

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2020-AP-31

DIVISION: AP-A

ADDISON JOSHUA DIERICKX,
Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition for Writ of Certiorari from the decision of the State of Florida Department of Highway
Safety and Motor Vehicles

MARCH 18, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's ruling and raises two arguments for review: (1) The hearing officer departed from the essential requirements from the law and denied Petitioner his right to due process at the hearing; and (2) The Department failed to comply with the essential requirements of the law and failed to afford Petitioner due process when the hearing officer found the Petitioner was lawfully arrested. On certiorari review of an administrative action, the Court's standard of review is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of the law had been observed, and whether the administrative order was supported by competent, substantial evidence." Dep't of Highway Safety

and Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008); see also Dep't of Highway Safety and Motor Vehicles v. Trimble, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002).

The hearing officer found as follows:

On March 12, 2020, Deputy M. Thompson of the Saint Johns County Sheriff's Office observed a black Dodge traveling southbound on AIA North, which he observed to be weaving outside of its lane. Deputy Thomas observed the vehicle drift from the fog line to the divider line multiple times. Deputy Thompson also observed the vehicle's right tires cross the fog line and enter into the bicycle lane multiple times. As the vehicle approached the intersection of AIA North and Ocean Place, Deputy Thompson observed the vehicle abruptly change lanes from the far right lane to the left turn lane; the vehicle did not slow down as it made the quick lane change. Deputy Thompson activated his emergency lights to conduct a traffic stop on the vehicle due to his concerns that the driver may be ill, tired, or impaired.

After Deputy Thompson activated his emergency lights, the vehicle traveled for approximately another 100 feet before parking in a parking spot at an apartment complex. Deputy Thompson observed that the vehicle was parked at an angle in the parking spot. Deputy Thompson made contact with the driver, subsequently identified a Addison Joshua Dierickx (hereafter referred to as the Petitioner). Upon making contact with the Petitioner, Deputy Thompson detected the strong odor of an alcoholic beverage emitting from the Petitioner's breath. Deputy Thompson also observed that the Petitioner's eyes were watery, bloodshot, and glassy; and his speech was slurred. The Petitioner advised Deputy Thompson that he was driving home [sic] Hoptinger's in Jacksonville Beach, where he worked.

Based on his observations of the Petitioner, Deputy Thompson advised the Petitioner that he was conducting a driving under the influence (DUI) investigation and asked the Petitioner to participate in field sobriety exercises. The Petitioner agreed to participate in the exercises. As the Petitioner exited the vehicle, Deputy Thompson observed that he swayed and appeared unsteady on his feet. During the eye exercises, the Petitioner swayed back and forth and moved his head to follow the stimulus. During the walk-and-turn exercise, the Petitioner could not maintain his balance while in the instructional stage; missed touching heel-to-toe on all steps; stepped off the line; used his arms for balance; and performed the turn incorrectly. During the one leg stand, the Petitioner swayed; used his arms for balance; hopped; and put his foot down. Additionally, the Petitioner did not count out loud as instructed. During his investigation, Deputy Thompson also observed that the Petitioner's face was flushed and he swayed while standing.

Based on his observations of the Petitioner, Deputy Thompson arrested the Petitioner for DUI. The Petitioner was transported to the county jail. Deputy Thompson read the Petitioner the Implied Consent Warning and requested that he submit to a breath test. The Petitioner refused. Based on the foregoing, I find the Petitioner was lawfully arrested for the offense of DUI.

I

In his first ground for relief, Petitioner argues the hearing officer departed from the essential requirements of the law by administering an oath over the telephone. Petitioner has failed to demonstrate a departure from the essential requirements of the law because Rule 15A-6013 only requires that oral evidence be taken under oath. Next, Petitioner he was deprived of due process when law enforcement failed to forward a copy of his driver's license to the Department. His argument is without merit. Pursuant to section 322.2615(2)(a), Florida Statutes, an officer's failure to submit materials does not affect the Department's ability to consider evidence submitted at or prior to the hearing.

II

In his second ground for relief, Petitioner argues that the initial stop of the Petitioner was unlawful because it was not based on reasonable suspicion or probable cause. Having reviewed the record, the Court finds that the hearing officer's findings were supported by competent, substantial evidence. Accordingly, the Petition is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.

CHARBULA AND SALEM JJ., concur.

Susan Z. Cohen., counsel for Petitioner

Mark L. Mason, Esq., counsel for Respondent.