

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ANGELA BORDWELL,

Petitioner,

APPELLATE DIVISION (CIVIL) 'AY'
CASE NO.: 502012CA0084444XXXMB

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

Opinion filed: **JUL 31 2013**

Petition for Writ of Certiorari from the Department of Highway Safety and Motor Vehicles.

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PER CURIAM.

The issue before the Court is whether a document that was submitted by the arresting officer, titled "D.U.I. Probable Cause Affidavit," was incorrectly considered as a valid affidavit in support of the suspension of the Petitioner's driver's license. We find that the document was not a valid affidavit and therefore the Hearing Officer erred in allowing the Department of Highway Safety and Motor Vehicles ("DHSMV") to enter it into evidence. Because no other evidence in the record supports a finding of probable cause, the suspension of the Petitioner's driver's license must be quashed.

The DHSMV suspended the Petitioner's driver's license for refusing to submit to a urine test after being placed under arrest for driving under the influence. *See* § 322.2615, Fla. Stat. (2012). At formal administrative review, the arresting officer's two-page "probable cause affidavit" was marked into evidence. The Petitioner objected to the document's admission because the exhibit was in fact two separate forms, one of which is not a valid affidavit. The Petitioner maintained that the first page of the exhibit, titled "D.U.I. Probable Cause Affidavit," did not have an "attestation section or jurat." The second page, he continued, titled "Roadside Tasks," had the proper attestation and jurat, but did not state the arresting officer's probable cause for believing the Petitioner was driving or in actual control of a motor vehicle while under the influence. The Petitioner argued that the "Probable Cause Affidavit" is invalid because it is not incorporated with the "Roadside Tasks" form by reference. Despite the Petitioner's objections, the Hearing Officer admitted the document and sustained the suspension of the Petitioner's license for failure to submit to a urine test under section 322.2615 of the Florida Statutes.

The Petitioner argues on appeal that there is not competent substantial evidence to uphold the suspension of her driver's license because the arresting officer's "probable cause affidavit" is invalid because it was not sworn to under oath. "[A]n 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" must have been submitted by the arresting officer "within 5 days after issuing the notice of suspension." § 322.2615, Fla. Stat. (2011). A valid affidavit must (1) be sworn to by the affiant in "an unequivocal and present act" (2) in the presence of an officer authorized to administer it, and (3) be punishable by perjury if proven false. *See Markey v. State*, 37 So. 53, 59 (Fla. 1904).

“An affidavit is a written statement made under oath and administered by a duly authorized person.” *Youngker v. State*, 215 So. 2d 318, 321 (Fla. 4th DCA 1968). “An oath may be undertaken by an unequivocal act in the presence of an officer authorized to administer oaths by which the declarant knowingly attests the truth of a statement and assumes the obligation of an oath.” *Id.* It is essential that there be a jurat clause wherein the affiant unequivocally attests to the truth of his statements for perjury to be actionable. *See Collins v. State*, 465 So. 2d 1266, 1268 (Fla. 2d DCA 1985).

This Court has previously found a “D.U.I. Probable Cause Affidavit” document and a “Roadside Tasks” document to be distinguishable items, each requiring its own jurat clause, when there is no indication that the documents were intended to be considered as single document. *See Schwartz v. Dep’t of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 87a (Fla. 15th Cir. 2012). In the instant case, the “Roadside Tasks” form is notarized. However, the document entitled “D.U.I. Probable Cause Affidavit” is not notarized and the forms are not incorporated by reference in any way. Without a jurat clause, the “D.U.I. Probable Cause Affidavit” submitted by the arresting officer is not an affidavit and therefore does not comply with section 322.2615, Fla. Stat., which requires the arresting officer to file an affidavit stating his grounds for belief that the person was driving under the influence.

The “D.U.I. Probable Cause Affidavit” was the only evidence before the Hearing Officer that could support a finding of probable cause. Since the “D.U.I. Probable Cause Affidavit” should not have been admitted into evidence as an affidavit, the Hearing Officer, therefore, did not rely upon competent substantial evidence in finding that Officer Brown had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of controlled substances.

Accordingly, the Petition for Writ of Certiorari is GRANTED and the Order of the Hearing Officer is QUASHED.

COX, J. MARX, and SASSER, JJ., concur.

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