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

CONSTANTINE BLINKOV,

Petitioner,

CASE NO.: 2009-CA-75

WRIT NO.: 09-01

VS.

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

Respondent.

-

ORDER GRANTING MOTION FOR REHEARING IN PART

THIS MATTER came before the Court for consideration of Petitioner's "Motion for Rehearing and Rehearing En Banc," filed on April 7, 2010, and Respondent's "Response to Motion for Rehearing," filed on April 19, 2010. This Court having reviewed the motion and response, the Final Order Denying Petition for Writ of Certiorari, entered on March 22, 2010, the court file, and being otherwise fully advised in the premises, finds as follows:

We reject, without decision, Petitioner's first argument regarding the lack of live testimony to explain the discrepancies in the dates and times shown on the evidence exhibits.

We agree with the hearing officer's finding that the discrepancies were due to a scrivener's error.

However, as to Petitioner's second argument, we note a direct conflict between this Court's Final Order Denying Petition for Writ of Certiorari, entered on April 5, 2010, and the decision of another Ninth Circuit appellate panel in the case of *Romaguera v. Department of Highway Safety and Motor Vehicles*, Case No. 2007-CA-9009-O, dated January 29, 2010. In *Romaguera*, this circuit, in its appellate capacity, held that the department's failure to include the statutorily required crash report in the hearing record departed from the essential requirements of

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law and denied petitioner due process of law. Consequently, we approve the holding in *Romaguera* and apply it to the instant case.

Petition for Writ of Certiorari, entered March 22, 2010, is **VACATED** and this decision is substituted in its place; Petitioner's Motion for Rehearing is **GRANTED IN PART**; the Petition for Writ of Certiorari is **GRANTED**; Petitioner's requests for oral argument and rehearing en banc are **DENIED**; the hearing officer's Final Order of License Suspension is **QUASHED**; and this matter is **REMANDED** for further proceedings consistent with this opinion. On remand, it shall be the Department's burden to include the crash report in the hearing record. If there is not crash report, the hearing officer is directed to make a finding to that effect.

crash report, the hearing officer is directed to ma	ke a finding to that effect.
DONE AND ORDERED at Orlando, Flo	orida this23 dayJune
2010.	
	/S/
	ROM W. POWELL
	Senior Judge
/S/	/S/
MAURA T. SMITH	DONALD E. GRINCEWICZ
Circuit Judge	Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true a	and correct copy of the foregoing order was furnished
via U.S. mail on this 24 day of	June _, 2010, to the following: William R. Ponall,
Esquire, Post Office Box 2728, Winter F	Park, Florida 32790-2728 and Kimberly A. Gibbs,
DHSMV, 133 South Semoran Blvd., Suite A, Orlando, Florida 32807.	
	<u>/S/</u>
	Judicial Assistant