

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEPARTMENT OF HIGHWAY)
SAFETY AND MOTOR VEHICLES,)
)
Petitioner,)
)
v.)
)
NICOLE PROFIS,)
)
Respondent.)
_____)

Case No. 2D01-1261

Opinion filed March 22, 2002.

Petition for Writ of Certiorari to the
Circuit Court for the Thirteenth Judicial
Circuit for Hillsborough County; sitting in
its appellate capacity.

Enoch J. Whitney, General Counsel,
and Rhonda M. Diamond, Assistant
General Counsel, Miami, for Petitioner.

Eilam Isaak, Tampa, for Respondent.

STRINGER, Judge.

In this appeal, the Department of Highway Safety and Motor Vehicles
(DHSMV) seeks certiorari review of a circuit court order granting Nicole Profis's petition
for writ of certiorari and quashing an order of the DHSMV. The DHSMV suspended
Profis's driver's license based on her arrest for driving under the influence of alcohol

and breath test results which showed that her blood alcohol level exceeded the legal limit at the time of her arrest. The circuit court quashed the order of the DHSMV because it concluded that the DHSMV failed to prove that the breath test administered to Profis was performed in substantial compliance with the applicable administrative rules. In accordance with the nearly identical cases of Department of Highway Safety & Motor Vehicles v. Sexton, 27 Fla. L. Weekly D314 (Fla. 2d DCA Feb. 1, 2002), and Department of Highway Safety & Motor Vehicles v. Alliston, No. 2D01-852 (Fla. 2d DCA Mar. 13, 2002), we conclude that the circuit court departed from the essential requirements of law in determining that the DHSMV failed to present substantial, competent evidence that the breath test was performed in substantial compliance with the applicable administrative rules. Additionally, for the reasons stated in Alliston, we conclude that the circuit court's error resulted in a miscarriage of justice requiring certiorari relief. See Alliston, No. 2D01-852, slip op. at 7.

Therefore, we quash the order granting Profis's petition for writ of certiorari and remand for further proceedings.

FULMER and WHATLEY, JJ., Concur.