

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

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

JAMES P. SKILLEN

Appellant,

Appeal Case No. CRC 08-00050 APANO

vs.

UCN No. 522007CT040901XXXXXX

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed: 10/21/09.

Appeal from a judgment and sentence
entered by the Pinellas County Court
County Judge Robert Dittmer

Rita Martin, Assistant Public Defender
Attorney for Appellant

Bernie J. McCabe, State Attorney
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

Appellant appeals his conviction for Driving While Under the Influence of Alcohol or a Controlled Substance in violation of Florida Statute § 316.193. Appellant was found guilty as charged and was sentenced to 12 months of probation with standard DUI conditions, a five year

driver's license suspension, a 30 day impound of his vehicle, and 120 days in the Pinellas County jail.

The issues that the Appellant brings on appeal cannot be considered by this Court, because the issues were not properly preserved for appeal. The proper procedure for moving for a mistrial is to object at the time of the improper comment, and if that objection is sustained, the defendant must move contemporaneously for a mistrial. Hendrix v. State, 767 So. 2d 493, 494 (Fla. 2d DCA 2000). The Appellant did not make a contemporaneous Motion for Mistrial; therefore, the issue was not preserved.

ACCORDINGLY, this Court AFFIRMS the Judgment and Sentence.

DONE and ORDERED this 26 day of October, 2009 at Pinellas County, Florida.

Original opinion entered by Circuit Judges David A. Demers, Joseph A. Bulone, & Chris Helinger.

Copies to: State Attorney's Office
 Sixth Judicial Circuit of Florida
 Public Defender's Office