IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

CITY OF TAMPA, o/b/o
TAMPA POLICE DEPARTMENT

Petitioner,

CASE NO.: 24-CA-006941

vs.

DIVISION: D

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES;
and JENNIFER ELLEN VICKREY,

Respondents.
_____/

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on Petitioner City of Tampa, on behalf of the Tampa Police Department's (TPD) Petition for Writ of Certiorari filed on August 26, 2024, seeking to quash the Department of Highway Safety and Motor Vehicles (Department)'s order setting aside the revocation of Jennifer Vickery's driving privileges. Petitioner alleges that the Department reinstated Ms. Vickery's driving privileges after holding a hearing and without taking testimony from a Tampa Police Officer (TPO) who had been subpoenaed to appear, thus making a determination without competent, substantial evidence, denied TPD procedural due process, and departed from the essential requirements of the law by failing to follow Florida Administrative Codes 15A-6.015 and 15A-6.010(6). The Court, having reviewed the Petition and record, finds as follows:

On June 16, 2024, Jennifer Ellen Vickrey was arrested for DUI by TPO Mike Koppe. Ms. Vickrey's license was administratively suspended as a result of the arrest. A formal hearing was scheduled for July 29, 2024,

to review the administrative suspension. On July 15, 2024, Officer Koppe received a subpoena summoning him to appear at the telephonic formal review hearing. On July 23, 2024, Officer Koppe emailed the Department acknowledging that he would appear at the hearing and providing his phone number and email address. Officer Koppe was not contacted on July 29, 2024, to appear telephonically at the formal review hearing. The hearing transcript indicates that at 10:00am the hearing officer looked to see whether Officer Koppe had "checked in" at the start of the hearing. Based on the hearing officer's assertion that Officer Koppe had failed to check in, Ms. Vickery moved to have her license reinstated on the basis that the arresting officer had failed to appear at the formal review hearing despite being properly subpoenaed. Ms. Vickrey's motion was granted. At 11:41am, Officer Koppe emailed the Department indicating that he was still waiting to be called for the telephonic hearing. At 12:20pm, the hearing officer responded to Officer Koppe stating that he "inadvertently did not see [Officer Koppe's] check-in prior to the 10:00am hearing time. The matter has been held and concluded."

Of particular import to this court, the subpoena instructs the recipient to send an email with the driver's name and the date of the hearing, confirming their appearance, and providing a phone number and email address. The subpoena goes on to say "****DO NOT CALL – YOU WILL BE CALLED. SEE DIRECTIONS ABOVE****." In short, based on the communications included in the appendix, Officer Koppe complied with the subpoena and his inability to provide testimony at the hearing was not caused by any act or omission by TPD.

Competent Substantial Evidence

The City argues that the Department did not rely upon competent, substantial evidence when making the decision to restore Ms. Vickrey's driving privileges because the documents submitted in Ms. Vickrey's DUI

packet meet all of the statutory requirements to show that she was lawfully arrested and refused to submit to a breath test. The City correctly states that the Department is permitted to rely on documents alone when making its decision. *See* Fla. Stat. § 322.2615(2)(b). In this case, the hearing officer based his decision on the requirement that "[i]f the arresting officer or the breath technician fails to appear pursuant to a subpoena as provided in subsection (6), the department shall invalidate the suspension." § 322.2615(11). If the evidence presented had factored at all into the hearing officer's decision, the court could determine whether that evidence was competent and substantial, but because the decision was based solely on the aforementioned statutory requirement, the court cannot consider the evidence submitted. The Fifth District Court of Appeal has stated that "[b]ecause there is no ambiguity in the wording of subsection (11), there is no need to resort to any other source for explanation or definition." *Obijo v. DHSMV*, 179 So. 3d 494, 496–97 (Fla. 5th DCA 2015).

Procedural Due Process

The City argues that it was denied its right to procedural due process. "[T]he Fourteenth Amendment to the federal constitution and article I, section 9, of the Florida Constitution provide that no 'person' shall be deprived of life, liberty, or property without due process of law. Being political subdivisions of the State of Florida, the Plaintiff Counties are not a 'person' entitled to protection under the due process clause of the federal or state constitution." *Dep't of Cmty. Affs. v. Holmes Cnty.*, 668 So. 2d 1096, 1102 (Fla. 1st DCA 1996); *see Hillsborough Cnty. v. City of Tampa*, No. 99-8735, 2000 WL 34235152, at *6 (Fla. 13th Cir. Jan. 10, 2000) (stating that "with respect to Plaintiffs Hillsborough County and Hillsborough County School Board, neither of these governmental entities may assert an equal protection claim for the reason that they are not "persons;" they are governmental entities"). Ms. Vickery, however, is an

individual person and thus entitled to procedural due process. *See generally Dep't of Cmty. Affs. v. Holmes Cnty.*, 668 So. 2d 1096. Both the City and the Department are arms of the state. This court has previously found that when the arresting officer's failure to appear can be attributed to the state, regardless of which arm of the state, the driver is entitled to have their license revocation overturned. *See Smith v. DHSMV*, 30 Fla. L. Weekly Supp. 193a (Fla. 13th Cir. May 25, 2022).

Essential Requirements of the Law

Finally, the City argues that the Department departed from the essential requirements of the law, specifically Florida Administrative Code 15A-6.015(2)(a) which states that:

> [t]he driver, or a properly subpoenaed witness who fails to appear at a scheduled hearing may submit to the hearing officer a written statement showing just cause for such failure to appear within two (a) days of the hearing: (a) For the purpose of this rule, just cause shall mean extraordinary circumstances beyond the control of the driver, the driver's attorney, or the witness which prevent that person from attending the hearing; (b) If just cause is shown, the hearing shall be continued and notice given.

It is well established that state statutes take precedence over administrative regulations.[1] "A departure from the essential requirements of the law is more than simple legal error; rather, it is a 'violation of a clearly established principle of law resulting in a miscarriage of justice.'" *One W. Bank, F.S.B. v. Bauer*, 159 So. 3d 843, 844 (Fla. 2d DCA 2014) (quoting *Fassy v. Crowley*, 884 So. 2d 359, 364 (Fla. 2d DCA 2004)). The Florida Supreme Court has ruled "that 'applied the correct law' is synonymous with 'observing the essential requirements of law.'" *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d

[1] It is also generally understood that a specific clause controls when related to a more general clause.

523, 530 (Fla. 1995); *see State v. Jones*, 283 So. 3d 1259, 1268 (Fla. 2d DCA 2019) (finding that "failure to apply the unambiguous language of a statute it is a departure from the essential requirements of the law"). In this case, the hearing officer was correct to apply the plain language of § 322.2615(2)(b).

It is therefore **ORDERED** that the Petition for Writ of Certiorari is hereby **DENIED**.

DONE and **ORDERED**, in Chambers in Tampa, Hillsborough County, Florida, on August 13, 2025August ___, 2025.

24-CA-006941 8/13/2025 4:04:46 PM

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Judge Emily A. Peacock

EMILY A. PEACOCK, Circuit Court Judge

Copies To:

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