

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

APPELLATE DIVISION (CIVIL) 'AY'
Case No.: 502012CA004621XXXXMB

JAMES GREGORY PASA,

Petitioner,

v.

FLORIDA DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

Opinion filed: **APR 16 2013**

Petition for Certiorari to the Florida Department of Highway Safety and Motor Vehicles

For Petitioner: Ira D. Karmelin, Esq.
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For Respondent: Peter N. Stoumbelis, Esq.
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PER CURIAM.

James Gregory Pasa ("Pasa") seeks review of an order of the Department of Highway Safety and Motor Vehicles ("DHSMV") affirming the suspension of his driver's license. We find that the DHSMV hearing officer erred in admitting the results of Pasa's breath-alcohol test into evidence without shifting the burden to DHSMV to prove that the breath test operator and agency inspector had valid permits.¹ See *Boivin v. DHSMV*, 19 Fla. L. Weekly Supp. 1004a (Fla. 15th Cir. Ct. Sept. 5, 2012); *Rivera v. DHSMV*, 19 Fla. L. Weekly Supp. 1048a (Fla. 15th Cir. Ct. Sept. 5, 2012). If the breath test operator and agency inspector did not have valid permits when

¹ We decline to reach the merits of the other grounds raised in Pasa's petition.

they operated and inspected the Intoxilyzer machine used on Pasa, the results of Pasa's breath-alcohol test are not admissible in the license suspension proceeding. *See Yankey v. DHSMV*, 6 So. 3d 633, 637 (Fla. 2d DCA 2009) (citing § 316.1932, Fla. Stat. (2012)); Fla. Admin. Code R. 11D-8.006(1). Furthermore, without the results of the breath-alcohol test, the hearing officer did not have substantial, competent evidence to support the finding that Pasa drove with a blood- or breath-alcohol level of 0.08 or higher. *See* § 322.2615(7), Fla. Stat. (2012).

Accordingly, the hearing officer's order of February 14, 2012 is **QUASHED** and this matter is **REMANDED** to the hearing officer. DHSMV shall have the opportunity to submit evidence that the agency inspector, Gregory Croucher, and the breath-test operator, Sue Owen, possessed valid Florida Department of Law Enforcement permits when they inspected and operated the Intoxilyzer 8000 used to test Pasa's breath-alcohol content. If DHSMV fails to prove that the breath-alcohol test was performed in substantial compliance with FDLE regulations, the hearing officer shall reverse Pasa's license suspension and his driving privilege shall be reinstated, if he is otherwise eligible.²

(ROSENBERG, FRENCH, and McCARTHY, JJ., concurring.)



² The Court notes that proof that the Intoxilyzer inspector and operator have completed the renewal courses required to maintain valid Florida Department of Law Enforcement permits would be sufficient to meet DHSMV's burden.