

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

GIANCARLO RABAROZZI,

Petitioner,

APPELLATE DIVISION (CIVIL): "AY"  
CASE NO. 502010CA022733XXXXMB

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 Linda Bell.

For Petitioner: Steven Kenneth Bell, Esq.  
2219 Belvedere Rd.  
West Palm Beach, FL 33406

For Respondent: Heather Rose Cramer, Esq.  
DHSMV-Legal Office  
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 by not considering the lawfulness of the stop or, alternatively, erred in finding that the stop was valid. 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).

The Hearing Officer's "Findings of Fact" demonstrate that the stop of the Petitioner's vehicle was not lawful, therefore his breath test was not incident to a lawful arrest. The fact that

Deputy "heard a loud revving engine and saw the [Petitioner's] vehicle rolling toward a police vehicle" is not competent substantial evidence to support a finding of either probable cause to believe that the Petitioner had committed a crime or reasonable suspicion of criminal activity. Accordingly, the Petition for Writ of Certiorari is hereby **GRANTED** and the order of suspension is **QUASHED**.

KELLEY, ROSENBERG, and MCCARTHY, JJ., concur.