NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
APPELLATE DIVISION

DANIEL MARACICH,
Petitioner,

v. **CASE NUMBER: 2024-CA-001145-WS**

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES,
Respondent.
_____/

Petition for Writ of Certiorari

Christopher Blaine, Esquire
Attorney for Petitioner

Linsey Sims-Bohnenstiehl, Esquire
Attorney for Respondent

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on the Petition for Writ of Certiorari, filed April 25, 2024, by Daniel Maracich ("Petitioner"), represented by Christopher Blaine, Esquire; the Response to Petition for Writ of Certiorari, filed September 18, 2024, by the State of Florida, Dept. of Highway Safety and Motor Vehicles ("Respondent"); and, the Petitioner's Reply, filed October 6, 2024. Upon review of the briefs, record, and being otherwise fully advised, the Court finds that the Petition for Writ of Certiorari must be granted as set forth below.

BACKGROUND FACTS

Petitioner appeals the Findings of Fact, Conclusions of Law and Decision ("DMV Order"), entered March 27, 2024, by Chaandi McGruder, Hearing Officer ("Hearing Officer"), affirming the license suspension imposed by the Respondent after the Petitioner refused to submit to a breath

test. The Hearing Officer upheld the Petitioner's eighteen-month license suspension, effective January 28, 2024, for driving under the influence.[1] The Hearing Officer denied Petitioner's motion to invalidate the license suspension based on *Danielewicz v. State,* 730 So.2d 363 (Fla. 2d DCA 1999), with the following findings:

> The stop can be construed as a welfare check, which was reasonable given that Petitioner's vehicle was running and the complainant believed the driver was impaired. See Dept. of Highway Safety & Motor Vehicles v. DeShong, 602 So.2d 1349, 1352 (Fla. 2d DCA 1992)(acknowledging that "a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether driver is ill, tired, or driving under the influence in situations less suspicious that that required for other types of criminal behavior").
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> Although Petitioner was legally parked in a parking space, here, Deputy Bews had a suspicion of impairment based on the complainant's initial call to 911. The complainant described the vehicle to the 911 dispatcher and stated he believed the subject was intoxicated. An encounter "becomes an investigative stop when the citizen is asked to exit the vehicle." Danielewicz v. State, 730 So.2d 363. "An investigatory stop must be based on founded or reasonable suspicion that the vehicle's occupants committed, are committing or about to commit a crime." Batson v. State, 847 So.2d 1149, 1150 (Fla. 4th DCA 2003)(quoting Davis v. State, 695 So.2d 836, 837 (Fla. 2d DCA 1997)). Actual physical control of a motor vehicle under the influence is a crime. See Section 316.193, Florida Statutes. *The documented suspicion of impairment provided a well-founded suspicion of criminal activity at the time of the welfare check that was not present in Danielewicz. (emphasis added).*

The Pinellas County Sheriff's Office Offense Report states that, on January 28, 2024, at 4:27 a.m., Deputy Tyler Bews, of the Pinellas County Sheriff's Office, was dispatched to 325 Main Street, Dunedin (Blur Nightclub), to conduct a welfare check on a male subject that was asleep inside a black Mercedes SUV in the parking lot. The Offense Report states: "Call notes advised the complainant was requesting a welfare check on a male subject that was asleep inside a black

[1] This was Petitioner's second DUI for refusal to submit to a breath test, his first occurring on or about August 6, 2017. As related to this second DUI, Petitioner has pending criminal traffic charges in Pinellas County, Case No. 2024-CT-5919 (which includes consolidated Case No. 2024-MM-1247).

Mercedes SUV in the parking lot. Call notes also indicated the complainant believed the subject was intoxicated."

Upon arrival, Deputy Bews observed the vehicle to be lawfully parked, actively running, and with the driver, later identified as the Petitioner, sleeping in the driver's seat. Petitioner's head was slumped over and his eyes were closed. Deputy Bews positioned his cruiser in a "pinch" manner for overall safety.

Deputy Bews knocked on the driver's side window and Petitioner slowly awoke. Petitioner did not appear surprised by Deputy Bews' presence. Deputy Bews asked Petitioner to step out of the vehicle to ensure he was alright and not in need of medical attention. Petitioner slowly exited his vehicle and Deputy Bews observed several signs of impairment, to include that Petitioner was unsteady on his feet, had a strong odor of alcohol, glassy and watery eyes, a flushed and sweaty face, and that he slurred and mumbled some of his words.

Petitioner stated that he was taking a nap while waiting for his Uber. In response to Deputy Bews' questioning, Petitioner stated that he was not in need of medical attention and was adamant that he felt okay to drive and wanted to leave. Based on his observations, Deputy Bews asked Petitioner a series of health questions and then asked Petitioner to participate in field sobriety exercises, which Petitioner refused. Petitioner was placed under arrest for DUI and subsequently refused to submit to a breath test.

After arresting Petitioner for DUI, Petitioner spoke with the complainant, Samuel Vinson, who was the manager of Blur Nightclub. As set forth in the Offense Report:

> Samuel advised that he often works nights at Blur and sees intoxicated people frequently. Samuel advised he typically tries to check on intoxicated people prior to calling law enforcement. Samuel advised him and his staff had seen Samuel's vehicle idling for roughly the past two hours with Daniel in the driver's seat sleeping. Samuel stated prior to calling 911, he had woken Daniel up to ask him if he was okay. Samuel stated that Daniel was advising he was waiting on an Uber to come and pick him up. Samuel does not recall

seeing Daniel inside of Blur and has no prior affiliations with Daniel until this occurrence. This concluded my contact with Samuel.

Petitioner timely requested an administrative hearing before the DMV's Bureau of Administrative Reviews to challenge the lawfulness of his license suspension. A telephonic hearing was held on March 18, 2024, wherein Petitioner was represented by Timothy Sullivan, Esquire. The arresting officer, Deputy Bews, appeared telephonically and testified.[2] The Hearing Officer admitted twelve documents received from the Pinellas County Sheriff's Office into evidence, without objection. As set forth in the transcript of the administrative hearing, the following documents and exhibits were admitted:

DDL1 – Florida DUI Uniform Traffic Citation (AI9MV9E);
DDL2 – DUI Packet cover sheet;
DDL3 – Petitioner's Florida Driver's License;
DDL4 – Breath Alcohol Test Affidavit;
DDL5 – Affidavit of Refusal to Submit to Breath Test;
DDL6 – Implied Consent Warning;
DDL7 – Affidavit of True Copy;
DDL8 - Field Sobriety Test Form;
DDL9 – Consent Arrest Affidavit;
DDL10 – Florida Uniform Traffic Citation (AIUOFFE);
DDL11 – Notification of Driver's License Hearing; and,
DDL12 – Case Master Report, Offense Report, and Supplements;

During the evidentiary hearing, counsel for Petitioner asked Officer Bews a series of questions regarding his welfare check of Petitioner. Officer Bews testified that Petitioner was sleeping, breathing, and was not bleeding, coughing or vomiting. In response to direct questioning,

[2] Deputy Bridgette Morris, breath test operator, was released from her subpoena.

Deputy Bews testified several times that he did not believe Petitioner was impaired at the time he asked him to exit the vehicle and that he was conducting a welfare check.[3]

After the evidentiary portion of the hearing concluded, Petitioner's counsel orally motioned to invalidate the license suspension arguing that Petitioner's arrest was the result of an unlawful seizure and detention. Petitioner's counsel argued that, based on *Danielewicz v. State,* 730 So.2d 363 (Fla. 2d DCA 1999) and *Popple v. State,* 626 So.2d 185 (Fla. 1993), Deputy Bews lacked the requisite reasonable suspicion at the point Deputy Bews asked Petitioner to exit his vehicle, at which time it ceased being a welfare check and became an investigatory stop. The Hearing Officer entered its DMV Order affirming the Petitioner's license suspension finding that Deputy Bews had a suspicion of impairment based on the complainant's initial call to 911. Petitioner timely sought certiorari review of the DMV Order.

STANDARD OF REVIEW AND ISSUES RAISED

The Circuit Court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent substantial evidence. *Haines City v. Heggs*, 658 So.2d 523, 530 (Fla. 1995)(*citations omitted*). The Circuit Court is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and decision. *Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So.2d 1247, 1249 (Fla. 2d DCA 2006)(*citations omitted*). "As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended." *Dusseau v. Metro. Dade Cty. Bd. of Cty. Commrs.*, 794 So.2d 1270, 1276 (Fla. 2001).

[3] Deputy Bews responded five times that he did not believe Petitioner was impaired and that he was conducting a welfare check.

Competent substantial evidence is evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). As further analyzed by the Florida Supreme Court in *Wiggins v. Dept. of Highway Safety and Motor Vehicles,* 209 So.3d 1165, 1172-73 (Fla. 2017):

> A court conducting section 322.2615 [suspension of license; right to review] first-tier certiorari review faces constitutional questions that do not normally arise in other administrative review settings. Every case involving a license suspension contains a Fourth Amendment analysis of whether there was reasonable suspicion to stop the vehicle or probable cause to believe that the driver was in physical control of the vehicle while under the influence of alcohol. § 322.2615(7)(b) 1. With that, first-tier review under this particular statute demands a close review of the factual record to determine whether the hearing officer's findings were supported by competent, substantial evidence and whether the essential requirements of the law were applied. Nader, 87 So.3d at 723.[4] Some consideration of the evidence is inescapable in the competent, substantial evidence determination. These are legal questions that call for an unbiased review, rather than being solely left to the discretion of a hearing officer who is actually employed by the Department. While a policy that provides deference to the agency fact-finder may be appropriate in special areas such as zoning or policy decisions, which involve concepts that require a certain level of expertise that can be provided by a nonlawyer, the same does not hold true for the questions of constitutional law that arise under section 322.2615. It is no wonder, then, that the Legislature created a statute to tailor review for this narrow situation.
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> Evidence that is confirmed untruthful or nonexistent is not competent, substantial evidence. Competent, substantial evidence must be reasonable and logical. Gonci v. Panelfab Prods., Inc., 179 So.2d 856, 858 (Fla. 1965). It follows that a competent, substantial evidence analysis demands an honest look at the evidence available. Otherwise, we are asking judges to simply parrot the findings of the hearing officer, thus reducing the task of a constitutional judge to providing a predetermined stamp of approval. . . The law under section 322.2615 is not designed to protect the decision of the hearing officer, but to preserve due process and justice. The Legislature clearly intended that the circuit court conduct a meaningful review of the record.

Petitioner's argument focuses on the second and third prongs of review: that there is not competent and substantial evidence to support the Hearing Officer's findings of fact and that the Hearing Officer departed from the essential requirements of law in concluding that Petitioner's

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[4] *Nader v. Fla. Dep't of Highway Safety and Motor Vehicles*, 87 So.3d 712 (Fla. 2012).

detention was lawful in the absence of reasonable suspicion of criminal activity. The Court agrees with Petitioner on both counts.

LAW AND ANALYSIS

The Court finds that the Hearing Officer was charged with determining, by a preponderance of the evidence, whether there was sufficient cause to sustain, amend, or invalidate the license suspension, based on three criteria:

> 1. Whether the 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 chemical 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;[5] and,
> 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. *See* § 322.2615(7)(b)1.-3., Fla. Stat.

Petitioner takes issue with the first criteria, arguing that Deputy Bews' welfare check lead to an unlawful search and seizure when he asked Petitioner to exit his vehicle without the requisite suspicion of criminal activity.

In analyzing the issues presented, the Court finds that there are three levels of police-citizen encounters: (1) a consensual encounter wherein the citizen can voluntarily comply with an officer's request and is free to leave; (2) an investigatory stop wherein an officer may temporarily detain a citizen if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime; and, (3) an arrest wherein an officer must have probable cause that a

[5] The Department cannot suspend a driver's license for refusal to submit to a breath test if the refusal was not incident to a lawful arrest, which falls within the Hearing Officer's scope of review. *Dept. of Highway Safety and Motor Vehicles v. Hernandez*, 74 So.3d 1070, 1073 (Fla. 2011)(citing to 316.1932(1)(a), Fla. Stat., that a breath test must be incidental to a lawful arrest).

crime has been committed. *K.W. v. State,* 328 So.3d 1022, 1025 (Fla. 2d DCA 2021)(*citing Popple v. State,* 626 So.2d 185, 186 (Fla. 1993)).

Welfare checks fall under the community caretaking doctrine and are considered consensual encounters, such that law enforcement can conduct such checks when necessary without constitutional implications. *Daniels v. State,* 346 So.3d 705, 708 (Fla. 2d DCA 2022)(*citations omitted).* The community caretaker standard permits a law enforcement officer to detain an individual, even without reasonable suspicion that a crime has occurred, is occurring, or is about to occur. *R.A. v. State*, 355 So.3d 1028, 1034 (Fla. 3d DCA 2023)(*citations omitted)*; *Taylor v. State*, 326 So. 3d 115, 117 (Fla. 1st DCA 2021)(finding that welfare checks fall under the community caretaking doctrine and are deemed lawful as long as they are totally devoid from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute)(*citations omitted); Vitale v. State,* 946 So.2d 1220, 1221 (Fla. 4th DCA 2007)(finding "[t]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid")(*citations omitted).* Once law enforcement has satisfied their concern for the welfare of the person, a continued detention is not permissible unless there is a reasonable suspicion that the person has committed, or is committing, a crime. *Id.*

As explained in *R.A. v. State, supra*:

> A determination of whether a seizure occurred "is a fact-intensive analysis in which the reviewing court must consider the totality of the circumstances." *Golphin v. State,* 945 So.2d 1174, 1183 (Fla. 2006). However, "[i]t is well established that an officer does not need to have a founded suspicion to approach an individual to ask questions." *Popple v. State,* 626 So.2d 185, 187 (Fla. 1993).

When conducting this fact-intensive analysis, the totality of the circumstances must be considered from the 'standpoint of an objectively reasonable officer.'" *Daniels,* 346 So.3d at 709;

Holland v. State, 696 So. 2d 757, 759 (Fla. 1997)(finding courts should use a strict objective test asking only whether any probable cause for a stop existed, not whether the basis believed by a law enforcement officer was accurate).

There is no dispute that Petitioner was in actual physical control of his vehicle as he was found in the driver's seat with the car running and could drive away. *State v. Fitzgerald,* 63 So.3d 75, 78 (Fla. 2d DCA 2011)(finding driver is in actual physical control of a vehicle when the keys were close enough for the driver to use them and drive away)(*citations omitted*). There is also no dispute that Deputy Bews was responding to a tip from a citizen informant, whose information is at the high end of the tip-reliability scale.[6] *Calhoun v. State,* 308 So.3d 1110, 1114 (Fla. 1st DCA 2020)(explaining that information provided by a citizen informant is presumed highly reliable because their motivation is the promotion of justice and public safety and they can be held accountable for the accuracy of the information given)(*citations omitted).* Deputy Bews was fully entitled to investigate the situation and conduct a welfare check based on the complainant's tip.

A consensual encounter generally becomes an investigative stop when a driver is asked to exit a vehicle. *Dermio v. State,* 112 So.3d 551, 556 (Fla. 2d DCA 2013)*; Danielewicz v. State,* 730 So.2d 363, 364 (Fla. 2d DCA 1999)(*citations omitted).* Hence, at the point Deputy Bews asked Petitioner to exit his vehicle, he needed to articulate the need for a continued welfare check or a well-founded suspicion that Petitioner was involved in criminal activity. *Id.; Popple,* 626 at 188 ("[w]hether characterized as a request or an order, we conclude that Deputy Wilmoth's direction for Popple to exit his vehicle constituted a show of authority which restrained Popple's

[6] The record shows that the complainant opined that Petitioner was intoxicated, but had not observed Petitioner in Blur Nightclub, did not see him consume alcohol, and, outside of Petitioner sleeping in his vehicle in the early morning hours on a Sunday, did not describe indicia of impairment or illegal activity.

freedom of movement because a reasonable person under the circumstances would believe that he should comply"); *Santiago v. State,* 133 So.3d 1159, 1164-65 (Fla. 4th DCA 2014)(finding that "[a]bsent a reasonable suspicion that a crime has occurred, is occurring, or is about to occur, an officer may not convert a consensual encounter into an investigatory stop by ordering a citizen out of a parked car").

Looking objectively at the facts of this case, Deputy Bews failed to articulate a need for a continued welfare check nor a well-founded suspicion that Petitioner was involved in criminal activity. In response to direct questioning, Deputy Bews repeatedly testified that he did not believe Petitioner was impaired and, after being asked multiple times in a variety of ways, Deputy Bews could not articulate that Petitioner was in need of immediate aid; Petitioner was awake, breathing, and not bleeding, coughing, or vomiting. In conducting a fact-intensive analysis and reviewing the case law, the Court concludes that the continued welfare check, and subsequent DUI investigation, were unlawful.

The Second District Court of Appeal provides guidance and legal precedent on the issues presented. In *Daniels, supra,* the defendant, Elliott Daniels, appealed the trial court's denial of his motion to suppress and subsequent conviction for DUI. At approximately 8:30 p.m., a citizen informant ("CI") contacted 911 to report finding Daniels asleep in his truck with his lights on. A video, admitted by stipulation, showed that the truck was parked within the entrance/exit of a business parking lot and facing outwards as if Daniels was preparing to pull onto an adjacent road. EMS arrived and, after medically clearing Daniels, left the scene. The testifying deputy stated that he first spoke with the CI, who stated he found Daniels slumped over in his seat, with his seatbelt on, and believed that Daniels either had a medical incident or was drunk. The CI stated that once

he saw Daniels' fingers move, he believed Daniels was likely intoxicated. *Daniels,* 346 So.3d at 707.

In affirming the trial court, the Second District found that the odd manner the truck was parked, in the entrance/exit and facing outwards with the headlights on, was atypical and that, even though Daniels had been medically cleared, the Court found that the responding deputies were justified in detaining Daniels to resolve any ambiguities. *Id.* at 710-11. In his concurring opinion, Chief Judge Morris writes to address deficiencies in the State's evidence: the State failed to call the CI, the 911 operator, the first responding officers who spoke to the CI, and the EMS technicians. *Id.* at 711. However, in the absence of such evidence, Chief Judge Morris agreed with the majority due to the location and manner in which the truck was parked. *Id.*

Similarly, the Respondent failed to call the complainant or the 911 operator for Maracich's administrative review hearing, which is problematic since the record shows that the only information available to Deputy Bews was that the complainant observed a male subject asleep in his vehicle, who complainant believed to be intoxicated. The record is silent as to whether Deputy Bews knew the identity of the complainant, or even the complainant's impressions as relayed to 911, at the time he arrived at the nightclub parking lot and the complainant was not present.[7]

Further, unlike the driver in *Daniels*, Petitioner was not parked in an unusual manner and Deputy Bews did not articulate any ambiguities in what he observed. Indeed, the *Daniels'* Court found that if the driver had been parked in a regular parking spot, asleep, with the headlights on, it would have reversed:

> Had Daniels been discovered by the CI parked in a regular parking spot, asleep, with the headlights on, we would have been constrained to reverse absent additional factors that

[7] The Court notes, unlike criminal proceedings, the DMV or arresting agency generally does not have counsel present at administrative license revocation review hearings nor subpoena witnesses for these review hearings. As such, the Hearing Officer is constrained to make their decision based solely on the documents submitted by the arresting agency and the testimony and evidence proffered by the driver.

> could lead to reasonable suspicion. This is so even if the engine had been running. Cf. Danielewicz v. State, 730 So. 2d 363, 364 (Fla. 2d DCA 1999) (concluding that where the appellant was parked in a legal parking spot, with the headlights on and his engine running but where the law enforcement officer observed no traffic infraction, had no reason to believe there was any mechanical problem with the vehicle, and did not testify that he was concerned for the appellant's personal health, the investigative stop was not based on reasonable suspicion); Delorenzo v. State, 921 So. 2d 873, 875 (Fla. 4th DCA 2006) (concluding that where the law enforcement officer observed the appellant sleeping in his legally parked vehicle in a public parking lot with the engine running but where the officer did not testify to any observation suggesting that the appellant was either ill or under the influence of alcohol or a controlled substance, there was no reasonable suspicion to support an investigative stop). This court has similarly concluded that being stopped near or partially on the road does not, by itself, give rise to reasonable suspicion of criminal conduct. See Bent v. State, 310 So. 3d 470, 471-72 (Fla. 2d DCA 2020). *Daniels,* 346 So.3d at 709.

In *Dermio, supra,* the Second District Court of Appeal affirmed the denial of the defendant driver's motion to suppress finding that the officer's initial encounter was consensual and the officer's request for the driver to roll down his window did not transform the consensual encounter into an investigatory stop. The facts of *Dermio* are again analogous to the facts of this case: At 3:30 in the morning, a deputy found the driver legally parked at a local bar with the car running and the lights on. The deputy pulled in behind the driver and activated her emergency lights. The deputy approached the driver who appeared to be sleeping with a cell phone lodged between his shoulder and cheek. The driver did not awake when the deputy shined her flashlight into the window, but did awake when the deputy tapped the flashlight on the window. The deputy immediately noted that the driver was "really out of it" and incoherent. After the driver did not respond to the deputy's request to roll down his window, the deputy opened the door upon which she immediately smelled marijuana and developed reasonable suspicion of criminal activity. *Dermio,* 112 So.3d at 553.

In affirming the trial court, the Second District found that the deputy's consensual encounter did not end when she asked the driver to roll down his window, and then opened the

door, because the deputy's concerns for the driver's safety had not been alleviated due to him being incoherent and "out of it." *Id at 556.* Conversely, Deputy Bews was unable to articulate concerns for Petitioner's safety to support his directive for Petition to get out of his vehicle.

In *Danielewicz, supra,* the Second District Court of Appeal reversed the trial court's denial of the defendant driver's motion to suppress. The facts of *Danielewicz* are that the officer pulled into the parking lot of a restaurant/bar at 1:30 a.m. and found the driver legally parked near the rear of the business with the headlights on and engine running. As he approached the vehicle, the officer noticed what appeared to be condensation from the air conditioning. The driver appeared to be asleep but awoke when the officer knocked on the window. The officer asked the driver five times to get out of her car before she unlocked her door and got out. *See Danielewicz,* 730 So.2d at 364.

In reversing the trial court, the Second District found that the officer did not articulate a well-founded suspicion of criminal activity and did not testify that he was concerned for the driver's personal health. *Id.* As the driver's actions were susceptible of being interpreted as innocent conduct, the officer needed additional factors before he could validly stop her. *Id.*

The Court finds that, while *Dermio* and *Danielewicz* did not involve a citizen informant, the facts are very similar this case and, in addition to the case law discussed above, compels this Court to grant certiorari relief. While the Hearing Officer cited to *Danielewicz* in the DMV Order, her finding that there was a documented suspicion of Petitioner's impairment at the time the investigatory stop commenced is not supported by competent substantial evidence in the record and is a departure from the essential requirements of law.

The undisputed testimony of Deputy Bews was that he did not believe Petitioner was impaired and Deputy Bews did not articulate any observations to support a continued welfare

check or a founded suspicion of criminal activity, such as being illegally parked,[8] until *after* he asked Petitioner to exit the vehicle. The finding that Deputy Bews had a suspicion of impairment based on the complainant's initial call is refuted by the record. Hence, the Court concludes that certiorari relief must be granted and the DMV Order must be quashed. *Wiggins v. Dept. of Highway Safety and Motor Vehicles,* 209 So.3d 1165, 1175 (Fla. 2017)(finding that circuit court applied correct law in quashing hearing officer's findings that were refuted by the record).

WHEREFORE, it is hereby, **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby GRANTED and the DMV Order is quashed. This cause is remanded for action consistent with this order and opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this ____ day of January, 2025.

Original Order entered on January 30, 2025, by Circuit Judges Linda Babb, Kimberly Bird, and Joshua Riba.

[8] *See, e.g., State v. Bodrato*, 346 So.3d 65, 66-67 (Fla. 4th DCA 2022)(explaining that officer was justified in asking defendant to exit his vehicle because he was observed committing a traffic infraction); *State v. DeShong*, 603 So.2d 1349 (Fla. 2d DCA 1992)(finding that officer had founded suspicion to conduct traffic stop due to driver's erratic driving); *Schneider v. State,* 31 Fla. L. Weekly Supp. 517a (Fla. 6th Cir. Ct. App. 2023)(denying certiorari relief when officer conducting welfare check observed signs of impairment and open container before asking driver to exit vehicle).

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