from consideration would have no impact in the Department’s case.¹

3. Affidavit of Refusal to Submit to Breath, Urine, or Blood Test

Petitioner argues that the Affidavit of Refusal to Submit to Breath, Urine, or Blood Test was not properly executed or notarized and therefore was “improperly considered [by the Hearing Officer] . . . in determining the validity of the suspension.” (Pet. Cert. 7.) Edgin also finds error in the fact that this affidavit “failed to state jurisdiction in the body of the refusal language.”² (Pet. Cert. 7.)

¹ The Breath Alcohol Test Affidavit does note: “subject test refused.” (App. 11.) This is not the only evidence of Petitioner’s refusal. An “Affidavit of Refusal to Submit to Breath, Urine or Blood Test” was also admitted into evidence and this latter document recites that Edgin “did . . . refuse to submit to such test or other tests.” (App. 12.) Also, in his Petition, Edgin concedes that he “refused the breath test.” (Pet. Cert. 2.)

² While the Court is unable to address Petitioner’s undeveloped assertion concerning an alleged “failure to state jurisdiction,” we note that the arresting officer, Deputy Hilley, is identified in the Breath Test Affidavit as a member of the Osceola County Sheriff’s Office. Deputy Hilley is the author of the Charging Affidavit which clearly states that Petitioner was speeding and driving while intoxicated in Osceola County. Thus, there is competent, substantial evidence that Deputy Hilley was within his jurisdiction when he developed probable cause to arrest Edgin.

Again, petitioner cites nothing in support of his arguments, thus depriving the Court of any ability to assess their merits, if any. It is not the responsibility of this Court to develop Petitioner's argument for him.

VI. CONCLUSION

With respect to Petitioner's objections to the Implied Consent Form and the Affidavit of Refusal, no authorities have been cited in support of Edgin's positions and these arguments must, therefore be rejected. As to the Affidavit of Breath Alcohol Test Results, the Court agrees with Petitioner that this document was not properly notarized. Nevertheless, even without this document, there is still substantial, credible evidence of record in support of the Hearing Officer's decision.

WHEREFORE it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari be and hereby is **DENIED** and the Hearing Officer's Final Order of License Suspension be and hereby is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the ____14th____ day of _____September_____, 2009.

/S/ _____
REGINALD K. WHITEHEAD
Circuit Court Judge

/S/ _____
LISA T. MUNYON
Circuit Court Judge

/S/ _____
ROGER J. McDONALD
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: Jason A. Shepelrich, Esquire, 840-A North John Young Parkway, Kissimmee, Florida 34741 and Jason Helfant, Esquire, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Legal Office, P.O. Box 540609, Lake Worth, Florida 33454 on the 14th day of September , 2009.

_____/S/_____
Judicial Assistant