

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

**RALPH WILLIAM SIMON,**

Petitioner,

v.

**CASE NO.: 2008-CA-9185-O**

**Writ No.: 08-34**

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

Respondent.

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Petition for Writ of Certiorari.

Jessica C. R. Buonauro, Esquire,  
for Petitioner.

Damaris E. Reynolds, Esquire,  
for Respondent.

BEFORE WATTLES, STRICKLAND, SHEA, JJ.

PER CURIAM.

**ORDER GRANTING PETITION FOR WRIT OF CERTIORARI**

Ralph William Simon (“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 eighteen month 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). We dispense with oral argument. Fla. R. App. P. 9.320.

On February 15, 2008, Trooper Vaughn waited at a traffic signal behind Petitioner's vehicle. Trooper Vaughn noticed that the metal tag frame around Petitioner's license plate obscured the top two-thirds of the license plate where "Florida" is printed. As the cars began to move, Trooper Vaughn then observed Petitioner's vehicle weave back and forth in the outside lane. Trooper Vaughn then initiated a traffic stop. Trooper Vaughn observed Petitioner's bloodshot, watery eyes, his slurred speech, and an odor of alcoholic beverage. Then Trooper Vaughn asked Petitioner to perform field sobriety exercises. Petitioner performed poorly on the exercises and was placed under arrest. Trooper Vaughn 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 March 18, 2008. At the hearing, Petitioner moved to set aside the suspension arguing that there was no probable cause to stop Petitioner based on his obscured license tag. On March 20, 2008, the hearing officer entered a written order denying Petitioner's motions and sustaining Petitioner's license suspension for a period of eighteen months. 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 a partially obscured license tag does not justify probable cause for a law enforcement officer to believe that the driver is impaired, that the weaving of Petitioner's vehicle was not severe enough to justify probable cause that the driver of the vehicle was impaired, and that the hearing officer erred by not considering the lawfulness of the stop at the hearing. 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. Specifically, the Department argues that the Legislature removed lawfulness of the arrest from the scope of review when it amended section 322.2615(7), effective October, 2006.

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 an obscured tag was the "main reason" for Petitioner's stop, that an obscured tag is not a legal reason for a stop, and that Petitioner's weaving was not a sufficient reason for a stop. After hearing Petitioner's arguments and motions, the hearing officer specifically noted that, "as of October, 2006," he was no longer required to consider the lawfulness of the stop as part of the scope of review.

Pursuant to the reasoning set for 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 Simon'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

16th day of November, 2009.

/S/  
**BOB WATTLES**  
Circuit Court Judge

/S/  
**STAN STRICKLAND**  
Circuit Court Judge

/S/  
**TIM SHEA**  
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 **Jessica C. R. Buonauro, Esq.**, Robert J. Buonauro, P.A., 390 North Orange Ave., Suite 1630, Orlando, FL 32801 and to **Damaris E. Reynolds, 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 16th day of November, 2009.

/S/  
Judicial Assistant