

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

CASE NO.: 16-2020-AP-13

DIVISION: AP-A

JEFFREY J. VOCHATZER,
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 23, 2021

PER CURIAM

This cause is before this Court on Petitioner, Jeffrey J. Vochatzer's "Petition for Writ of Certiorari," filed on March 2, 2020. The Petition raises one argument for review: Whether or not the hearing officer's order was supported by competent, substantial evidence and departed from the essential requirements of the law when the Department did not provide competent, substantial evidence that a twenty-minute observation period occurred before Deputy Garlow administered a breath test to Petitioner.

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).

Petitioner argues the hearing officer’s order was not supported by competent, substantial evidence and departed from the essential requirements of the law because the Department did not provide competent, substantial evidence that a twenty-minute observation period occurred before Deputy Garlow administered a breath test to Petitioner. Deputy Garlow reported that he began the observation period at 11:38 p.m. in the sally port. Petitioner argues the Department did not offer any evidence as to how Deputy Garlow determined the initial observation time. Deputy Patrone, the agency inspector for the breath test instrument, testified at the hearing that the initial observation time should come from the breath test instrument. Petitioner points out that Deputy Garlow could not have used the breath test instrument to determine the initial observation time because he began the observation period in the sally port. Petitioner contends that the clock used by Deputy Garlow could have differed from the breath test instrument’s clock and resulted in an observation period of less than twenty minutes. Petitioner avers that, as such, the Department did not provide competent, substantial evidence that twenty minutes elapsed before administration of the breath test. We disagree.

Rule 11D-8.007(3) of the Florida Administrative Code provides:

The breath test operator, agency inspector, arresting officer, or person designated by the permit holder shall reasonably ensure that the subject has not taken anything by mouth or has not regurgitated for at least twenty (20) minutes before administering the test. This provision shall not be construed to otherwise require an additional twenty (20) minute observation period before the administering of a subsequent sample.

Here, competent substantial evidence supported the hearing officer’s finding that Deputy Garlow complied with the twenty-minute observation period. Both the Breath Alcohol Test

Affidavit and the Intoxilyzer 20 Minute Observation Form noted 11:38 p.m. as the initial observation time. The Breath Alcohol Test Affidavit show the first breath sample was taken at one minute after midnight (00.01). The Observation Form provided a comprehensive narrative of the twenty-minute observation period, during which Deputy Garlow searched Petitioner and read the Implied Consent Form to him. The Affidavit stated Deputy Garlow observed the twenty-minute observation period and administered the breath test to Petitioner in accordance with the procedures described in Chapter 11D-8, Florida Administrative Code. The Department also submitted Deputy Garlow's handwritten notes that corroborated the initial observation time on the Affidavit and Observation Form. During the hearing, Deputy Garlow swore and affirmed that the statements in these documents were true. Such evidence constituted competent, substantial evidence to support finding Deputy Garlow complied with the twenty-minute observation period. Therefore, Petitioner's claim is denied.

On April 17, 2020, Petitioner filed a "Motion for Oral Argument," requesting oral argument on the instant Petition. Since this Court finds Petitioner is not entitled to certiorari relief, Petitioner's request for oral argument is moot.

Based on the foregoing, the "Petition for Writ of Certiorari" is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**

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

David M. Robbins, Esq., and Susan Z. Cohen, Esq., counsel for Petitioner
Mark L. Mason, Esq., counsel for Respondent