

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

CHRISTOPHER D. KIRBY,

Petitioner,

v.

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

Respondent.

APPELLATE DIVISION (CIVIL)
CASE NO.: 502009CA007794XXXXMB

Appealed from the Department of
Highway Safety and Motor Vehicles

Opinion filed: **MAR 23 2010**

Appeal from the Department of Highway Safety and Motor Vehicles.

For Petitioner: Donna P. Levine, Esq.
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For Respondent: Heather R. Cramer, Esq.
Assistant General Counsel
Department of Highway Safety and Motor Vehicles
P.O. Box 540609, Lake Worth, FL 33454

PER CURIAM.

The Petition for Writ of Certiorari is **GRANTED** on the grounds that the hearing officer failed to adhere to the essential requirements of law and due process in refusing to subpoena the breath test maintenance officer and the state inspector of the breathalyzer. *Yankey v. DHSMV*, 6 So. 3d 633, 638 (Fla. 2d DCA 2009); and *Lee v. DHSMV*, 4 So. 3d 754, 758 (Fla. 1st DCA 2009). The Court **REMANDS** the case to the hearing officer for further proceedings in accordance with this decision.

McCARTHY, COX, and FINE, JJ., concur.

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