

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

JUSTINE THOMPSON,
Petitioner,

CASE NO.:21-CA-8247

v.

DIVISION: D

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This case is before the court on Justine Thompson's Amended Petition for Writ of Certiorari. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat. Petitioner contends that the Department's decision to suspend her driving privileges was not supported by competent, substantial evidence, and the hearing officer departed from the essential requirements of the law in that the decision relied on documents that failed to meet the requirements of a sworn affidavit, in violation of section 322.2615(2)(a), Florida Statutes. After reviewing the petition, response, relevant statutes, and case law, the court finds that, although itself unsworn, the Complaint Affidavit complied with section 322.2615(2) because it was incorporated by reference into the properly signed and sworn Uniform Probable Cause Affidavit. In addition, the Complaint Affidavit contained sufficient factual details of Petitioner's arrest and refusal to submit to a breath test to provide the hearing officer competent, substantial evidence to support the finding that Petitioner refused to submit to a breath test subsequent to a lawful arrest. Accordingly, the petition is denied.

On August 13, 2021, Petitioner was arrested by Officer Emery of the Dade City Police Department for driving under the influence ("DUI"). Petitioner refused to submit to a breath, blood, or urine test, and her

driver's license was suspended.¹ Petitioner timely requested an administrative hearing, which was held on September 13, 2021, to challenge the lawfulness of the suspension of her driving privilege. The hearing officer marked into evidence the self-authenticating documents submitted by the Dade City Police Department. No witnesses testified at hearing.

A Uniform Probable Cause Affidavit was entered into evidence at the hearing; it contained the case number assigned by the Dade City Police Department, the Petitioner's driver's license number, the citation number, and the properly notarized signature of the arresting officer. It states that the affiant had probable cause for the arrest and has a box marked next to the phrase "see attachments." An unsworn Complaint Affidavit containing the same case number as the Uniform Probable Cause Affidavit and signed by the arresting officer was also entered into evidence. The Complaint Affidavit gives a written narrative of the arresting officer's observations leading up to the traffic stop, the arrest, and describes Petitioner's refusal to submit to a breath alcohol test after being read her implied consent. A properly signed and notarized Alcohol/Drug Influence Report that describes Petitioner's behavior and affect prior to arrest was also entered into evidence.

Petitioner asserts that the hearing officer lacked competent, substantial evidence to support a finding of a lawful arrest and refusal to submit to a breath test because the Complaint Affidavit does not have the witness signature of a fellow law enforcement officer or notary, and thus fails to meet the requirements of an affidavit. Additionally, Petitioner argues that the properly signed and notarized Uniform Probable Cause Affidavit did not cure this defect, because it states generally that it incorporates attachments but did not specifically reference the Complaint Affidavit by name as an attachment. Petitioner further argues that the Alcohol/Drug Influence Report also does not cure this issue because it does not contain a written narrative by Officer Emery.

¹ Despite her arrest in Pasco County, Petitioner's hearing was conducted at the Tampa Bureau of Administrative Reviews, so venue is proper here. §322.2615(13), Fla. Stat. ("A person may appeal any decision of the department . . . to the circuit court in the county . . . wherein a formal or informal review was conducted.").

The court disagrees. The Complaint Affidavit contains the required written narrative and was incorporated into the Uniform Probable Cause Affidavit by reference. Additional reports may be incorporated by reference into a sworn report. *Kantner v. Boutin*, 624 So. 2d 779, 781 (Fla. 4th DCA 1993) (citing *Hurwitz v. C.G.J. Corp.*, 168 So. 2d 84, 87 (Fla. 3d DCA 1964)). Here, the properly sworn Uniform Probable Cause Affidavit has a box marked next to the phrase “see attachments.” Although it is certainly the better practice for law enforcement to specify in the Uniform Probable Cause Affidavit any incorporated reports, the Uniform Probable Cause Affidavit and the Complaint Affidavit have the same case number, were prepared by the same law enforcement officer, and were submitted together to the hearing officer. There is no doubt the documents were traveling together. The hearing officer, therefore, did not depart from the essential requirements of the law when she found that the properly sworn Uniform Probable Cause Affidavit incorporated the Complaint Affidavit. *Frolova v. State, Dep’t of Highway Safety & Motor Vehicles*, 19 Fla. L. Weekly Supp. 76a (Fla. 20th Cir. Ct. Oct. 26, 2011). Because the properly entered Complaint Affidavit contains factual details of Petitioner’s arrest and refusal to submit to a breath test, the decision is supported by competent, substantial evidence. *Dobrin v. DHSMV*, 874 So. 2d 1171, 1174 (Fla. 2004); *DHSMV v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012).

It is therefore ORDERED that the petition is DENIED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge’s signature.

Electronically Conformed 6/28/2022
Emily A. Peacock

EMILY A. PEACOCK, Circuit Court Judge

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