

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

SUZANNE M. SMITH,

Petitioner,

v.

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,

Respondent.

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APPELLATE DIVISION (CIVIL)  
CASE NO.: 502010CA030268XXXXMB

Appealed from the Department of  
Highway Safety and Motor Vehicles

Opinion filed: **MAY 09 2012**

Appeal from the Department of Highway Safety and Motor Vehicles.

✓ For Petitioner: John P. Marinelli, Esq.  
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/ For Respondent: Heather R. Cramer, Esq.  
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PER CURIAM.

Suzanne M. Smith ("Smith") seeks review of the Hearing Officer's order sustaining the suspension of her license. We find that, because the Hearing Officer failed to make an express finding as to whether Smith'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*, 74 So. 3d 1070 (Fla. 2011), the matter must be remanded to the Hearing Officer for a determination of whether the refusal to submit to a breath test was incident to a lawful arrest.

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 an express finding of whether the refusal to submit to a breath test was incident to a lawful arrest.

ROSENBERG, BRUNSON, KELLEY, JJ., concur.