

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

CASE NO: 16-2020-AP-32

DIVISION: AP-A

JAMES WILLIAM ALEXANDER,
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

APRIL 11, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's ruling, arguing that the breath test was not incident to a lawful arrest. 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 May 25, 2020, Officers M. Middleton and S. Halbritter of the Jacksonville Sheriff's Office responded to 5116 Gate Parkway Apartment 2311 in reference to a dispute involving Mrs. Olinger and her ex-boyfriend. Mrs. Olinger provided a description of the ex-boyfriend's vehicle and stated that he had struck other vehicles in the parking lot. As the officers arrived on scene, they heard a vehicle "peel out" while entering the complex. The officers observed a silver truck entering the complex which matched the description of the subject of their call. Officer Middleton used his flashlight and called out to flag down the driver. After the driver saw the officers, he put the vehicle in reverse and began to leave the scene. The driver almost struck a white Toyota as it made its way to the rear exit and left the complex. Officer Halbritter put out a description over the radio of the vehicle with its tag number, and a description of the driver. Officers Halbritter and Middleton then spoke to the complainant, Mrs. Olinger, who stated that her ex-boyfriend had been harassing her.

Officer R. Lugo of the Jacksonville Sheriff's Office observed a vehicle matching the provided description turning left out of a parking lot at 5555 Gate Parkway. Officer Lugo got behind the vehicle and activated his emergency light and sirens to initiate a stop. The driver continued to travel south on Gate Parkway, during which he failed to maintain a single lane, and ultimately stopped at 6699 Gate Parkway. The driver, subsequently identified as James William Alexander (hereafter referred to as the Petitioner), exited his vehicle after coming to a stop and attempted to walk away from it. Officer Lugo placed the Petitioner in handcuffs. Officer Lugo placed the Petitioner in the back of his patrol vehicle until he cleared the Petitioner's vehicle. Officer Lugo opened the vehicle's passenger door and a Crown Royal bottle fell from the floorboard.

During his interaction with the Petitioner, Officer Lugo detected the odor of an alcoholic beverage emitting from the Petitioner's breath. Officer Lugo also observed that the Petitioner's speech was slurred. Officer Lugo asked the Petitioner how much he had to drink, and the Petitioner stated, "not much." Officer Lugo took the Petitioner out of handcuffs and advised the Petitioner that he was beginning a driving under the influence (DUI) investigation. Officer Lugo read the Petitioner his Miranda warnings. The Petitioner denied consuming any alcohol and stated that the bottle found in his car had been left there by some friends that had drinks earlier. Officer Lugo asked the Petitioner to participate in field sobriety exercises, and the Petitioner ultimately agreed to do so.

During the eye exercise, Officer Lugo observed a lack of smooth pursuit in both of the Petitioner's eyes; distinct and sustained nystagmus at maximum deviation in both eyes; and, the onset of nystagmus prior to 45 degrees in both eyes.

During the walk-and-turn, the Petitioner could not keep his balance while in the instructional stage; missed touching heel-to-toe on almost every step during the exercise; stopped off the line; and, used his arms for balance and bent down to help maintain his balance. During the one-leg stand, The Petitioner used his arms for balance; hopped; and swayed. During the rhomberg balance exercise, the Petitioner swayed side-to-side and did not count in the way he was instructed to do. During his investigation, Officer Lugo also observed that the Petitioner's face was flushed; his eyes were water; and, the Petitioner's attitude was profane, cocky, combative, and threatening.

Officer Lugo arrested the Petitioner for DUI and transported him to the Pre-Trial Detention Facility (PTDF). Once there, Officer Lugo made contact with Officer B. Sutton, a Certified Breath Test Operator with the Jacksonville Sheriff's Office, and requested that Officer Sutton administer a breath test to the Petitioner. The Petitioner refused. Officer Sutton read the Petitioner the Implied Consent Warning, and again requested that the Petitioner submit to a breath test. The Petitioner agreed to submit to the requested test. After a twenty-minute observation period, Officer Sutton collected two valid breath samples from the Petitioner. The first sample collected was 0.152 g/210L. The second sample collected was 0.146 g/210L. The Petitioner was charged with DUI, resisting an officer without violence, and reckless driving, among other charges. Based on the foregoing, I find the Petitioner was lawfully arrested for the offense of DUI.

The hearing officer's findings were supported by competent, substantial evidence. Accordingly, Petitioner has failed to demonstrate that the hearing officer departed from the essential requirements of the law. The Petition is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.

CHARBULA, SALVADOR, AND SALEM, JJ., concur.

Nathan R. Ross., counsel for Petitioner

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