

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

LORI BEAL,

Petitioner,

APPELLATE DIVISION (CIVIL): "AY"
CASE NO. 502011CA003973XXXXMB

v.

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

Respondent.

Opinion filed: **DEC 21 2012**

Petition for Writ of Certiorari from Department of Highway Safety & Motor Vehicles Bureau of Administrative Reviews, Hearing Officer Donna George.

For Petitioner: Richard Springer, Esq.
Catherine Mazzullo, Esq.
3003 S. Congress Ave., Ste. 1A
Palm Springs, FL 33461

For Respondent: Damaris Reynolds, Esq.
DHSMV-Legal Office
P.O. Box 540609
Lake Worth, FL 33454

PER CURIAM.

Petitioner seeks review of the order affirming the suspension of his driver's license and argues that the Hearing Officer erred because the totality of the circumstances did not support a finding that the arrest was lawful. Whether or not a breath test is incident to a lawful arrest is within the Hearing Officer's scope of review. *Dep't of Hwy. Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011); *Ferreir v. Dep't of Highway Safety & Motor Vehicles*, 91 So. 3d 920 (Fla. 2d DCA 2012).

Although the Hearing Officer did not make a legal ruling that the stop was lawful, she made factual finding regarding Petitioner's stop and arrest. She found the following by a preponderance of the evidence:

Deputy Cordero advised Deputy Rieger, he stopped Petitioner after observing the vehicle she was driving, drifting into the left lane and into the right lane of travel, failing to stay in the center lane. The Petitioner was also coming to an abrupt stop behind other vehicles. Deputy Cordero attempted to conduct a traffic stop for some time before the Petitioner came to a stop.

These factual findings are supported by competent substantial evidence in the record and clearly demonstrate that the Petitioner's arrest was lawful. Therefore, there was no error in affirming the suspension. Accordingly, the Petition for Writ of Certiorari is **DENIED**.

KELLEY, ROSENBERG, and MCCARTHY, JJ., concur.