

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

STEVEN E. SILVESTER,

Petitioner,

v.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.

Appellate Division (Civil)
Case No.: 502010CA028962XXXXMB
Division: 'AY'

Appealed from the Department of Highway
Safety and Motor Vehicles

Date Petition was filed: November 24, 2010

Opinion filed: **MAY 31 2011**

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For Respondent: Heather Rose Cramer, Esq.
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PER CURIAM.

Steven Silvester ("Silvester") seeks review of the hearing officer's order sustaining the suspension of Silvester's driver's license due to his refusal to submit to a breath test. We find that the hearing officer's decision was not based on competent, substantial evidence. The Affidavit of Refusal to Submit to Breath, Urine or Blood Test ("Affidavit of Refusal") admitted into evidence was defective as it was not sworn before a person authorized to administer oaths. "Oaths, affidavits, and acknowledgments *required or authorized under the laws of this state . . . may be taken or administered by or before* any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or *any notary public within this state.*" § 92.50(1), Fla. Stat. (2010) (emphasis added). "Section

92.50, Florida Statutes, also 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); *see also Jackson v. State*, 881 So. 2d 666, 667 (Fla. 5th DCA 2004) (“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.”). The Affidavit of Refusal states that the instrument was sworn before the notary, Pamela Dorsey. From the testimony of Ms. Dorsey, however, it is conclusively shown that she did not administer an oath to Deputy Mercier. In addition, none of the other documents introduced at the formal review hearing satisfied section 322.2615(2), which requires an affidavit in order to establish that a breath, blood, or urine test was requested by a law enforcement officer and that the person refused to submit to such test. *See Department of Highway Safety & Motor Vehicles v. Perry*, 751 So. 2d 1277, 1280 (Fla. 5th DCA 2000) (finding that an arrest affidavit satisfied the dual affidavit requirements under section 322.2615(2)). Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The order sustaining Silvester’s driver’s license suspension is quashed.

HOY, McCARTHY, and KELLEY, JJ., concur.