

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EMILIO CABAN,
Appellant,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2016AP900020
L.T. NO.: 2015TR106583

v.

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

Opinion filed: *march 2, 2017*

Appeal from the County Court in and for Palm Beach County,
Traffic Hearing Officer Marshall Osofsky

✓ For Appellant: Emilio Caban, *pro se*
4438 Colony View Drive
Lake Worth, FL 33463
emiliocaban@gmail.com

✓ For Appellee: Natalia Costea, Esq.
Assistant General Counsel
Department of Highway Safety and Motor Vehicles
1011 N.W. 111th Avenue
Miami, FL 33172
nataliacostea@flhsmv.gov

PER CURIAM.

Appellant, Emilio Caban, appeals the lower court's Order Denying Motion to Vacate and/or for Arrest of Judgment; or in the Alternative, Motion for Rehearing ("Order"). Caban argues the lower court erred because its Order refused to consider Caban's argument regarding

the constitutionality of section 316.0741(3), Florida Statutes, on its merits. In its Order, the traffic hearing officer below determined he could not consider Caban's argument because it had not been raised prior to or at his final hearing. Caban's argument was made for the first time in a motion filed pursuant to Florida Rule of Traffic Court 6.540, which allows for motions in arrest of judgment.

The Court writes only to note that a traffic hearing officer has the ability to review constitutional challenges to statutes raised in motions for arrest of judgment. *See, e.g., State v. Nichols*, 892 So. 2d 1221, 1224 (Fla. 1st DCA 2005) (noting a motion for arrest of judgment is an appropriate vehicle to challenge the constitutionality of a statute a defendant is accused of violating). Because the Court finds no merit to the substantive arguments raised in Caban's motion, though, the lower court's Order is affirmed.

AFFIRMED.

GILLEN, ROWE, and HAFELE, JJ., concur.

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Beach, Florida;
Traffic Hearing Officer Marshall Osofsky

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

Appealed: February 24, 2016

DATE OF PANEL: FEBRUARY 21, 2017

PANEL JUDGES: GILLEN, ROWE, AND HAFELE

AFFIRMED/REVERSED/OTHER: AFFIRMED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:

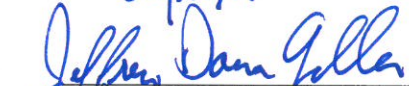
) DISSENTING:

) CONCURRING SPECIALLY:

02/27/17

) With/Without Opinion

) With/Without Opinion


2/27/17

J.


J.

J.

J.

J.

J.


3/1/17

J.

J.

J.