

MICHELLE BASA RENNER

Petitioner,

vs.

STATE OF FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
BUREAU OF DRIVER IMPROVEMENT,

Respondent.

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

Case No. 2022-CA-001216

Appellate Panel J

**ORDER DENYING, IN PART, AND GRANTING,
IN PART, PETITION FOR WRIT OF CERTIORARI**

Petitioner petitions for a writ of certiorari quashing the order of the State of Florida Department of Highway Safety and Motor Vehicles, Bureau of Driver Improvement (“Department”) affirming the suspension of her driver’s license. The Petition for Writ of Certiorari (“Petition”) will be denied, in part, and granted, in part, as discussed below.

The Petition alleging it was not proven that the arresting officer was operating within his territorial jurisdiction at the time of the stop will be denied because the issue was not preserved for appellate review (and Petitioner’s trial counsel agreed the stop was legal). *State, Dept. of Highway Safety & Motor Vehicles v. Lankford*, 956 So. 2d 527, 527 (Fla. 1st DCA 2007).

The Petition alleging there was not competent substantial evidence to support probable cause to believe Petitioner was under the influence of alcohol because the arresting officer did not detect the odor of alcohol will be denied because the odor of alcohol is but one factor to consider, among the totality of the circumstances, in determining whether there is probable cause to believe a suspect committed that offense. *See DHSMV v. Rose*, 105 So. 3d 22 (Fla. 2d DCA 2012) *and Mathis v. Coats*, 24 So. 3d

1284 (Fla. 2d DCA 2010). Multiple other factors were noted in the arrest affidavit (*e.g.*, Petitioner was unsteady, slow in getting out of her car, failed a field sobriety test, urinated on herself, and fell asleep). Those other factors support a finding of probable cause for the offense of driving under the influence.

The Petition alleging the Hearing Officer erred in failing to resolve whether the instant refusal was Petitioner's second refusal of a breath/blood test will be denied because the scope of the Hearing Officer's review is limited to the issues set forth in Section 322.2615(7), Fla. Stat. *See* Fla. Admin. Code R. 15A-6.013(7)(a). The Hearing Officer was correct in limiting her review. Once a hearing officer determines that the elements of subsection (7) have been proved, "the Department shall" impose the penalty provided for in subsection (8). The statute contemplates the Department making this ministerial determination based solely on the person's driving record.

The Petition alleging the Hearing Officer failed to make conclusions of law regarding the required elements of review (*i.e.*, whether Petitioner refused a breath/blood test, and whether she was provided implied consent regarding the consequences of refusal) will be granted because the Hearing Officer departed from the essential requirements of law by making erroneous statements of the issues to be determined, and rendering conclusions that are inconsistent with her findings of fact. Although she correctly stated the issue orally at the hearing, the Hearing Officer misstated the issue twice in the Decision¹ (Decision 1: 20-21, 2: 19-21). Although she made a finding of fact that Petitioner refused a breath test and then was administered implied consent (Decision 3: 14-15), she subsequently rendered a conclusion inconsistent with that finding: "Petitioner had an

¹Findings of Fact, Conclusions of Law and Decision entered January 14, 2022 ("Decision").

unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher...” (Decision 4: 10-12). The conflicting statements, findings, and conclusions constitute a departure from the essential requirements of law. Because the inconsistencies in the Decision may affect Petitioner’s driving record, we cannot say those errors are harmless. It is accordingly

ORDERED and ADJUDGED that:

1. The Petition is DENIED, in part, and GRANTED, in part, as follows.

2. To the extent the Petition alleges the Hearing Officer failed to make conclusions of law regarding the required elements of review, we GRANT the Petition, QUASH the Decision, and REMAND this case for: (a) entry of an amended decision resolving the inconsistencies if the Hearing Officer is able to do so without taking evidence; or, alternatively, (b) conduct of a new hearing if the Hearing Office is unable to resolve the inconsistencies without taking evidence.

3. The Petition is otherwise DENIED.

DONE and ORDERED at Orlando, Orange County, Florida on this 3rd day of November 2022.



eSigned by Chad Alvaro 11/03/2022 08:07:48 nPho2Sv0

CHAD K. ALVARO
Presiding Judge

WHITEHEAD and STROWBRIDGE, JJ., concur.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Order was furnished on the 3rd day of November 2022 to the following:

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