

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

RAMAN CHOPRA,

Petitioner,

v.

CASE NO.: 2008-CA-14155-O

Writ No.: 08-44

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY & MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**

Respondent.

Petition for Writ of Certiorari.

Stuart I. Hyman, Esquire,
for Petitioner.

Heather Rose Cramer, Esquire,
for Respondent.

BEFORE LAUTEN, DAWSON, and BRONSON, JJ.

PER CURIAM.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Raman Chopra (“Petitioner”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the order sustained the suspension of his driver’s license for refusing to submit to the breath-alcohol test. This Court has jurisdiction under sections 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

On April 12, 2008, Deputy Huggins was called to the scene of a vehicle parked in the roadway with the potential to obstruct traffic. Deputy Huggins approached the vehicle and noticed Petitioner asleep behind the wheel with the engine running. Deputy Huggins woke Petitioner and began to question him. Deputy Huggins noticed that Petitioner displayed the odor of alcoholic impurities, poor balance, and slurred speech. Then, Deputy Huggins asked Petitioner to perform field sobriety exercises. Petitioner performed poorly on the exercises and was placed under arrest. Deputy Huggins then transported Petitioner to the breath test center where he refused the breath test.

Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, and a hearing was held on May 14, 2008. At the hearing, Petitioner moved to set aside the suspension arguing that there was no probable cause to stop Petitioner based on his vehicle being in the roadway. Additionally, Petitioner argued that there was no probable cause to detain Petitioner after he attempted to drive away. Petitioner also argued that there was no evidence that he refused the breath test and that the suspension was invalid because the Department refused to issue a subpoena for the breath test officer. On May 15, 2008, the hearing officer entered a written order denying Petitioner's motions and sustaining Petitioner's license suspension. Petitioner now seeks certiorari review of this order.

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver's license was suspended for refusing to submit to a breath-alcohol test, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the arresting 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 controlled substances.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended 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 18 months.

§ 322.2615(7)(b), Fla. Stat. (2008).

In the Petition for Writ of Certiorari, Petitioner argues that the hearing officer improperly refused to rule on whether there existed probable cause to detain Petitioner and that Petitioner was read an improper consent warning. Conversely, the Department argues that the hearing officer properly sustained the suspension where there was competent substantial evidence to support the hearing officer's decision.

To support his argument, Petitioner cites to *Dep't of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d 304 (Fla. 5th DCA 2008). This case is controlling authority on the issue of whether a hearing officer must consider lawfulness of the stop in light of the amendments to section 322.2615(7). In *Pelham*, the Fifth District analyzed the July 1, 2006 amendment to section 322.2615, Florida Statutes, that eliminated consideration of a lawful arrest from the

hearing officer's scope of review. *Id.* The Fifth District concluded that the statutory amendment did not relieve the hearing officer, in a refusal to submit to a "lawful" breath, blood, or urine test case, from making a determination that the request for a test was made incidental to a lawful arrest in accordance with section 316.1932(1)(a), Florida Statutes. *Id.* at 305-8.

Here, Petitioner argues that the hearing officer failed to consider the lawfulness of his stop and subsequent arrest during his formal review hearing. Upon a careful review of the record, it is apparent that Petitioner argued to the hearing officer that there was no probable cause for the stop based on case law defining lawful stops, that the officer only observed a vehicle legally parked in the roadway, and that there was no willful blocking of any traffic on the road, as it had no dividing center lines. After hearing Petitioner's arguments and motions, in the Final Order the hearing officer specifically noted that there was no ruling on Petitioner's motion as to lack of probable cause for the stop "as per Florida Statute 322.2615 and scope of review."

Pursuant to the reasoning set forth in the *Pelham* decision, the Court finds that the hearing officer's decision to sustain the Petitioner's license suspension departed from the essential requirements of the law, wherein the hearing officer declined to consider Petitioner's arguments that the arrest was unlawful, although a lawful arrest is necessary to support an order for license suspension. Because this argument is dispositive, the Court finds it unnecessary to address the additional arguments made by Petitioner and the Department.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Chopra's 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, this
__17th__ day of __February_____, 2010.

/S/ _____
FREDRICK J. LAUTEN
Circuit Court Judge

/S/ _____
DANIEL P. DAWSON
Circuit Court Judge

/S/ _____
THEOTIS BRONSON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **Stuart I. Hyman, Esq.**, Stuart I. Hyman, P.A., 1520 East Amelia St., Orlando, FL 32803; and to **Heather Rose Cramer, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, DHSMV-Legal Office, P.O. Box 540609, Lake Worth, FL 33454-0609, on this 17th day of February , 2010.

/S/ _____
Judicial Assistant