IN THE
SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Petitioner, v. GEORGE F. McLAUGHLIN, Respondent.	Case No. SC08-2394 District Court Case No. 2D07-4891

AMICUS BRIEF OF THE
FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
IN SUPPORT OF THE RESPONDENT

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C. PRELIMINARY STATEMENT.

This brief is being filed by the Florida Association of Criminal Defense Lawyers ("FACDL") in support of the Respondent, George F. McLaughlin. FACDL is a statewide organization representing over 1,500 members, all of whom are criminal defense practitioners. FACDL has an interest in the issue before the Court as there is a conflict among the district courts concerning whether the lawfulness of a driver's stop/arrest is relevant in a postsuspension hearing authorized by section 322.2615, Florida Statutes. *Compare Hernandez v. Dep't of Highway Safety & Motor Vehicles*, 995 So. 2d 1077 (Fla. 1st DCA 2008) (holding that the lawfulness of a driver's stop/arrest is relevant in a postsuspension hearing) *and Dep't of Highway Safety & Motor Vehicles v. Pelham*, 979 So. 2d 304 (Fla. 5th DCA 2008) (same) *with McLaughlin v. Dep't of Highway Safety & Motor Vehicles*, 2 So. 3d 988 (Fla 2d DCA 2008) (holding that the lawfulness of a driver's stop/arrest is not relevant in a postsuspension hearing). FACDL believes that the Court's resolution of this conflict will have a significant impact on administrative license suspension proceedings throughout Florida.

D. SUMMARY OF ARGUMENT.

FACDL agrees with the Respondent that section 322.2615, Florida Statutes, and section 316.1932, Florida Statutes, must be read *in pari materia* (consistent with the holdings of the First District in *Hernandez* and the Fifth District in *Pelham*). Accordingly, as part of his or her review of an administrative driver's license suspension, a hearing officer must consider whether there has been compliance with section 316.1932 – including whether the driver was lawfully stopped/arrested prior to being asked to submit to a breath, blood, or urine test. FACDL submits the instant amicus brief in order to argue that the Fourth Amendment exclusionary rule applies in administrative driver's license suspension proceedings. The application of the exclusionary rule in administrative driver's license suspension proceedings is necessary to deter unlawful police conduct, to promote the public's trust in the judicial system, and to protect the core value of privacy embraced in Article I, section 23, of the Florida Constitution.

E. ARGUMENT AND CITATIONS OF AUTHORITY.

The Fourth Amendment exclusionary rule applies in administrative driver's license suspension proceedings.[1]

The Fourth Amendment to the United States Constitution, which applies to the states under the Due Process Clause of the Fourteenth Amendment,[2] recognizes the people's right to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures.[3] As a means of enforcing this right by removing the incentive of Government agents to disregard it, as well as to preserve

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[1] Whether the Fourth Amendment exclusionary rule applies in administrative driver's license suspension proceedings is a question of law and subject to *de novo* review.

[2] *See Mapp v Ohio*, 367 U.S. 643, 654-55 (1961).

[3] Florida courts are constitutionally required to interpret search and seizure issues in conformity with the Fourth Amendment of the United States Constitution, as construed by the United States Supreme Court. *See* Art. I, § 12, Fla. Const. The United States Supreme Court has not specifically addressed whether the Fourth Amendment exclusionary rule applies in administrative driver's license suspension proceedings. However, in *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, 380 U.S. 693 (1965), the United States Court determined that quasi-criminal proceedings require application of the exclusionary rule. In that case, two Pennsylvania Liquor Control Board officers followed a suspicious car into Philadelphia, and, upon stopping the vehicle, "found 31 cases of liquor not bearing Pennsylvania tax seals." *One 1958 Plymouth Sedan*, 380 U.S. at 694. The officers then seized the car and the liquor. *See id*. The Pennsylvania Supreme Court held that because the exclusionary rule "applies only to criminal prosecutions" it should not be applied in forfeiture proceedings, which are civil in nature. *Id*. at 693. The United States Supreme Court disagreed, finding that the exclusionary rule applies in forfeiture cases because of their quasi-criminal nature. *See id*. at 699.

the courts' integrity by keeping them from becoming parties to abuse, the United States Supreme Court developed the rule that evidence obtained through a search or seizure in violation of the Fourth Amendment is not admissible in federal or state criminal proceedings (i.e., the "exclusionary rule"). *See Weeks v. United States*, 232 U.S. 383, 398 (1914).

Police misconduct is the primary justification for the exclusionary rule. *See United States v. Calandra*, 414 U.S. 338, 348 (1974) (stating that the exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved"). The purpose of applying the exclusionary rule is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures. *See United States v. Janis*, 428 U.S. 433, 446 (1976) ("[T]he prime purpose of the rule, if not the sole one, is to deter future unlawful police conduct.").

In order to achieve the purpose of deterring police misconduct, FACDL submits that the exclusionary rule must be applied in administrative driver's license suspension proceedings. In support of this argument, FACDL relies upon the Vermont Supreme Court's opinion in *State v. Lussier*, 757 A.2d 1017 (Vt. 2000), where the Vermont Supreme Court held that the exclusionary rule applies in

administrative driver's license suspension proceedings.[4] In *Lussier*, the Vermont Supreme Court explained:

> [T]he public's interest in having strict police control over persons driving on our highways may not be satisfied at the expense of our constitutional right to be free from unbridled government interference in our lives, particularly considering that the State offers no empirical evidence suggesting that applying the exclusionary rule in civil suspension proceedings will have a deleterious effect on preventing the carnage caused by drunk drivers. If the State were permitted to obtain license suspensions based on evidence resulting from unconstitutional stops, the right of individuals to be free from unreasonable governmental intrusion into their private affairs . . . would be seriously compromised.
>
> [I]n our view, the exclusionary rule is just as necessary to deter unlawful police conduct in the context of civil suspension proceedings as it is in related criminal [Driving While Intoxicated (DWI)] proceedings. Generally, in both the criminal and civil components of DWI cases the State presents the same evidence from the same stop made by the same police officer. Further, in both the civil and criminal cases, license revocation is often the most long-lasting and significant sanction imposed on the defendants. The nationwide campaign against drunk driving has taught us, if nothing else, that the threat of criminal prosecution has little impact on keeping problem drinkers off of our highways. As a result, the focus of state legislatures and law enforcement agencies has been on removing intoxicated motorists from highways by suspending their licenses or otherwise preventing them from driving. Because the primary objective of [DWI] laws and law enforcement is to remove intoxicated drivers from our highways, the deterrent effect of the exclusionary rule would be weakened significantly if it were not applied in civil suspension proceedings.

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[4] In *Lussier*, the Vermont Supreme Court stated that its decision was "supported by a significant number of cases in other jurisdictions." *See Lussier*, 757 A.2d at 1023-24 (citing cases).

> *[I]f the exclusionary rule were not applied in civil suspension proceedings, law enforcement officers could make investigatory stops based on hunches or stereotypical beliefs, or for any or no reason whatsoever, knowing that even if any evidence obtained from the stop were to be suppressed in criminal proceedings, license suspensions could still follow*. Given the significance of obtaining license suspensions, allowing unlawfully obtained evidence to be admitted in civil suspension proceedings could encourage disregard for the constitutional limits of a legal stop.

Lussier, 757 A.2d at 1026 (emphasis added) (citations omitted). FACDL requests the Court to adopt the well-reasoned analysis articulated by the Vermont Supreme Court in *Lussier*.[5]

[5] The Vermont Supreme Court's opinion in *Lussier* was based, in part, on the Vermont state constitutional right of privacy:

> In sum, notwithstanding that the license suspension system is civil in nature and does not demand all of the procedural safeguards required in criminal proceedings, we conclude that it is appropriate to apply the exclusionary rule in civil license suspension proceedings to protect the core value of privacy embraced in Article 11 [of the Vermont Constitution], to promote the public's trust in the judicial system, and to assure that unlawful police conduct is not encouraged.

Lussier, 757 A.2d at 1026-27 (citation omitted). Likewise, the Florida Constitution contains an explicit right of privacy that offers Floridians greater privacy protection than that afforded by the United States Constitution. *See* Art. I, § 23, Fla. Const. *See also N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 619 (Fla. 2003) ("[Article I, section 23,] embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution.") (quoting *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989)).

Accordingly, for the reasons set forth above (and stated by the Vermont Supreme Court in *Lussier*), FACDL requests the Court to hold that the exclusionary rule applies in administrative license suspension proceedings. It follows that a hearing officer should be permitted to consider whether a license suspension was predicated on an unlawful or unconstitutional stop/arrest.

F. CONCLUSION.

For all of the foregoing reasons, FACDL respectfully requests that this Court approve the First District's decision in *Hernandez* and the Fifth District's decision in *Pelham*. FACDL further requests the Court to hold that the Fourth Amendment exclusionary rule applies in administrative license suspension proceedings.

G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished to:

Douglas D. Sunshine, Counsel for the Petitioner
Department of Highway Safety and Motor Vehicles
2900 Apalachee Parkway, Room A-432
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by U.S. mail delivery this 15th day of May, 2009;

Heather Rose Cramer, Counsel for the Petitioner
Department of Highway Safety and Motor Vehicles
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by U.S. mail delivery this 15th day of May, 2009;

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Respectfully submitted,

/s/ Michael Ufferman

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H. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Amicus Brief complies with the type-font limitation.

Respectfully submitted,

/s/ Michael Ufferman

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