

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

**THOMAS OUELLETTE,**

**CASE NO.: 2013-CA-008430-O**

Petitioner,

**WRIT NO.: 13-56**

v.

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

Respondent.

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

William R. Ponall, Esquire and Michael J. Snure, Esquire,  
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,  
for Respondent.

BEFORE APTE, THORPE, and MURPHY, J.J.

PER CURIAM.

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

Petitioner, Thomas Ouellette (“Ouellette”) 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 a breath test. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

### *Findings of Fact*

As gathered from the Hearing Officer's findings, the Arrest Report, and other related documents presented at the formal review hearing on May 20, 2013, the facts are summarized as follows: On April 13, 2013, Officer M. Daniels and Officer Shuvon Ligon with the Winter Park Police Department along with Winter Park Fire and Rescue arrived on the scene of a traffic crash involving a parked vehicle. While on scene, Officer M. Daniels conducted the crash investigation. During the crash investigation, the driver identified as Ouellette approached Officer Ligon and inquired that his wallet was possibly still inside the vehicle. As he spoke, the officer detected the strong odor of alcoholic beverages about Ouellette's person. Officer Ligon also met with the witness, Andrew J. Gregor, who informed him that the black SUV had rolled over onto its side and that he helped the driver, Ouellette, out of his vehicle and carried him to safety. Ouellette was seen and treated by Winter Park Fire and Rescue and refused further medical attention.

Upon completion of the crash investigation, Officer Ligon advised Ouellette that he was beginning a criminal investigation for DUI and Ouellette spontaneously uttered that he was coming from the Winter Park Village Ruth Chris restaurant and did not know what happened. While speaking with Ouellette, the officer continued to smell the impurities of alcohol emitting from Ouellette's breath. The officer then became concerned that Ouellette may be too impaired to safely operate his motor vehicle and requested that he submit to field sobriety exercises. Ouellette agreed to perform the exercises. Prior to commencing the exercises, the officer asked Ouellette a series of medical questions to which Ouellette responded that he was under the care of a doctor and took Oxycodone for back pain. Ouellette then uttered that he was not drunk and that he only had a few drinks.

Consequently, upon completion of the exercises, Officer Ligon believed that Ouellette's normal faculties were impaired. Ouellette was then placed under arrest and taken to the Orange County DUI Testing facility where the 20 minute observation period was conducted and Ouellette was read the implied consent warnings. Ouellette was then afforded an opportunity to provide samples of his breath and refused to be tested. Ouellette was cited for DUI with property damage, refusal to submit to a lawful breath test, and driving while license suspended without knowledge.

### *Standard of Review*

“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). “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 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 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 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. (2013).

### *Arguments*

Ouellette argues that the Hearing Officer's decision to sustain his license suspension was not supported by competent substantial evidence that the arresting officer had the necessary reasonable suspicion to commence a DUI investigation.

Conversely, the Department argues that Hearing Officer's decision to sustain his license suspension was supported by competent substantial evidence and is clearly lawful. Also, the Department argues that should this Court find any error in the administrative hearing, then remand for a new administrative hearing is the only remedy.

### *Analysis*

This Court finds that upon review of the record, specifically the facts contained in the Arrest Affidavit, the Hearing Officer's finding that the arresting officer had the necessary reasonable suspicion to commence a DUI investigation including the field sobriety exercises was supported by competent substantial evidence. Such evidence included the information about the crash obtained from witness, Andrew Gregor, and the observations by Officers Daniels and Ligon as to the detection the strong odor of alcoholic beverages about Ouellette's person and the continued smell of alcohol impurities emitting from his breath.

Ouellette correctly argues that *State v. Kliphouse*, 771 So. 2d 16 (Fla. 4th DCA 2000) and *State v. Scott*, 17 Fla. L. Weekly Supp. 1075a (Fla. 9th Cir. Ct. 2010), although criminal cases, apply to administrative hearings, however both cases are distinguishable from the instant case. In *Kliphouse*, it was determined that Kliphouse did not cause or contribute to the crash; however, in the instant case there was no explanation for the cause of the crash. *Scott*, did not involve a crash at all and the trial court found that the law enforcement officer's testimony was not sufficient to establish reasonable suspicion for Scott's continued detention as the officer did not testify that he made any observations that indicated Scott was actually impaired by alcohol.

### ***Conclusion***

Upon review of the record, this Court finds that Ouellette was provided due process and the Hearing Officer's decision to sustain his license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Further, because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this Court's review cannot go further to reweigh the evidence presented. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines that there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end as the issue is not whether the hearing officer made the best, right, or wise decision, instead, the issue is whether the hearing officer made a lawful decision).

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Thomas Ouellette's Petition for Writ of Certiorari is **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, on this 28th day of January, 2014.

/S/ \_\_\_\_\_  
**ALAN S. APTE**  
**Presiding Circuit Judge**

THORPE and MURPHY, J.J., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **William R. Ponall, Esquire and Michael J. Snure, Esquire**, Snure & Ponall, P.A., 425 W. New England Avenue, Suite 200, Winter Park, FL 32789, [ponallb@criminaldefenselaw.com](mailto:ponallb@criminaldefenselaw.com), [snurem@criminaldefenselaw.com](mailto:snurem@criminaldefenselaw.com) and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, FL 32857, [kingibbs@flhsmv.gov](mailto:kingibbs@flhsmv.gov), [marianneallen@flhsmv.gov](mailto:marianneallen@flhsmv.gov), on this 28th day of January, 2014.

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