

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

**CASE NO.: 2006-CA-011142-O  
WRIT NO.: 06-97**

**LAUREN CAUDLE,**  
Petitioner,

v.

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

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Petition for Writ of Certiorari  
from the Florida Department of  
Highway Safety and Motor Vehicles,  
Reginald Owes, Hearing Officer.

Stuart I. Hyman, Esquire,  
for Petitioner.

Damaris E. Reynolds, Assistant General Counsel,  
for Respondent.

Before M. SMITH, MUNYON and WATTLES, J.J.

PER CURIAM.

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

Petitioner Lauren Caudle (Petitioner) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (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 pursuant to sections 322.2615 and 322.31, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

On October 17, 2006, Officer Davis of the University of Central Florida Police Department observed a vehicle emitting a white light from a tail brake light. Officer Davis made contact with the driver, Petitioner, and observed the odor of alcohol emitting from Petitioner's breath and the vehicle. Officer Davis also observed that Petitioner's movements were slow and her eyes were bloodshot and glassy. Petitioner completed three field sobriety exercises: walk and turn, one-leg stand, and horizontal gaze nystagmus. Based on Petitioner's performance on the field sobriety exercises, Officer Davis arrested Petitioner and transported her to the Orange County testing facility. Petitioner agreed to submit to a breath test and gave breath-alcohol samples of .141 and .142. As a result, the Department suspended Petitioner's driving privileges.

Pursuant to section 322.2615, Florida Statutes, Petitioner requested a formal review of her license suspension. On November 16, 2006, the hearing officer held a formal review hearing at which Petitioner was represented by counsel. Petitioner moved to invalidate the license suspension on seven grounds: (1) that the hearing officer failed to issue subpoenas and subpoenas duces tecum for Roger Skipper, Laura Barfield, Tanya Shrum and Kelly Melville; (2) that section 322.2615, Florida Statutes, is unconstitutional on its face and as applied to Petitioner; (3) that the Intoxilyzer 8000 was not properly approved for use in the State of Florida pursuant to section 316.1932, Florida Statutes, and FDLE Rule 11D-8.003 and that it did not work accurately; (4) that Officer Davis did not have probable cause to stop Petitioner's vehicle; (5) that Officer Davis lacked probable cause to believe that Petitioner was impaired by alcohol; (6) that the breath test was coerced by implied consent; and (7) that section 322.2615, Florida Statutes, does not define .08. On November 28, 2006, the hearing officer entered an order denying Petitioner's motions and sustaining the suspension of her driver's license finding that Officer Davis had probable cause to believe that Petitioner was driving or in actual physical

control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and that she had an unlawful breath-alcohol level of 0.08 or higher.

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. 5th DCA 1989).

In cases where the individual's license is suspended for an unlawful breath-alcohol level, "the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension." § 322.2615(7), Fla. Stat. (2006). The hearing officer's scope of review is limited to the following issues:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a), Fla. Stat. (2006).

At issue in the instant case is whether the hearing officer deprived Petitioner of procedural due process of law by finding that the lawfulness of the stop was outside the scope of the review hearing. Petitioner argues that inherent to section 322.2615, Florida Statutes, is a requirement that the hearing officer consider whether Petitioner was illegally stopped by Officer Davis. Petitioner also argues that the hearing officer's failure to issue subpoenas and subpoenas

due tecum for State personnel involved in the administration, inspection, and approval of the Intoxilyzer 8000, deprived her of due process of law. She further asserts that the breath test was illegally coerced and the results are not properly approved because the samples were obtained by using an unapproved and unreliable testing machine.

Alternatively, the Department contends that the legality of the stop is no longer an issue for the hearing officer to consider but even if it was a consideration, the stop was valid and based upon reasonable probable cause to believe that the vehicle did not comply with the Florida Statutes. The Department also contends that the hearing officer properly denied the subpoenas because the subject persons were not identified in section 322.2615(6)(b), Florida Statutes. The Department further maintains that the breath test was not illegally coerced and the Department established substantial compliance with the FDLE rules to render the results admissible and the subject machine approved.

Following the filing of Petitioner's Amended Petition for Writ of Certiorari, Petitioner filed a notice of supplemental authority attaching the Fifth District's decision in Department of Highway Safety and Motor Vehicles v. Pelham, 979 So. 2d 304 (Fla. 5th DCA 2008). The Department later filed a motion to abate and remand for further proceedings, wherein it conceded that the hearing officer failed to properly consider the lawfulness of Petitioner's stop and arrest and it requested that this Court remand the matter to the hearing officer for such determination.

In Pelham, the petitioner urged that the 2006 amendments to section 322.2615, Florida Statutes, negated lawfulness of the arrest as a precondition to the administrative suspension of one's license. Id. at 306. The Fifth District rejected the petitioner's reasoning holding that a lawful arrest must precede the administration of a breath test and despite the statutory amendments, a hearing officer still has authority to consider the lawfulness of a motorist's arrest.



**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**, Stuart I. Hyman, P.A., 1520 East Amelia Street, Orlando, Florida 32803 and **Damaris E. Reynolds, Assistant General Counsel**, DHSMV-Legal Office, Post Office Box 540609, Lake Worth, FL 33454-0609, on the   9   day of   October  , 2009.

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Judicial Assistant