

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

JESSICA BACHIOCHI,  
Petitioner,

v.

Ref. No.: 16-000053-AP-88B  
UCN: 522016AP000053XXXXCI

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

Respondent.

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**ORDER AND OPINION**

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) suspending her driving privilege for DUI under section 322.2615, Florida Statutes. Petitioner contends that DHSMV’s order was not supported by competent substantial evidence that Petitioner was lawfully stopped and departed from the essential requirements of law by finding that the stop was lawful. Petitioner also contends that the Hearing Officer departed from the essential requirements of law by considering hearsay statements. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

**Facts and Procedural History**

On July 3, 2016, at approximately 1:41 a.m., Deputy Clark observed a vehicle stopped on the shoulder of Gandy Boulevard with the female driver asleep inside. He observed the keys in the vehicle’s ignition, reached in to the vehicle, and took the keys out. Deputy Clark made contact with the driver, identified the driver as Petitioner from her driver’s license, and observed signs of impairment. Petitioner informed Deputy Clark that she had been drinking alcohol. He then transferred the investigation to Deputy Wagner.

Deputy Wagner smelled the strong odor of alcohol emitting from Petitioner upon approaching her, noticed that her eyes were bloodshot, watery, and glassy, and her speech was thick-tongued and slurred. He then requested Petitioner to perform field sobriety exercises (FSE), and Petitioner again stated that she had been drinking alcohol. Petitioner performed the FSE poorly and, after taking all observations into consideration, Deputy Wagner determined that

Petitioner was impaired by alcohol and placed her under arrest for DUI. Deputy Wagner read Petitioner her *Miranda*<sup>1</sup> rights and Petitioner stated that she drank two to three beers and had not slept recently, so she pulled over on the shoulder of Gandy Boulevard to sleep. Deputy Wagner then transported Petitioner to Central Breath Testing, where he observed her for twenty minutes. She then provided two breath samples of 0.138g/210L and 0.129g/210L. Thereafter, Petitioner requested a formal hearing and the Hearing Officer affirmed the suspension. She then filed the instant Petition for Writ of Certiorari.

### **Standard of Review**

On review of the DHSMV order, this Court must ascertain whether (1) the DHSMV afforded the Petitioner procedural due process, (2) the essential requirements of the law were observed, and (3) the DHSMV's decision is supported by competent, substantial evidence. *Dep't of Highway Safety & Motor Vehicles v. Silva*, 806 So. 2d 551, 553 (Fla. 2d DCA 2002).

### **Discussion**

Petitioner submits two distinct arguments: (1) there is no competent substantial evidence to support the Hearing Officer's finding that Petitioner was lawfully stopped and that finding departed from the essential requirements of law and (2) the Hearing Officer departed from the essential requirements of law by considering hearsay statements.

First, Petitioner incorrectly contends that competent substantial evidence does not support the Hearing Officer's finding that the stop was lawful and the finding departed from the essential requirements of law. "The constitutional validity of a traffic stop depends on purely objective criteria." *Hurd v. State*, 958 So. 2d 600, 602 (Fla. 4th DCA 2007) (internal citations omitted). "The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop." *Dobrin v. Dept. of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1174 (Fla. 2004). "Generally, 'the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.'" *State v. Arevalo*, 112 So. 3d 529, 531 (Fla. 4th DCA 2013) (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). An officer may also conduct an initial stop based on reasonable suspicion if the officer has "a legitimate concern for the safety of the motoring

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

public.” *Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992). “Whether an officer's suspicion is reasonable is determined by the totality of the circumstances that existed at the time of the investigatory detention.” *Gaffney v. State*, 974 So. 2d 425, 426 (Fla. 2d DCA 2007) (internal quotations omitted). “A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.” *United States v. Arvizu*, 534 U.S. 266, 277 (2002). Considering the totality of the circumstances “allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *Id.* at 273 (internal citations omitted).

Here, the evidence establishing the basis for the initial stop indicates that Deputy Clark stopped Petitioner because Petitioner was asleep in the driver’s seat of the vehicle while it was stopped on the shoulder of the road with the keys in the ignition. Since the Complaint/Arrest Affidavit specifically states that the reason for the stop was for “sleeping in the driver’s seat,” there is no competent substantial evidence that could support the initial stop being lawful based on the occurrence of a traffic infraction. However, the totality of the circumstances supports the initial stop as lawful based on the existence of reasonable suspicion created by Deputy Clark’s legitimate concern for the safety and welfare of Petitioner and the public. Thus, competent substantial evidence supports the Hearing Officer’s finding that the initial stop was lawful, which comports with the essential requirements of law.

Second, Petitioner incorrectly contends that the Hearing Officer departed from the essential requirements of law by considering Deputy Wagner’s hearsay statements. Specifically, Petitioner contends that the only record evidence of the basis for the initial stop is Deputy Wagner’s recollection of Deputy Clark’s statements regarding the initial stop. However, reports submitted by law enforcement, regardless of whether they are hearsay documents, are properly within the purview of the hearing officer to consider.

Section 322.2615(2)(b), Florida Statutes, provides that after the issuance of a notice of suspension of driver's license, “[m]aterials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer.” Under Rule 15A-6.013(2), “[n]o extrinsic evidence of authenticity as a condition precedent to admissibility is required.” Fla. Admin. Code R. 15A-6.013(2). “The hearing officer may consider any report or photocopies of such report submitted

by a law enforcement officer. . . relating to the suspension of the driver.” *Id.* “Neither [322.2615] nor [15A-6.013(2)] prohibits the admission of hearsay evidence. Nor do these provisions require non-hearsay evidence to corroborate any hearsay evidence admitted at the hearing.” *Dep’t of Highway Safety & Motor Vehicles v. Saxlehner*, 96 So. 3d 1002, 1007 (Fla. 3d DCA 2012). Here, the Hearing Officer could properly consider Deputy Wagner’s statement of Deputy Clark’s reasons for the initial stop because hearsay evidence is not prohibited at DHSMV hearings.

### **Conclusion**

Because the DHSMV final order observed the essential requirements of law and was supported by competent substantial evidence that the initial stop was lawful, it is

**ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this  
14 day of March, 2017.

Original Order entered on March 14, 2017, by Circuit Judges Amy M. Williams, Pamela A.M. Campbell, and Thomas M. Ramsberger.

#### **COPIES FURNISHED TO:**

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