

**IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA**

**KELLY HARWOOD,**  
Petitioner,

**CASE NO.:** 2006-CA-007431-O  
**WRIT NO.:** 06-74

v.

**STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR  
VEHICLES,**  
Respondent.

---

Petition for Writ of Certiorari  
from the Florida Department of  
Highway Safety and Motor Vehicles,  
Robert F. Larson, Hearing Officer.

Stuart I. Hyman, Esquire,  
for Petitioner.

Judson M. Chapman, General Counsel and  
Heather Rose Cramer, Assistant General Counsel,  
for Respondent.

Before THORPE, O'KANE, and KOMANSKI, J.J.

PER CURIAM.

**FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI**

Petitioner Kelly Harwood timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (the Department) Final Order of License Suspension, sustaining the suspension of her driver's license pursuant to section 322.2615, Florida Statutes. This Court has jurisdiction. 322.2615, 322.31, Fla. Stat. (2004); Fla. R. App. P. 9.030(c)(3).

At approximately 2:38 a.m. on July 7, 2006, Officer Fronseca of the University of Central Florida (“UCF”) Police Department observed Petitioner, who was traveling eastbound on University Boulevard, make a U-turn at the signal light at the intersection of University and Alafaya Trail. There is a “no U-turn” sign at eye level at the intersection and another “no U-turn” sign mounted on the signal light. Officer Fronseca followed Petitioner and initiated a traffic stop on westbound University between Alafaya and Gemini Boulevard.

Upon making contact with Petitioner, Officer Fronseca observed a case of beer on the floor of the passenger side of the vehicle. Officer Fronseca proceeded to ask Petitioner for her driver’s license, registration and proof of insurance. After running Petitioner’s driver’s license, Officer Fronseca was informed by dispatch that Petitioner’s driver’s license was suspended. He next inquired as to how much Petitioner had to drink that night, to which Petitioner responded that she had only had two beers. At this point, Officer Fronseca asked Petitioner to exit her vehicle and requested that she submit to field sobriety testing. Petitioner lost her balance trying to exit her vehicle. Officer Fronseca then attempted to administer the horizontal gaze nystagmus test, to which Petitioner consented. However, when Petitioner was unable to hold her head steady for the test, she became irate and refused to participate in any further field sobriety tests. Based on his training and experience, Officer Fronseca felt that Petitioner was impaired and placed her under arrest. Petitioner was transported to the DUI testing center where she also refused the breath test.

Pursuant to section 322.2615, Florida Statutes, and chapter 15A-6, Florida Administrative Code, on August 10, 2006, Petitioner was granted a formal review held by Department Hearing Officer Larson. Petitioner and her counsel were present.

At the hearing, Petitioner moved to set aside the suspension on the basis that neither she nor Officer Fronseca were on UCF property and thus, he did not have jurisdiction to stop and arrest Petitioner. Petitioner submitted two maps to illustrate that she was not on UCF property at any time. On August 11, 2006, the hearing officer entered a Final Order of License Suspension denying Petitioner's motions and sustaining the suspension of her driver's license.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." Dep't of Highway Safety & Motor Vehicles v. Allen, 539 So. 2d 20, 21 (Fla. 5<sup>th</sup> DCA 1989).

In a case where the individual's license is suspended for refusal to submit to a breath, blood, or urine test, "the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain . . . the suspension." § 322.2615(7), Fla. Stat. (2004). The hearing officer's scope of review is limited to the following issues:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the

influence of alcoholic beverages or controlled substances.

2. Whether the person was placed under lawful arrest for a violation of s. 316.193.
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
4. Whether the person was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of eighteen months.

§ 322.2615(7)(b), Fla. Stat. (2004).

Petitioner asserts that Officer Fronseca was outside his jurisdiction when he placed her under arrest. Thus, Petitioner argues that the stop and arrest were unlawful and therefore, the hearing officer's decision was not supported by competent substantial evidence. On the other hand, the Department contends that Officer Fronseca's charging affidavit establishes that the illegal U-turn was made at University and Gemini on the UCF campus, and thus, Officer Fronseca's stop and arrest qualified as a lawful arrest for a violation of s. 316.193.

Despite the Department's contention, Officer Fronseca's charging affidavit does not establish that the illegal U-turn was made at University and Gemini. Instead, the narrative indicates that Petitioner made the illegal U-turn at the signal light at the intersection of University and Alafaya. The intersection of University and Alafaya is not on the UCF campus.

Generally, an officer has no official power to make an arrest outside his jurisdiction. State v. Gelin, 844 So. 2d 659 (Fla. 3d DCA 2003). However, an arrest outside the officer's jurisdiction can be validated in certain circumstances. Id. An officer may validly arrest outside his jurisdiction if in fresh pursuit of a felon, misdemeanant, or a violator of traffic laws. 901.25, Fla. Stat. (2004); State v. Edwards, 462 So. 2d 581 (Fla. 4<sup>th</sup> DCA 1985). Here, there is no evidence that Officer Fronseca was on UCF property or within his jurisdiction at the time he observed Petitioner commit the U-turn. Thus, it appears that this exception is inapplicable. Therefore, it seems that Officer Fronseca's stop of Petitioner was unlawful. As a result, it appears that the hearing officer's decision that Petitioner was lawfully stopped and arrested is not supported by competent substantial evidence. Therefore, Officer Fronseca's stop of the Petitioner was unlawful. As a result, the hearing officer's decision that Petitioner was lawfully stopped and arrested is not supported by competent substantial evidence.

Accordingly, it is hereby

**ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **GRANTED** and the hearing officer's Final Order of License Suspension is **QUASHED**.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida on this the   8   day of            July                     , 2009.

  /S/    
**JANET C. THORPE**  
**Circuit Judge**

  /S/    
**JULIE H. O'KANE**  
**Circuit Judge**

  /S/    
**WALTER KOMANSKI**  
**Circuit Judge**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished via U.S. mail to **Stuart I. Hyman, Esquire**, 1520 E Amelia St., Orlando, FL 32803 and **Judson M. Chapman, General Counsel and Heather Rose Cramer, Assistant General Counsel**, 6801 Lake Worth Rd., #230, Lake Worth, FL 33467 on the   8   day of   July  , 2009.

\_\_\_\_\_/S/\_\_\_\_\_  
Judicial Assistant