

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

JONATHAN JACKSON,

Petitioner,

APPELLATE DIVISION (CIVIL): "AY"  
CASE NO. 502009CA025928XXXXMB

v.

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

Respondent.

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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.  
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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, the final order contains detailed factual findings regarding the traffic stop and Officer McVay and Officer Sentmanat's observations. Officer Sentmanat conducted a traffic stop after he "observed a vehicle speeding 80-MPH in a 45-MPH posted zone and swerving almost striking the median." Upon making contact with the Petitioner,

he detected a strong odor of an alcohol beverage coming from Petitioner's mouth. Officer McVay was called to assist with the DUI investigation, and briefed by Officer Sentmanat. Officer McVay detected an odor of an alcoholic beverage coming from Mr. Jackson's breath. Mr. Jackson's eyes were bloodshot, his speech was slurred, and while exiting the vehicle he almost fell. Mr. Jackson performed poorly the field sobriety exercises.

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.