NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA

Appellant,

vs.

Appeal No. CRC 12-00008APANO
UCN 522012AP000008XXXXCR

BURTON JOHN ESPY, JR.
Appellee.
_____/

Opinion filed August 10, 2012.

Appeal from an Order Granting a
Motion to Suppress
entered by the Pinellas County Court
County Judge Lorraine M. Kelly

David E. Little, Esquire
Assistant State Attorney
Attorney for Appellant

Ricardo Rivera, Esquire
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on the State of Florida's appeal from an order of the Pinellas County Court granting a Motion to Suppress. After reviewing the briefs and record, this Court reverses the order of the trial court.

Factual Background and Trial Court Proceedings

Appellee, Burton John Espy, Jr. was arrested for driving under the influence. In the ensuing law enforcement investigation Mr. Espy provided breath samples to determine his breath alcohol level. Those samples were obtained using an *Intoxilyzer* maintained by the Pinellas County Sheriff's Office. Cheryl Peacock, an employee of sheriff's office, had performed the last agency inspection on the *Intoxilyzer*.

Mr. Espy filed a motion to suppress the breath test results asserting that Ms. Peacock did not have a valid Agency Inspection Permit at the time of the inspection because she had not satisfied the necessary continuing education requirements. At hearing on the motion Ms. Peacock testified, in part, that she was certified as an agency inspector at the time of the involved inspection. A copy of her agency inspector certificate was admitted into evidence. Laura Barfield, the alcohol testing program manager of the Florida Department of Law Enforcement, testified, in part, to several points; that she wrote Florida Administrative Code Rule 11(d)(8).008(3), she testified as to the agency's interpretation and application of that rule and that Cheryl Peacock was certified as an agency inspector at the time of the involved inspection.

After hearing, the trial court entered a written order granting Mr. Espy's motion. In pertinent part that order provides:

> Ms. Peacock was not eligible to conduct the monthly Agency Inspection on Intoxilyzer #80-001367 on September 22, 2010, contrary to the requirements of the Florida Administrative Code Rule 11D-8.008(3) because her continuing education requirements had lapsed and she did not have a valid Agency Inspector or Breath Test Operator Permit. On October 22, 2010, the date of the Defendant's breath test, Ms. Peacock had not yet completed her continuing education and was, therefore, prohibited by Rule 11D-8.008(4) from performing the duties of Agency Inspector. The Court does not find the testimony of the State's expert about how time is calculated by the Agency under the Rule persuasive. Giving the words

> of the Rule their plain and ordinary meaning and giving "great weight," with all due deference, to the Agency's intent and interpretation, this Court cannot read the Rule to permit more than four years to elapse between certification and renewal.[1] Respectfully, Ms. Barfield's interpretation of the rule at bar is indistinguishable from the interpretation rejected by the Appellate Court in *Young v. State of Florida Department of Highway Safety and Motor Vehicles*, No. 11-000008AP-88A (Fla. 6th Cir. App. Ct. August 24, 2011) at 5. This Court is constrained to follow the controlling, mandatory appellate decision announced in *Young*. Accordingly, all breath test evidence from October 22, 2010, is hereby suppressed.
>
> [1]Ms. Peacock took the Agency Inspector Renewal Course on 6-13-05 (the time period for the four-year cycle for renewal commenced on 6-30-05). Although the FDLE data base shows that her permit is valid until 6-30-13 – this calculation of time is not supported by a plain reading of the Rule. Nearly five years and four months elapsed from her original certification and anniversary date until she took a renewal course (for Breath Test Operator) on 3-22-11. This Court finds the Agency's interpretation of the words "four" and "year" and "cycle" to be contradistinct to a plain reading of the words contained in the Rule, particularly the language which states that continuing education must be accomplished "during each subsequent four year cycle." The Court disagrees that four calendar years can be reasonably construed to mean five years, four months; to do so is to take the plain meaning of words outside of the vernacular.

Standard of Review

Our review of a trial court's ruling on a motion to suppress evidence involves a mixed question of law and fact. We accord a presumption of correctness with regard to the trial court's determination of facts where the trial court's factual findings are supported by competent, substantial evidence. However, we review the trial court's application of the law to those facts de novo. *Ornelas v. United States,* 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *Connor v. State,* 803 So.2d 598 (Fla.2001); *State v. Pruitt*, 967So2d 1021 (Fla. 2nd DCA 2007); *Newkirk v. State,* 964 So2d 861, 863 (Fla. 2nd DCA 2007).