

**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**

TARA BRACETTY,  
Petitioner,  
v.

Ref. No.: 17-000008-AP-88B  
UCN: 522017AP000008XXXXCI

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”) upholding the suspension of her driving privilege for driving under the influence (“DUI”) under section 322.2615, Florida Statutes. Petitioner contends that DHSMV’s order finding that Petitioner was lawfully detained was not supported by competent substantial evidence and therefore, departed from the essential requirements of law. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

**Facts and Procedural History**

On September 30, 2016, Officer White was working on foot patrol when an unidentified anonymous person reported to him that there were two females fighting at the other end of parking lot. As Officer White was walking through the parking lot, he alerted dispatch to his position and dispatch informed him that it had just received a 911 call for a disturbance in the same area. Then, a second unidentified anonymous person approached Officer White, pointed to a specific vehicle, and told Officer White that those were the people he was looking for. The specified vehicle was stopped in the through lane of the parking lot with its brake lights on. Officer White observed two women yelling at each other. He approached the vehicle where he made contact with a woman standing outside of the passenger side door and Petitioner, who was in the driver’s seat. Officer White requested that Petitioner turn off and exit the vehicle, which she did. Very shortly thereafter, other officers arrived and made contact with Petitioner. Ultimately, Petitioner was arrested for DUI, refused to submit to a breath test, and her driver’s

license was suspended. Petitioner requested a formal review hearing, and the Hearing Officer affirmed the suspension. She then filed the instant Petition for Writ of Certiorari.

### Standard of Review

“[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence.” *Wiggins v. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017)

### Discussion

“[W]hether characterized as a request or an order,” an encounter becomes a detention if a law enforcement officer directs a citizen to exit or turn off his or her vehicle. *Popple v. State*, 626 So. 2d 185, 188 (Fla. 1993); *Gentles v. State*, 50 So. 3d 1192 (Fla. 4th DCA 2010). The community caretaking doctrine allows an officer to temporarily detain a citizen based on “concern for the safety of the general public.” *Castella v. State*, 959 So. 2d 1285, 1292 (Fla. 4th DCA 2007) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). Such concern warrants a brief detention “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.” *Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992). The detention “is reasonable if it is based on specific articulable facts.” *Castella*, 959 So. 2d at 1292. “Thus, even without reasonable suspicion of criminal activity, a police officer may detain an individual pursuant to a community caretaking function under certain circumstances.” *Gentles*, 50 So. 3d at 1199.

Here, Petitioner contends that she was unlawfully detained because Officer White’s “only reason for seizing the Petitioner was a breach of the peace,” and competent substantial evidence does not support a detention for that reason. Regardless of whether the evidence supports a detention for breach of the peace, the Hearing Officer’s finding that Petitioner was lawfully detained for safety reasons is supported by competent substantial evidence. In the final order, the Hearing Officer found that Officer White, after contacting Petitioner and observing yelling, “requested the Petitioner turn off the engine and exit the vehicle, **for the safety of all**, while he attempted to ascertain why [there was a] disturbance.” (Emphasis added). At the hearing, Officer White testified that he “tried to find out what was wrong, [but Petitioner] wouldn’t

answer any questions.” She was “hysterical” and “just kept yelling.” Officer White “tried to calm [Petitioner] down while in the car” but Petitioner “was getting up to a point where [Officer White] was concerned with all the people walking around that she might put [the vehicle] in gear and take off. For [Petitioner’s] safety, for [Officer White’s] safety, and everybody else’s safety, [Officer White] told [Petitioner] to turn the car off, [and] get out of the car.” Thus, competent substantial evidence supports the Hearing Officer’s finding that Petitioner was lawfully detained based on Officer White’s legitimate concern for the safety of everyone involved.

### **Conclusion**

Because the DHSMV final order finding that Petitioner was lawfully detained is supported by competent substantial evidence, 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<sup>th</sup> day of August, 2017.

Original Order entered on August 14, 2017, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

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

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