

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**  
**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT**  
**IN AND FOR PINELLAS COUNTY, FLORIDA**  
**APPELLATE DIVISION**

**MATTHEW CHRISTOPHER PETERFI,**  
**Petitioner,**

**Case No.: 12-000010AP-88A**  
**UCN: 522012AP000010XXXXCV**

**v.**

**STATE OF FLORIDA, DEPARTMENT**  
**OF HIGHWAY SAFETY AND MOTOR**  
**VEHICLES,**  
**Respondent.**

\_\_\_\_\_ /

Opinion Filed \_\_\_\_\_

Petition for Writ of Certiorari from  
Decision of Hearing Officer  
Bureau of Administrative Reviews  
Department of Highway Safety  
and Motor Vehicles

Rebecca L. Hamilton, Esq.  
Attorney for Petitioner

Stephen D. Hurm, Gen. Counsel  
Damaris E. Reynolds, Asst. Gen. Counsel  
Attorneys for Respondent

**PER CURIAM.**

Matthew Christopher Peterfi seeks certiorari review of the "Findings of Fact, Conclusions of Law and Decision" of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles entered on January 26, 2012. The decision affirmed the order of suspension of Mr. Peterfi's driving privileges. Upon review of the briefs and the appendices, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The petition is denied.

### **Statement of Case**

Mr. Peterfi did not testify at the January 26, 2012, administrative hearing on the suspension of his driver's license, but appeared only through counsel. Officer Joseph Sustek of the Tampa Police Department, the arresting officer, presented testimony at the hearing. Based on the officer's testimony and the documents admitted into evidence, the following facts were established. On December 23, 2011, at approximately 2:17 a.m. in Hillsborough County, Mr. Peterfi's vehicle was stopped at a red traffic light. Officer Sustek stopped behind Mr. Peterfi's car. Approximately ten to twelve vehicles stopped behind Off. Sustek's vehicle in line at the traffic light. When the traffic light turned green, Mr. Peterfi did not move his vehicle for twenty-three seconds. The police officer testified that he did not tap his horn to alert Mr. Peterfi. However, the officer stated that "[c]ars behind [the police vehicle] were honking quite a bit and [the drivers were] yelling at me to get things moving, and right as I was about to check on him, he decided – he started pulling forward, and that's when I turned on my lights." (1/26/12 Trans., p. 6-7). Thereafter, Mr. Peterfi immediately pulled his car out of the traffic lane and did not violate any traffic laws while pulling over. Officer Sustek testified that Mr. Peterfi was stopped for "impeding the flow of traffic" and "the suspicion of being ill, tired or impaired because through [the officer's] training and the [National Highway Traffic Safety Administration] standards, slow response to a traffic signal is a sign of impairment that is standardized." (1/26/12 Trans., p. 8).

### **Standard of Review**

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. State, Dep't of Highway Safety & Motor Vehicles v. Sarmiento, 989 So. 2d 692, 693 (Fla. 4th DCA 2008). This Court is not to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings. Dep't of Highway Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006).

## Analysis

### Due Process

Although Mr. Peterfi states in the petition that there was a violation of his due process rights, he presents no argument in support of that allegation.

Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. Dep't of Highway Safety & Motor Vehicles v. Hofer, 5 So. 3d 766, 771-72 (Fla. 2d DCA 2009). Upon a review of the record, this Court concludes that there was no due process violation in this matter.

### Essential Requirements of Law and Competent, Substantial Evidence

A formal review of a driver's license suspension is conducted pursuant to section 322.2615(1)(b)3, Florida Statutes (2011). When an individual's license is suspended for driving with an unlawful blood-alcohol level in violation of section 316.193, Florida Statutes (2011), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain the license suspension. The issues on review are limited to (1) whether the arresting officer had probable cause to believe that the individual was driving while under the influence of alcohol; (2) whether the person was lawfully arrested for violation of section 316.193; and (3) whether, pursuant to section 316.193, the person had an unlawful blood alcohol level. See § 322.2615(7)(a), Fla. Stat.; Dep't of Highway Safety & Motor Vehicles v. Mowry, 794 So. 2d 657, 657-58 (Fla. 5th DCA 2001).

The Second District Court of Appeal has explained that "[i]n order to effect a valid stop for DUI, the officer need only have a 'founded suspicion' of criminal activity. Thereafter, the probable cause needed to arrest or to suspend a license for DUI may be based upon evidence obtained during the standard procedures following a valid traffic stop." State, Dept. of Highway Safety & Motor Vehicles v. DeShong, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992)(citations omitted). The hearing officer looks at the totality of the circumstances when determining whether a reasonable suspicion exists to justify the vehicle stop. See Maldonado v. State, 992 So. 2d 839, 843 (Fla. 2d DCA 2008).

"The preponderance of the evidence standard [is] evidence which as a whole shows that the fact sought to be proved is more probable than not . . . . Substantial evidence has been defined as evidence 'which a reasoning mind would accept as

sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.' " State v. Edwards, 536 So. 2d 288, 292 (Fla. 1st DCA 1988); see Dep't of Highway Safety & Motor Vehicles v. Trimble, 821 So. 2d 1084 (Fla. 1st DCA 2002).

Mr. Peterfi only presents the argument that there was not a lawful basis for the stop of his vehicle and, therefore, the subsequent arrest and the suspension should be set aside. He directs the Court to the circuit court appellate opinions in State v. Perez, 12 Fla. L. Weekly Supp. 35 (Fla. 11th Cir App. Ct. Oct. 5, 2004); and Jones v. State, 8 Fla. L. Weekly Supp. 689a (Fla. 11th Cir. App. Ct. Aug. 9, 2010); and to the published trial court order granting a defendant's pre-trial motion to suppress in a criminal prosecution in State v. Tillman, 12 Fla. L. Weekly Supp. 763a (Fla. 18th Cir. Ct. Jan. 14, 2005). It is asserted that according to these opinions and order there was no justification for the stop of Mr. Peterfi's vehicle under the facts of this case. This Court finds that the Perez opinion does not support Mr. Peterfi's argument; the Jones case is factually distinguishable; and the Eighteenth Circuit Court order granting a motion to suppress in Tillman is not persuasive or binding on this Court.

In the present case, Off. Sustek testified that Mr. Peterfi was impeding the flow of traffic when he was sitting in his car at the traffic light for twenty-three seconds while other motorists sounded their horns and shouted for the police officer positioned immediately behind Mr. Peterfi's vehicle to take action. The officer testified that through his experience and training he believed Mr. Peterfi was ill, tired or impaired. This was sufficient to provide the officer with a founded suspicion in order to effectuate the investigatory stop. See DeShong, 603 So. 2d at 1352 (holding "a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior").

### **Conclusion**

This Court concludes there was no violation of due process; the hearing officer observed the essential requirements of law; and competent, substantial evidence supports the hearing officer's findings and decision that there was a valid stop of Mr.

Peterfi's vehicle by the police officer and, therefore, the subsequent arrest and suspension of driver's license should be upheld.<sup>1</sup>

Petition denied.

14<sup>th</sup> **DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this day of June, 2012.

Original order entered on June 14, 2012, by Circuit Judges Linda R. Allan, W. Douglas Baird, and John A. Schaefer.

Copies furnished to:

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<sup>1</sup> Mr. Peterfi's statement in his brief that the wording in the hearing officer's "Findings of Fact, Conclusions of Law and Decision" was insufficient is without merit. See State, Dep't of Highway Safety & Motor Vehicles v. Porter, 791 So. 2d 32, 35 (Fla. 2d DCA 2001).