

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

**BRADLEY CARPENTER,**

Petitioner,

v.

**CASE NO.: 2008-CA-05827-O**

**Writ No.: 08-22**

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

Respondent.

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**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 7, 2010. The Petitioner filed his, "Response to Respondent's Motion for Rehearing," on May 14, 2010. 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.

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

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

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/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 **Stuart I. Hyman, Esq.**, Stuart I. Hyman, P.A., 1520 East Amelia St., Orlando, FL 32803; and to **Damaris E. Reynolds, 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