

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

CASE NO: 16-2022-AP-21

DIVISION: AP-A

JOSEPH SAUCER,
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 17, 2023

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 June 11, 2022, Jacksonville Sheriff's Officer Miller responded to 1000 Hammond Blvd. in Duval County, Florida to investigate a traffic crash with injuries. When Ofc. Miller arrived, she observed a Chevrolet Silverado pickup truck blocking the middle lanes. While directing traffic, fire and rescue officials advised her of an individual in the back of an ambulance who was being very belligerent. Ofc. Miller went to investigate the belligerent individual, who was later identified as the Petitioner. Upon Ofc. Miller's appearance before the Petitioner, the Petitioner grew very aggravated and combative with fire and rescue officials. Ofc. Miller was close enough to the Petitioner to detect that he had a distinct odor of alcoholic beverages emanating from his breath.

When attempting to exit the ambulance, the Petitioner stumbled and was unable to keep his balance. He continued to be aggressive and spoke with a mumbled speech pattern. Ofc. Miller then searched the Petitioner and found a small bottle of an alcoholic beverage in one of his pockets. She then placed the Petitioner in the back of her patrol car. When she placed the Petitioner in the back of a patrol car, Ofc. Miller smelled the odor of an alcoholic beverage that was not present in the vehicle prior to the entrance of the Petitioner.

Sometime thereafter, Ofc. Durham of the Jacksonville Sheriff's Office arrived on the scene. When Ofc. Durham arrived, he spoke with a witness to the crash. The witness conveyed that he was inside of his residence when he heard a collision. He then went outside and to the Chevrolet Silverado pickup truck that was blocking the middle lanes and observed the Petitioner behind the wheel, unconscious. The witness also smelled the odor of alcohol coming from the Petitioner's vehicle.

Officer Durham then went to speak with the Petitioner. Officer Durham escorted the Petitioner to the front of his patrol vehicle to discuss what happened in the crash. As they were walking to Ofc. Durham's patrol vehicle, the Petitioner walked with a visible sway that required officer Durham to assist him while walking to ensure the Petitioner did not fall. The Petitioner advised that he did not know what happened and cannot explain any of the circumstances surrounding the crash. During his interaction with the Petitioner, Ofc. Durham was able to observe that Petitioner's eyes were watery, his eyelids were droopy, and there was a strong odor of alcoholic beverages emanating from his breath. Moreover, the Petitioner spoke with a very mumbled and heavily slurred speech pattern. Further, the Petitioner's movements were also very slow and lethargic. At that point Ofc. Durham advised Petitioner that a DUI investigation was starting and Ofc. Durham informed the Petitioner of his constitutional rights under Miranda.

Ofc. Durham asked the Petitioner how much he had to drink, and the Petitioner responded, "not enough." On a scale of 1 to 10, where zero is sober and 10 is being too drunk to stand, Petitioner indicated he was at a "4." The Petitioner then refused to participate in field sobriety exercises and was ultimately arrested based on the totality of the circumstances. He was then taken to the Duval County Jail where he was read Florida's Implied Consent warning but refused to submit to a breath test.

...

After consideration of the foregoing, I conclude, as a matter of law, that the law enforcement officer had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer, subsequent to a lawful arrest; and that Petitioner was told that if he refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

As his only ground for relief, Petitioner argues the suspension is invalid because he was not properly informed of the consequences he would face if he refused to consent. Specifically, Petitioner argues he was not informed that he would be subject to an increased penalty for refusal if he had previously been fined for refusing to submit to a test pursuant to section 327.35215, Florida Statutes.

Effective October 1, 2021, the Florida Legislature amended the implied consent warning to also inform individuals that they would be subject to increased penalties if they had previously been fined under section 327.35215(1) Florida Statutes. That section deals with the penalties for failing to submit to a test after being suspected of boating under the influence.

Based on the hearing officer's findings, Petitioner knew his license would be suspended for twelve months for a refusal or eighteen months if he had previously refused. This warning was sufficient.¹ See generally Dep't of Highway Safety and Motor Vehicles v. Nader, 4 So. 3d 705, 709 (Fla. 2d DCA 2009) (when an officer asks a driver to take a required test, suspension not invalid unless the driver was misled). Further, Petitioner did not make this argument before the hearing officer, so it is not preserved for review.

Accordingly, the Petition is **DENIED**. The Petitioner's Motion for Oral Argument is DENIED.

WALLACE, FELTEL, and FAHLGREN, JJ., concur.

Susan Z. Cohen, counsel for Petitioner

Michael Lynch., counsel for Respondent.

¹ Petitioner does not allege that he has a prior arrest or conviction for boating under the influence or that he had previously been fined under s. 327.35215 (1) as a result of his refusal to submit to a blood, breath, or urine test in a boating under the influence investigation. He only argues that any deviation from the implied consent warning renders the suspension unlawful.