

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,  
DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
BUREAU OF DRIVER  
IMPROVEMENT,

CASE NO. 1D06-6020

Petitioner,

v.

SAMUEL L. LANKFORD,

Respondent.

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Opinion filed May 14, 2007.

Certiorari - Original Jurisdiction.

Bryan Thomas Pugh, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Tallahassee, for Petitioner.

Mitchell Stone, Jacksonville, for Respondent.

PER CURIAM.

The Department of Highway Safety and Motor Vehicles seeks certiorari review of an order of the circuit court granting Samuel L. Lankford's petition for writ of certiorari challenging the suspension of his driver's license based on his arrest for

driving under the influence. The circuit court concluded that the hearing officer should have invalidated Lankford's license suspension because the arresting officer did not provide a reason for failing to bring the videotape of the traffic stop and arrest to the hearing as directed by subpoena duces tecum. This was a departure from the essential requirements of the law.

At no time during either of his two evidentiary hearings did Lankford preserve this issue for review by raising an objection before the hearing officer. Because this argument was waived at the trial level, it could not have been properly used as a basis for reversal of the hearing officer's decision to suspend Lankford's license. See Dep't of Safety & Motor Vehicles v. Marshall, 848 So. 2d 482 (Fla. 5th DCA 2003).

Moreover, we find no provision in the pertinent statute and rule that authorizes invalidation of a DUI license suspension because a witness did not provide the hearing officer with a good reason for failing to bring evidence pursuant to a subpoena duces tecum. See § 322.2615, Fla. Stat. (2004); Fla. R. Admin. P. 15A-6.013.<sup>1</sup>

Accordingly, we find that the circuit court exceeded its authority, thus departing from the essential requirements of law resulting in a miscarriage of justice. See, e.g.,

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<sup>1</sup>Section 322.2615(6)(c) and rule 15A-6.013(5) authorize a party to enforce a subpoena duces tecum in circuit court when a witness has failed to comply. The hearing officer below informed Lankford of this and continued the proceeding while Lankford successfully pursued this remedy.

Dep't of Highway Safety & Motor Vehicles v. Snelson, 817 So. 2d 1045 (Fla. 2d DCA 2002); Dep't of Highway Safety & Motor Vehicles v. Scinta, 828 So. 2d 486, 488 (Fla. 2d DCA 2002); Moore v. Palilla, 739 So. 2d 1228, 1229 (Fla. 1st DCA 1999).

We GRANT the petition for writ of certiorari and QUASH the order below.

BARFIELD, KAHN, and PADOVANO, JJ., CONCUR.