

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

**ANTHONY J. DEMERAC,**

**APPELLATE DIVISION (CIVIL)  
Case No.: 502008CA034494XXXXMB**

**Petitioner,**

**DIVISION 'AY'**

**v.**

**DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,**

**Respondent.**

Opinion filed: January 20, 2010

**Appeal from the County Court in and for Palm Beach County,**

For Appellant: Donna Levine, Esq., 324 Datura St., Suite 145, West Palm Beach, Florida  
33401

For Appellee: Heather Rose Cramer, Assistant General Counsel, DHSMV Legal Office,  
PO Box 540609, Lake Worth, Florida 33454

**PETITION GRANTED.**

Anthony Demerac petitioned this Court for a writ of certiorari seeking review of the final order entered by the Department of Highway Safety and Motor Vehicles ("Department") affirming the suspension of his driver's license.

Mr. Demerac was placed under arrest for driving under the influence of alcohol and agreed to submit to a breath-alcohol test. Mr. Demerac's driving privilege was suspended based on these results. He then requested a formal administrative review of the suspension and requested that subpoenas be issued for the maintenance officers of the breathalyzer machine utilized in his case.

The request for these subpoenas was denied. As one of many arguments made, Mr. Demerac argues that the failure of the Department to issue these subpoenas constituted a denial of due process.

In accordance with our opinion in *Johnson v. Department of Highway Safety and Motor Vehicles*, 16 Fla. L. Weekly Supp. 400a (March 19, 2009), as well as *Yankey v. Department of Highway Safety and Motor Vehicles*, 6 So. 3d 633 (Fla. 2d DCA 2009) and *Lee v. Department of Highway Safety and Motor Vehicles*, 4 So. 3d 754 (Fla. 1st DCA 2009), we agree with Mr. Demerac. "When a law enforcement officer administratively suspends a driver's license and submits breath test results pursuant to section 322.2615(2), Fla. Stat., that include an agency inspection report, and the agency inspection report identifies a person, the hearing officer is authorized to issue a subpoena to any person 'identified' therein." See *Johnson*, 16 Fla. L. Weekly Supp. 400a (March 19, 2009).

Based upon the foregoing, it is hereby ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is GRANTED as to the subpoena argument only and DENIED as to all others. The hearing officer's final order is QUASHED and the case is REMANDED for further proceedings consistent with this opinion.

ROSENBERG, GARRISON, FRENCH, JJ., concur.