

The issue before the Court is whether a document that was submitted by an arresting officer and labeled as a “D.U.I. Probable Cause Affidavit” can be entered into evidence at a Formal Review Hearing when the document is not sworn to or notarized. We find that the Hearing Officer erred in allowing the Department of Highway Safety and Motor Vehicles (“DHSMV”) to enter the form labeled “DUI Probable Cause Affidavit” into evidence because that document was not a true affidavit. Since there was no other evidence in the record as to whether the arresting officer had probable cause, the Petitioner’s driver’s license suspension must be quashed.

The Petitioner's driver's license was suspended for refusing to submit to a breath test after being arrested for suspicion of Driving Under the Influence ("DUI"). *See* § 322.2615, Fla. Stat. (2012). At the formal review hearing, DHSMV submitted the arresting officer's written statements from the date of the arrest into evidence. The Petitioner objected and moved to invalidate his suspension on the grounds that the record did not contain a sworn statement of the arresting officer's grounds to believe he was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The Petitioner contended that the "DUI Probable Cause Affidavit" lacked the proper jurat and therefore there was insufficient evidence to support a license suspension. The Hearing Officer rejected this argument and found that all elements necessary to sustain the suspension of Schwartz's license for refusal to submit to a breath test under section 322.2615 of the Florida Statutes were supported by a preponderance of the evidence.

The Petitioner argues on appeal that the only "evidence" of the arresting officer's probable cause to arrest the Petitioner was in the forms labeled "DUI Probable Cause Affidavit" and "Reporting Officer Narrative," neither of which were sworn to, submitted under oath or notarized. As a result, the Petitioner argues that neither of the documents satisfies the affidavit requirement of Florida Statute section 322.2615(2) and are therefore inadmissible. DHSMV contends that because the "Roadside Tasks" document was notarized, the two accompanying documents, the "D.U.I Probable Cause Affidavit and "Witness Lists," were as a result also deemed notarized, as each of the three documents made up one composite form.

DHSMV's argument is flawed because a notarized document that is not sworn to or affirmed is, by definition, not an affidavit. "Section 92.50, Florida Statutes, indicates that an affidavit must be sworn to before a person authorized to administer oaths." *Crain v. State*, 914

So. 2d 1015, 1019 (Fla. 5th DCA 2005); § 92.50(1), Fla. Stat. (2012). “An affidavit is a written statement made under oath and administered by a duly authorized person. 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.” *Youngker v. State*, 215 So. 2d 318, 321 (Fla. 4th DCA 1968). “By definition, ‘an affidavit’ is a written or printed declaration or statement of facts, *made under oath, before a person having authority to administer such oath or affirmation.*” *Jackson v. State*, 881 So. 2d 666 (Fla. 5th DCA 2004) (emphasis added); *see also State v. Johnston*, 553 So. 2d 730 (Fla. 2d DCA 1989) (A sworn statement requires an oath, and an oath is unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath.).

A notarized document acknowledges and confirms that the person signing the document is in fact that person. § 117.04, Fla. Stat. (2012). A notarized document is not necessarily an affidavit, although a notary may notarize the signature on an affidavit. An affidavit must be made under oath and if an affidavit is to be sworn before a notary, then the affidavit must display such information. § 92.525, Fla. Stat. (2012). A notarized document that is neither sworn to nor affirmed is by definition, not an affidavit.

In the instant case, of the three documents included in what the DHSMV claims to be one composite form, only one - the “Roadside Tasks” document - appears to have been notarized. The “Roadside Tasks” document explicitly states, “THE FOLLOWING INSTRUMENT WAS NOTARIZED OR ATTESTED BEFORE ME THIS 01-08-12” and is then signed by the notary and the arresting officer. (emphasis added.) Absent is a declaration that the document has been

sworn to or submitted under oath or under penalties of perjury. Thus, the document does not satisfy the requirements of an affidavit.

Since the "DUI Probable Cause Affidavit" and "Reporting Officer Narrative" were the only documents that supported a finding of probable cause in this case, we find that the Hearing Officer's finding of probable cause was not supported by competent substantial evidence since these documents were not affidavits and therefore should not have been admitted into evidence. Accordingly, the Petition for Writ of Certiorari is **GRANTED** and the Order of the Hearing Officer is **QUASHED**.

J. Keyser, Kastrenakes, and Rosenberg, JJ., concur.