

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

MIRANDA FAULKNER

Petitioner,

vs.

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

Respondent.

WRIT NO.: 08-63

Case No.: 2008-CA-027874-O

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Darrin Bowen, Hearing Officer

Joerg F. Jaeger, Esq.,
for Petitioner.

Jason Helfant, Esq.,
for Respondent.

Before Grincewicz, Kirkwood, Thorpe, JJ.

PER CURIAM.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

We are once again asked to review an administrative license suspension in which the hearing officer failed to apply the Fifth District Court of Appeals' decision in *Department of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d 304 (Fla. 5th DCA 2008).

The driving privileges of petitioner, Miranda Faulkner, were administratively suspended for driving under the influence when, after an accident, blood tests revealed a blood alcohol content of .198. At a formal review hearing, the hearing officer, Darrin Bowen, declared that the applicable scope of review, was twofold: 1) whether the law enforcement officer had probable cause to believe that Ms. Faulkner was driving or in actual physical control of a motor vehicle in Florida while under the influence of alcoholic beverages or chemical or controlled substances; and 2) whether Faulkner had an unlawful blood alcohol content of .08 or higher. Faulkner contended at the hearing that the applicable scope of review was set forth in *Pelham* and urged that *Pelham* set out a third aspect of the scope of review which the Hearing Officer failed to apply.

Pelham held that in a formal review hearing, the correct scope of review under section 322.2615(7)(b), Florida Statutes (2007), includes a determination of whether the driver's arrest was lawful. *Dep't. of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d at 305. This Court has held this same finding to be part of the scope of review in cases under section 322.2615(7)(a), Florida Statutes (2007). *Gonzalez-Vega v. Dep't. of Highway Safety & Motor Vehicles, Div. of Licenses*, 17 Fla. L. Weekly Supp. 513a (Fla. 9th Cir. Ct. April 19, 2010); *Drozd v. Dep't of Highway Safety & Motor Vehicles, Div. of Licenses*, 17 Fla. L. Weekly Supp 77a (Fla. 9th Cir. Ct. Nov. 18, 2009); *Pelto v. Dep't of Highway Safety & Motor Vehicles, Div. of Licenses*, 17 Fla. L. Weekly Supp. 74a (Fla. 9th Cir. Ct. Oct. 26, 2009).

Here, the Hearing Officer was requested by Faulkner to apply the *Pelham* standard of review and declined to do so.

Our review is “limited to a determination of whether procedural due process was accorded, whether the essential requirements of law had been observed, and whether the administrative order was supported by competent substantial evidence.” *Dep’t of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008).

The failure of the Hearing Officer to apply the correct standard of review was a departure from the essential requirements of the law.

The Department contends that, the Hearing Officer did, in fact, consider the legality of Faulkner’s arrest even though he did not explicitly say that he was doing so. We agree with the Department that a hearing officer’s application of the correct standard of review is not dependent on his or her recitation of any “magic words.” We disagree, however, that Hearing Officer Bowen ever considered (even impliedly) the legality of Faulkner’s arrest. In his Findings of Fact, Conclusions of Law and Decision, Hearing Officer Bowen wrote that

the scope of the hearing is limited to whether the law enforcement officer had probable cause to believe that Petitioner 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 and whether Petitioner had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

(Findings of Fact, Conclusions of Law & Order 2.)

Nowhere is any mention made of the issue of the legality of the arrest. “*Pelham* holds that the lawfulness of the arrest is an issue that must be addressed at the administrative hearing in order to sustain a driver’s license suspension under section 322.2615. ” *Dep’t of Highway Safety & Motor Vehicles v. Icaza*, 37 So. 3d 309, 310 (Fla. 5th DCA 2010). The failure of the Hearing

Officer to address the legality of Faulkner's arrest was a departure from the essential requirements of the law.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari of Miranda Faulkner be and hereby is **GRANTED**, the Hearing Officer's Final Order of License Suspension be and hereby is **QUASHED** and this matter be and hereby is **REMANDED** for further proceedings consistent herewith.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the ___1st___ day of ___October___, 2010.

/S/
DONALD E. GRINCEWICZ
Circuit Court Judge

/S/
LAWRENCE R. KIRKWOOD
Circuit Court Judge

/S/
JANET C. THORPE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: 1) **Joerg F. Jaeger., Esq.**, JAEGER & BLANKNER, P.A., 217 East Ivanhoe Boulevard, Orlando, Florida 32804; and 2) **Jason Helfant, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, DHSMV Legal Office, P.O. Box 540609, Lake Worth, Florida 33135 on the ___4th___ day of ___October___, 2010.

/S/
Judicial Assistant