

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

CASE NO.: 2009-CA-37560
WRIT NO.: 09-54

WENDY JONES,
Petitioner,

vs.

**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,
Darrin Bowen, Hearing Officer.

Wendy Jones, *pro se*
for Petitioner,

Richard M. Coin, Assistant General Counsel,
for Respondent.

Before POWELL, MCDONALD, and J. ADAMS, SR., J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Prose petitioner Jones seeks certiorari review of a decision of an administrative hearing officer sustaining the suspension of her driver's license after a formal review hearing. After carefully reviewing Jones' amended petition, the Department's response, the record, the certified transcript of the hearing and the controlling law, we dispense with oral argument and deny her petition.

The law is well settled that this Circuit Court on appeal, like all appellate courts, is forbidden by law to judge the credibility (believability) of witnesses, to resolve conflicts in the

evidence, to weigh the significance of the evidence or to make factual findings based on the record. *See State of Florida, DHSMV v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989); *DHSMV v. Satter*, 643 So. 2d 692 (Fla. 5th DCA 1994); *DHSMV v. Dean*, 662 So. 2d 371 (Fla. 5th DCA 1995). These matters are solely and exclusively the function of the trier of fact, whether it be a jury, a judge in a non-jury proceedings, or an administrative hearing officer as in this case. *Id.* A trier of fact can disbelieve all or any part of the testimony of any witness. *See Dean*, 662 So. 2d 371. This Court cannot conduct a de novo (new) hearing by reviewing the testimony and evidence exhibits in the record. *See* § 322.26 15(13), Fla. Stat. (2009). Rather, this Court's review is narrowly and exclusively limited to three matters: (1) whether due process was accorded petitioner; (2) whether the hearing officer complied with essential requirements of law, and (3) whether the hearing officer's decision was supported by substantial competent evidence. *See Campbell v. Vetter*, 392 So.2d 6 (Fla. 4th DCA 1980), *rev. denied*, 399 So.2d 1140 (Fla. 1981). Proper documentation and reports submitted by a law enforcement officer and received in evidence at a formal review hearing like those in this case constitute substantial competent evidence even without the testimony of any law enforcement witness. *See* § 322.2615(11), Fla. Stat.; *DHSMV v. Stewart*, 625 So.2d 123, 124 (Fla. 5th DCA 1993). In *Stewart* the court said: "[T]he burden of proof is by a preponderance of the evidence," and "submission of the law enforcement officer's written report to the hearing officer is enough to sustain the burden." This "places on the suspended the burden to call all witnesses, including the law enforcement officer, in order to rebut the state's prima facie case." *Id.*

We turn now and briefly address all of Petitioner's arguments. The officer did not conduct a traffic stop of Petitioner. Her vehicle was parked when he arrived at the crash scene. He had reasonable suspicion to lawfully detain Petitioner for a DUI investigation based upon his

observations when he encountered her at the scene. *See Origi v. State*, 912 So.2d 69 (Fla. 4th DCA 2005). He had probable cause to lawfully arrest her for DUI based upon the other driver's identification of Petitioner as the driver of the second car which had rear-ended his; her admission she was driving the second car at the time of the crash; the odor of alcohol coming from her; her red, bloodshot eyes and flushed face; her slow, slurred, confused speech; her walk with a side to side stagger; her admissions that she had been drinking an alcoholic beverage; and her poor performance on the field sobriety exercises. *See and compare DHSMV v. Possati*, 866 So. 2d 737 (Fla. 3d DCA 2008) (holding that the smell of alcohol on *Possati*, his observably bloodshot and watery eyes, and the fact that he had just crashed into a parked police vehicle "were more than sufficient to establish probable cause" for a lawful DUI arrest). The hearing officer was not required to believe Jones's testimony. There was substantial competent evidence to support his decision based solely on the written documentation and arrest report generated by the officer and admitted in evidence, despite her contradictory testimony. Finally, the fact that she was later found not guilty of DUI at a jury trial does not require that the hearing officer's decision be quashed and her driver's license reinstated. *See* § 322.26 15(14)(b), Fla. Stat. ("...The disposition of any related criminal proceedings does not affect a suspension for refusal to submit to a ...breath test...").

Consequently, we conclude that the hearing officer accorded Petitioner due process, he complied with essential requirements of law, and his decision was based upon and supported by substantial competent evidence.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Jones' Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 13th day of May , 2011.

 /S/
ROM W. POWELL
Senior Judge

 /S/
ROGER J. MCDONALD
Circuit Judge

 /S/
JOHN H. ADAMS, SR.
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Wendy Jones**, 6623 Andrea Rose Drive, Orlando, Florida 32835; and **Richard M. Coin, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857, by mail, this 13th day of May , 2011.

 /S/
Judicial Assistant