

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

SHAWN R. MAESEL,

Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

APPELLATE DIVISION (CIVIL)
CASE NO.: 502011CA002344XXXMB

Appealed from the Department of
Highway Safety and Motor Vehicles

Opinion filed: **SEP 26 2011**

Appeal from the Department of Highway Safety and Motor Vehicles.

✓ For Petitioner: Richard Springer, Esq.
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✓ For Respondent: Heather R. Cramer, Esq.
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PER CURIAM.

Shawn R. Maesel ("Maesel") seeks review of the Hearing Officer's order sustaining the suspension of Maesel's license. We find that, because the Hearing Officer failed to consider whether Maesel's refusal to submit to a breath test was incident to a lawful arrest as required by the Florida Supreme Court's recent decision in *Dep't Highway Safety and Motor Vehicles v. Hernandez*, 36 Fla. L. Weekly S243a (Fla. 2011), the petition must be granted.

Maesel was pulled over by an officer on patrol who observed Maesel swerving out of his lane on at least four occasions. After failing a series of roadside sobriety tests, Maesel was arrested for Driving Under the Influence ("DUI") and transported to the Palm Beach County

Sheriff Office's Blood Alcohol Testing ("BAT") Center where he refused to submit to a request for a breath test. Implied Consent Warnings were then read; however, Maesel maintained his refusal. As a result, the Department of Highway Safety and Motor Vehicles ("DHSMV") suspended Maesel's driver's license. At the formal review hearing, the Hearing Officer clearly limited the scope of the hearing to the following issues:

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.
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.

§ 322.2615, Fla. Stat. (2010). Recently, the Florida Supreme Court held that DHSMV cannot suspend a driver's license for refusal to submit to a breath test if the refusal is not incident to a lawful arrest and therefore, the issue of whether the refusal was incident to a lawful arrest is within the allowable scope of review of the DHSMV hearing officer. *Hernandez*, 36 Fla. L. Weekly S243a. The legality of the arrest is central to any determination by a hearing officer as to whether there is "sufficient cause" to "sustain" a driver's license suspension based upon the refusal to submit to a breath test. *Id.*

Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The order of suspension is **QUASHED** and the matter is **REMANDED** to the Hearing Officer to make a finding of whether the refusal to submit to a breath test was incident to a lawful arrest.

CROW, SASSER, BARKDULL, JJ., concur.