

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

RICHARD SEXTON,

APPELLATE DIVISION (CIVIL)
Case No.: 502008CA028357XXXXMB

Petitioner,

DIVISION 'AY'

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

_____ /

Opinion filed: June 4, 2009

Appeal from the County Court in and for Palm Beach County,

For Appellant: Richard Springer, Esq., 3003 South Congress Avenue, Suite 1A
Palm Springs, Florida 33461

For Appellee: Heather Rose Cramer, Assistant General Counsel, DHSMV Legal Office,
PO Box 540609, Lake Worth, Florida 33454

PETITION GRANTED.

Richard Sexton petitioned this Court for a writ of certiorari seeking review of the final order entered by the Department of Highway Safety and Motor Vehicles ("Department") affirming the suspension of his driver's license.

Mr. Sexton was placed under arrest for driving under the influence of alcohol and agreed to submit to a breath-alcohol test. Mr. Sexton's driving privilege was suspended based on these results. Mr. Sexton requested a formal administrative review of the suspension. During that review, Mr. Sexton objected to the admission of all documents being entered into evidence because the Department refused to issue a subpoena for the Breathalyzer maintenance person, who

was an individual named in two Agency Inspection Reports. The Department refused to issue this subpoena. The objection was noted for the record and the documents to which Sexton objected were admitted.

In accordance with our recent opinion in *Johnson v. Department of Highway Safety and Motor Vehicles*, 16 Fla. L. Weekly Supp. 400a (March 19, 2009), as well as *Yankey v. Department of Highway Safety and Motor Vehicles*, No. 2D08-2045 (Fla. 2d DCA February 20, 2009) and *Lee v. Department of Highway Safety and Motor Vehicles*, No. 1D08-2887 (Fla. 1st DCA March 10, 2009), we grant the Petition for Writ of Certiorari. “When a law enforcement officer administratively suspends a driver’s license and submits breath test results pursuant to section 322.2615(2), Fla. Stat., that include an agency inspection report, and the agency inspection report identifies a person, the hearing officer is authorized to issue a subpoena to any person ‘identified’ therein.” See *Johnson*, 16 Fla. L. Weekly Supp. 400a (March 19, 2009).

Based upon the foregoing, it is hereby ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is GRANTED, the hearing officer's final order is QUASHED and the case is REMANDED for further proceedings consistent with this opinion.

KELLEY, FRENCH, LEWIS, JJ., concur.