

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

CASE NO.: 2010-CA-21015-O
WRIT NO.: 10-74

CHRISTOPHER ALLEN CALL,

Petitioner,

vs.

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

Respondent.

_____/

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Donna Petty, Hearing Officer.

David H. Novack, Esquire,
for Petitioner

Stephen D. Hurm, General Counsel, and
Kimberly A. Gibbs, Assistant General Counsel,
Florida Department of Highway Safety and Motor Vehicles,
for Respondent.

Before POWELL, ROCHE, T. SMITH, J.J.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner Call seeks certiorari review of a decision of a hearing officer sustaining the suspension of his driver's license after a formal review hearing. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and grant the petition.

After an accident while operating his motorcycle, petitioner Call was arrested for DUI, his driver's license suspended, and a formal review hearing was held. No crash report was placed in the record although one was written. Petitioner's motion to invalidate the suspension for that reason was denied, the adverse decision herein was issued, and this petition followed.

It is with some reluctance¹ we conclude that we must follow our holdings in *Romaguera v. DHSMV*, No. 2007-CA-9009-O (Fla. 9th Cir. Ct. Jan. 29, 2009) and *Blinkov v. DHSMV*, No. 2009-CA-75, (Fla. 9th Cir. Ct. March 22, 2010) (petition for rehearing granted in part). In both of those cases we held that the version of section 322.2615(2), Florida Statutes (which was in effect then and is in effect in this case²), provided in part that “[t]he law enforcement officer *shall* forward to the Department.....a copy of the crash report, if any” was mandatory; and that the failure to place a copy of the crash report in the record at the review hearing was a departure from essential requirements of law. *See also Glaser v. DHSMV*, 16 Fla. L. Weekly Supp.1a (Fla. 4th Cir. Ct. Sept. 4, 2008) and *Carter v. DHSMV*, 15 Fla. L. Weekly Supp. 1b (Fla. 4th Cir. Ct. Oct. 10, 2007), which are in accord. *Contra Roy v. DHSMV*, 15 Fla. L. Weekly Supp. 955a (Fla. 4th Cir. Ct. May 13, 2008). The case of *DHSMV v. Snelson*, 817 So.2d 1045 (Fla. 2d DCA 2002), cited by the Department, is distinguishable on its facts.

Therefore, the Petition for Writ of Certiorari is **GRANTED** and the decision of the hearing officer in this case is hereby **QUASHED**.

DONE AND ORDERED at Orlando, Florida this 11th day of July , 2011.

 /S/
ROM W. POWELL
Senior Judge

 /S/
RENEE A. ROCHE
Circuit Judge

 /S/
THOMAS B. SMITH
Circuit Judge

¹ We are not unmindful of what the *Snelson* Court observed: “...If the driver sincerely thought that the video tape demonstrated that his field sobriety test results were not as testified to by the investigating officer, he had the opportunity to subpoena the video tape and place it into the record on his own account” *Snelson*, 817 So.2d at 1048. In the case at bar, the crash report was a public record a copy of which a motorist’s attorney can obtain from the investigating agency upon payment of a nominal charge.

² Fourteen days after the hearing officer’s decision in this case was issued, a further amendment to § 322.2615(2), Fla. Stat. became effective. It says that the crash report “may” instead of “shall” be placed in the record. Had this amendment been in effect on the date of the accident, we would have followed *Snelson* and reached a different result.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **David H. Novack, Esq.**, 217 E. Ivanhoe Blvd., N., Orlando, Florida 32804; and **Kimberly A. Gibbs, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857, by mail, this 12th day of July , 2011.

_____/S/_____
Judicial Assistant