

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

CASE NO: 16-2021-AP-3

DIVISION: AP-A

KEVIN BOYLES,  
Petitioner,

v.

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
Respondent.

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

DECEMBER 19, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's decision to uphold the suspension of his 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 January 1, 2021, at 2:34a.m., Officer D'alessio was dispatched to the scene of traffic stop where Officer Turner, #7693 advised him that he observed white female standing in the roadway banging on the window of a black truck which was stopped at a red light. Officer Turner then advised that when the light turned green the truck did not move at which time the white female that was banging on the truck window advised him that there was a male in the truck passed out. Officer Turner advised that he then observed the Petitioner slumped over the center console with a beer between his legs and that the vehicle's engine was running, its gear in drive and that the Petitioner's foot was on the brake. Officer Turner then advised that he and Officer Kempfe placed their patrol vehicles in front of and behind the Petitioner's vehicle to prevent him from driving. Officer Turner and Officer Kempfe then began to bang on the Petitioner's windows to wake him up. Once the Petitioner woke up he put his vehicle in reverse and rammed the police car behind him and then put his vehicle in drive and crashed into the police car in front of him after which he was charged with criminal mischief.

Upon contact with the Petitioner, Officer D'alessio read him his Miranda Rights after which he advised that he did not want to answer any questions and advised further that he did not want to perform any field sobriety tasks at which time he was placed in handcuffs and placed inside the back of Officer D'alessio's police car.

Officer D'alessio while speaking with the Petitioner smelled the odor of an alcoholic beverage on his breath and noted that his eyes were bloodshot and glassy.

Based on the foregoing the Petitioner was arrested for DUI, transported to jail where he refused to submit to a breath test after being read the Implied Consent Warning.

## I

In his first ground for relief, Petitioner argues the hearing officer departed from the essential requirements of the law by holding the hearing outside of Jacksonville, Florida. He has failed to establish a departure from the essential requirements of the law. See State, Dep't of Highway Safety and Motor Vehicles, Bureau of Admin. Reviews, v. Fernandez, 114 So. 3d 266, 270 (Fla. 3d DCA 2013).

Next, Petitioner argues law enforcement erred by failing 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. Although the Jacksonville Sheriff's Office deviated from the requirements of section 322.2615 by not providing the Department with a copy of the Petitioner's driver's license, we do not find reversal to be the appropriate remedy in light of the factual record. Here, Petitioner cannot demonstrate undue prejudice and his identification was verifiable by other means. Moreover, identity was not an issue in this case. Therefore, we find no corresponding due process violation.

## II

In his second ground for relief, Petitioner argues there was no reasonable suspicion to conduct a DUI investigation, nor was there any probable cause to arrest him. His claim is without merit.

## III

In his third ground for relief, Petitioner argues there was no competent, substantial evidence supporting the hearing officer's finding that he had refused a lawful request for a breath test. His argument is without merit. Accordingly, the "Petition for Writ of Certiorari" is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.

AHO and BASS, JJ., concur.

SHARRIT, J., concurs specially with opinion.

SHARRIT, J., concurring specially.

While I concur in the result, I write separately to address what I perceive to be an unsettled question regarding venue. Although hearing officers are afforded broad discretion in setting the format of a hearing, see e.g., State, Department of Highway Safety and Motor Vehicles, Bureau of Administrative Review v. Fernandez, 114 So. 3d 266, 270 (Fla. 3d DCA 2013), a plain reading of Revised Rule 15A-6009 establishes the proper venue. On this narrow point, I agree with Petitioner's interpretation of the rule. I do not read the second sentence of the rule (allowing option of remote appearance) as negating the first sentence (mandating location of hearing). However, Respondent correctly asserts the applicability of Executive Order 20-52 (Emergency Covid 10 Provisions). The Executive Order allows state agencies, including the Department of Highway Safety and Motor Vehicles, broad flexibility in marshalling resources and personnel in maintaining their essential mission during the pandemic. This Court should not venture to substitute its judgment for that of the Department in determining the allocation of resources for the preservation of timely hearings. I view the ordered venue to be consistent with the Executive Order and therefore not contrary to the essential requirements of law. Were it not for the Executive Order brought about by the pandemic, the venue issue presented here appears to me to be unsettled.

Susan Z. Cohen., counsel for Petitioner

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