

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA**

JAMES BAGWELL,

Petitioner,

v.

CASE NO.: 2008-CA-572-O

Writ No.: 08-04

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY & MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**

Respondent.

ORDER GRANTING IN PART RESPONDENT'S MOTION FOR REHEARING

THIS MATTER came before the Court for consideration of the Department of Highway Safety & Motor Vehicles' Motion for Rehearing, filed on May 10, 2010. The Petitioner did not file a response. The Court finds as follows:

On April 30, 2010, the Court entered an order granting Petitioner's petition for writ of certiorari in light of the Fifth District's decision in *Dep't of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d 304 (Fla. 5th DCA 2008). The Department seeks rehearing arguing that the Court overlooked the recent case of *Dep't of Highway Safety & Motor Vehicles v. Icaza*, 35 Fla. L. Weekly D850a (Fla. 5th DCA April 16, 2010) (court held that the circuit court's refusal to allow remand to hearing officer to make determination regarding lawfulness of arrest deprived the Department of procedural due process). The Department argues that the

instant case and *Icaza* have identical fact patterns, requiring the Court to remand the present case for further proceedings.

Upon reviewing the cited case law, the Court finds that the Court's failure to allow remand to the hearing officer to make a determination regarding the lawfulness of the stop deprived the Department of procedural due process. In the present case, the hearing officer did not have the benefit of the *Pelham* decision at the time of the hearing. Thus, based on the reasoning in *Icaza*, the proper remedy is to remand this case and allow the hearing officer the opportunity to consider the lawfulness of the stop as required by *Pelham*.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that "Respondent's Motion for Rehearing" is **GRANTED IN PART**. This matter is **REMANDED** for further proceedings consistent with the Final Order Granting Petition for Writ of Certiorari, entered April 30, 2010, and this Order.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this
__16th__ day of __June_____, 2010.

_____/S/_____
JULIE H. O'KANE
Circuit Court Judge

_____/S/_____
ROGER J. MCDONALD
Circuit Court Judge

_____/S/_____
GAIL A. ADAMS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **William R. Ponall, Esq.**, Kirkconnell, Lindsey, Snure, & Yates, P.A., P.O. Box 272, Winter Park, FL 32790; and to **Heather Rose Cramer, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, DHSMV-Legal Office, P.O. Box 540609, Lake Worth, FL 33454-0609, on this __16th__ day of ____June_____, 2010.

_/S/_____
Judicial Assistant