

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

ERIC HEISLER,
Petitioner,

v.

CASE NO.: 24-CA-004647

DIVISION: B

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on Petitioner Eric Heisler's Petition for Writ of Certiorari filed June 7, 2024. The petition is timely and this court has jurisdiction. § 322.31, Fla. Stat. Petitioner contends that Respondent, Florida Department of Highway Safety and Motor Vehicles, failed to observe the essential requirements of law by entering a decision not based on competent, substantial evidence because the sworn affidavit did not contain sufficient details to demonstrate probable cause for an arrest, and the supplemental report submitted as part of the DUI packed was not notarized. After reviewing the petition, appendix, response, relevant statutes, and case law, the Court finds the DUI packet taken as a whole complied with the statutory requirements because it contained a properly sworn and notarized criminal report alongside a detailed supplemental report that contained sufficient details to demonstrate Petitioner's arrest was lawful. The petition must therefore be denied.

On May 2, 2024, the Department conducted a formal hearing to review the administrative suspension of Petitioner's driver license resulting from a DUI arrest. The Tampa Police Department (TPD) sent a DUI packet detailing Petitioner's arrest to the Department prior to the hearing. The packed included an affidavit of refusal, a written statement from TPD Officer Peters who conducted the initial traffic stop, and a criminal report affidavit written by TPD Officer Whitlock who arrived at the scene in response to Officer Peters' request for assistance. Whitlock's criminal report affidavit contains a brief description of the traffic stop, stating "Tampa PD officers contacted the defendant on a traffic stop, in reference to operating a motor vehicle on the roadway while failure to maintain his lane of travel and driving carelessly." Peters' supplemental statement contains a detailed description of the facts leading up to the initial traffic stop. At the formal review hearing, Petitioner submitted a motion to invalidate the suspension on the basis that the hearing officer lacked competent, substantial evidence to find that the underlying arrest was lawful.

Petitioner argues the Department violated Petitioner's right to due process because § 322.2615 "contains a minimum requirement of affidavits in the DUI packet for the officer's grounds of belief that a driver was operating a motor vehicle under the influence of alcohol," and those requirements had not been met when the Department held the formal hearing. Petitioner cites *State v. Johnston*, 553 So. 2d 730, 733 (Fla. 2d DCA 1989), in support of his argument, stating that "due process required the Department to first receive a properly sworn statement to have its jurisdiction vested." The court in *Johnston*, however, was analyzing a version of the statute that was no longer in effect when the Department reviewed Petitioner's license suspension.

The current version of § 322.2615(2)(a) states:

Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after issuing the notice of suspension, the driver license; an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person refused to submit; the officer's description of the person's field sobriety test, if any; and the notice of suspension. The failure of the officer to submit materials within the 5-day period specified in this subsection and in subsection (1) does not affect the department's ability to consider any evidence submitted at or prior to the hearing.

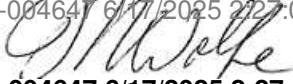
Petitioner admits the criminal report affidavit was properly sworn and notarized. Of import to this court, the criminal report affidavit was written by Officer Whitlock, who was not present to witness the initial traffic stop. The affidavit includes a description of Florida Statute § 92.525 and states "I declare that I have read the foregoing document and the facts stated in it are true to the best of my knowledge." It is true that Officer Whitlock's description of Officer Peters' observations alone would not be sufficient to establish probable cause, but Officer Whitlock would risk perjuring himself if he were to write a moment-by-moment report of events that happened prior to his arrival. While he was permitted to rely on Officer Peters' statements in the moment to justify his own actions, the fellow officer rule does not extend to testimony given after the fact. *State v. Bowers*, 87 So. 3d 704, 709 (Fla. 2012) (finding that in the moment, law enforcement officers may assume that their fellow officers are acting lawfully but "this is not the same as permitting an officer

to testify as to knowledge that another officer possessed in order to justify the other officer's conduct"). The best evidence in this situation is a written statement from Officer Peters, who did personally witness the events leading up to the initial traffic stop. This court has previously highlighted the importance of statements and testimony from the officer who first initiated the traffic stop in DUI cases because that officer is best able to testify as to their own observations and reasons for believing they had probable cause to detain the driver. See *Smith v. Dep't of Highway Safety & Motor Vehicles*, 30 Fla. Weekly Supp. 193a (Fla. 13th Cir. May 25, 2022); *Jones v. Dep't of Highway Safety & Motor Vehicles*, 30 Fla. Weekly Supp. 63a (Fla. 13th Cir. March 8, 2022).

Section 322.2615(2)(a) requires law enforcement to submit affidavits outlining the underlying facts of a driver's arrest prior to the driver's suspension review hearing. In this case, Officer Whitlock submitted a properly sworn criminal report affidavit containing a summary of events that was accurate to the best of his knowledge, alongside a detailed supplemental written summary from Officer Peters. Taken together, it is clear that law enforcement had probable cause to initiate a traffic stop and then place Petitioner under arrest. There is no statutory requirement that all documents submitted to the hearing officer be notarized. The requirements of § 322.2615 were thus met and the Department relied on competent, substantial evidence in upholding Petitioner's license suspension.

The Petition is therefore DENIED.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted
with the Judge's signature.


24-CA-004647 6/17/2025 2:27:02 PM
Judge Mark Wolfe

MARK R. WOLFE, Circuit Court Judge

Electronic copies provided through JAWS.