

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

CASE NO: 16-2020-AP-63

DIVISION: AP-A

LEAH CARLSON,
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 28, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's decision to uphold the suspension of her driver's license. On certiorari review of an administrative action, this 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 July 31, 2020, Trooper I. Dragomir of the Florida Highway Patrol was on patrol on US-17 when she observed a vehicle stopped in the right ravel lane of US-17 southbound, with no lights on. Trooper Dragomir initiated her lights and stopped behind the vehicle. Trooper Dragomir approached the vehicle and observed a white female in the driver's seat who appeared to be asleep. Trooper Dragomir and Corpor Vo attempted to wake the driver, but the driver did not wake. Trooper Dragomir requested that Rescue personnel respond to the scene. Trooper Dragomir and Corporal Vo continued to try to wake the driver by knocking on the driver side window and pushing on the car. The driver subsequently awoke and opened the driver side door. As Trooper Dragomir asked the driver, subsequently identified as Leah Carlson (hereafter referred to as the Petitioner) if she was okay, the Petitioner turned the vehicle on.

Trooper Dragomir asked the Petitioner several times to turn the vehicle off. Trooper Dragomir observed that the Petitioner appeared lethargic; her face was somewhat red; and, Trooper Dragomir detected the odor of an alcoholic beverage. The Petitioner turned the car off, and Trooper Dragomir asked the Petitioner to step out of the vehicle. The Petitioner complied. The Petitioner advised Trooper Dragomir that her vehicle kept dying/she had run out of gas, which was why she was stopped in the lane. The Petitioner stated that she had been drinking earlier in the night and had fallen asleep in her vehicle. While speaking to the Petitioner, Trooper Dragomir continued to detect the odor of an alcoholic beverage. Trooper Dragomir also observed that the Petitioner's eyes were bloodshot and she stumbled when she walked.

Trooper Dragomir asked the Petitioner to participate in field sobriety exercises, and the Petitioner agreed to do so. Trooper Dragomir observed that the Petitioner had food on the front of her shirt and a wet stain on the back of her pants as if she had urinated herself. Trooper Dragomir and the Petitioner relocated to a nearby gas station. Trooper Dragomir read the Petitioner her Miranda warnings, and the Petitioner acknowledged her understanding of her rights. During the walk-and-turn exercise, the Petitioner could not maintain the instructional position; she missed touching heel-to-toe; she used her arms for balance; and, she performed the turn incorrectly. During the one-leg stand, the Petitioner put her foot down. During the investigation, Trooper Dragomir also observed that the Petitioner's clothing appeared disorderly; her pupils were dilated; and, her speech was slurred.

Based on the totality of the circumstances, Trooper Dragomir arrested the Petitioner for DUI. Trooper Dragomir transported the Petitioner to Orange Park Medical to be cleared due to the Petitioner stating that she might have COVID-19. Once cleared, Trooper Dragomir transported the Petitioner to the Clay County Jail.

At the jail, Trooper Dragomir requested that Deputy E. Danella, a Certified Breath Test Operator with the Clay County Sheriff's Office, administer a breath test to the Petitioner. Deputy Danella read the Petitioner the Implied Consent Warning and requested that she submit to a breath test. After a twenty-minute observation period, Deputy Danella escorted the Petitioner to the Intoxilyzer room to allow the petitioner an opportunity to provide the breath samples. The Petitioner ultimately refused to submit to the breath test. Based on the foregoing, I find the Petitioner was lawfully arrested for the offense of DUI.

I

In her 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.

II

In her second ground for relief, Petitioner argues there was no competent, substantial evidence in the record to support a finding that she was lawfully arrested. Her claim is without merit. Accordingly, the "Petition for Writ of Certiorari" is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.

CHARBULA AND SALVADOR, JJ., concur.

Susan Z. Cohen., counsel for Petitioner

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