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

BRIAN GARRETTE

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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APPELLATE DIVISION (CRIMINAL) "AC"
CASE NO: 502010AP900061
L.T. NO: 2010CT004857

Opinion filed: AUG - 2 2013

Appeal from the County Court in and for Palm Beach County, Florida,
Judge Peter Evans.

For Appellant: RICHARD W. SPRINGER, ESQ.
CATHERINE MAZZULLO, ESQ.
3003 SOUTH CONGRESS AVENUE
SUITE 1A
PALM SPRINGS, FL 33461

For Appellee: STEPHANIE DUTKO, ESQ.
ASSISTANT STATE ATTORNEY
401 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FL 33401

PER CURIAM.

AFFIRMED. We affirm the outcome of the trial court in this case, however, we write to specifically discuss Appellant's reliance on *State v. Henry*, 42 Fla. Supp. 2d 42 (Fla. 15th Cir. Ct. 1990). In *Henry*, this Court suppressed the results of a breathalyzer test that was conducted as a direct result of an officer's misstatement of the law. *Id.* at 44. The officer in *Henry* informed the defendant that if he did not submit to a breathalyzer test, the defendant would be incarcerated for three days over a long holiday weekend. *Id.* at 43. After considering the officer's gross misstatement of the law, this Court suppressed the results of the breathalyzer test and noted that an

officer "cannot and must not improperly state the law" and that the facts of *Henry* equated to an officer informing a defendant that if he did not submit to the test "he would be shot." *Id.* at 44.

Subsequent to our decision in *Henry*, numerous appellants and defendants have argued that *Henry* stands for the proposition that *any* misstatement of the law by an officer necessarily results in suppression. We therefore clarify that the holding in *Henry* only applies to gross misstatements of the law.

In the instant case, law enforcement attempted to properly inform the Appellant of the law. The officers present at the Appellant's breathalyzer test read the Appellant the standard implied consent instruction as required by law and, upon the Appellant displaying confusion, attempted to read the Appellant the standard implied consent instruction a second time. The officers cautioned the Appellant that they could not provide legal advice and that the Appellant was free to choose whether or not to take the breathalyzer test. Although the officers did make certain technically imprecise comments as to administrative procedures that result from a refusal to take a breathalyzer test and although the officers were silent as to certain subjects, we disapprove of the Appellant's mischaracterization of the record when he asserts law enforcement told him "that if Appellant refused the breath test . . . he would not receive a temporary or ten day permit." (Initial Brief of Appellant at 12). A search of the record and trial testimony has failed to uncover any such statement attributable to law enforcement.

The officers in the instant case made an earnest effort to conduct the Appellant's breathalyzer test in accordance with the law. As *Henry* only stands for the proposition that breathalyzer test results will be suppressed if an officer grossly misstates the law, we hereby affirm and approve of the trial court's decision.

MILLER, OFTEDAL, KROLL, JJ., concur.