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

RONNIE G. SCOTT,

APPELLATE DIVISION (CIVIL): "AY" CASE NO. 502011CA004711XXXXMB

Petitioner,

V.

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

Respondent.

Opinion filed: DEC 2 1 2012

Petition for Writ of Certiorari from Department of Highway Safety & Motor Vehicles Bureau of Administrative Reviews, Hearing Officer Odileinis Gibson.

For Petitioner:

Donna Levine, Esq.

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For Respondent:

Damaris Reynolds, Esq.

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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); Ferrei 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 stop. Officer Heisser "observed the Petitioner riding his designated lane lines, drifting from side to side and traveling over the line reflectors" and "observed the Petitioner swerve on at least seven occasions" with "other traffic on the road." These findings are all supported by competent substantial evidence in the record and clearly demonstrate that the stop was lawful. Therefore, Petitioner's breath test was incident to a lawful arrest and there was no error in affirming the suspension. The Court finds no merit to the Petitioner's other arguments. Accordingly, the Petition for Writ of Certiorari is **DENIED**. KELLEY, ROSENBERG, and MCCARTHY, JJ., concur.

DIEVERS () BASSETS () VIII ()