

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

**CASE NO.: 2008-CA-15277  
WRIT NO.: 08-45**

**RONNIE PERCIBALLI,**  
Petitioner,

v.

**STATE OF FLORIDA, DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR  
VEHICLES,**  
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 July 6, 2010. The Petitioner filed his, "Response to Respondent's Motion for Rehearing," on July 9, 2010. The Court finds as follows:

On June 21, 2010, the Court entered an order granting Petitioner's petition for writ of certiorari in light of the Second District's decision in *Yankey v. Department of Highway Safety and Motor Vehicles*, 6 So. 3d 633 (Fla. 2d DCA 2009). 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 in accordance with *Icaza*, remand is the appropriate remedy.

Upon reviewing the cited case law, the Court finds that the Court's failure to allow remand to the hearing officer to issue the requested subpoenas deprived the Department of procedural due process. In the present case, the hearing officer did not have the benefit of the *Yankey* 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 issue the requested subpoenas as required by *Yankey*.

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 June 21, 2010, and this Order.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this  
\_\_24th\_\_ day of \_\_August\_\_\_\_\_, 2010.

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

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/S/  
**GAIL A. ADAMS**  
Circuit Judge

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

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished via U.S. mail to **Stuart I. Hyman, Esquire**, 1520 East Amelia Street, Orlando, Florida 32803 and **Heather Rose Cramer, Assistant General Counsel**, DHSMV-Legal Office, Post Office Box 540609, Lake Worth, FL 33454-0609, on the \_\_24th\_\_ day of \_\_August\_\_\_\_\_, 2010.

\_\_\_\_\_  
Judicial Assistant