

## FLORIDA CASE LAW UPDATE 16-06

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**Case:** Aguiar v. State, 41 Fla. L. Weekly D820a (Fla. 5th DCA)

**Date:** April 1, 2016

**Subject:** *Update to Florida Case Law Update 15-06: Officer May Legally Order a Passenger Who Attempts to Leave Back into the Vehicle during a Lawful Traffic Stop*

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**FACTS:** Aguiar was charged with possession of cocaine and other offenses after he was detained during a traffic stop. Aguiar was a front-seat passenger in a vehicle that was pulled over for a burned out brake light and the driver's seat belt violation. When the vehicle pulled into a parking space, Aguiar jumped out and the officer conducting the traffic stop ordered him back into the car. Thereafter, the officer discovered a bag of cocaine and arrested Aguiar. Aguiar filed a motion to suppress the cocaine on the basis that the officer had no legal authority to order him back into the vehicle. The trial court denied the motion and Aguiar entered nolo contendere pleas to the charges, reserving his right to appeal.

**RULING:** Initially, on October 30, 2015, the Fifth District Court of Appeal reversed Aguiar's convictions. The State moved for rehearing citing U.S. Supreme Court precedent in the cases Brendlin v. California, 551 U.S. 249 (2007) and Arizona v. Johnson, 555 U.S. 323 (2009). The court granted the motion, withdrew the original panel opinion, and issued a revised opinion. In the revised opinion, the Fifth District Court of Appeal affirmed the trial court's denial of the motion to suppress, affirming Aguiar's convictions. The Fifth District also certified conflict to the Florida Supreme Court between Aguiar and Wilson v. State, 734 So. 2d 1107 (Fla. 4<sup>th</sup> DCA 1999), as well as other Florida cases that have followed Wilson.

**DISCUSSION:** The Fifth District Court of Appeal was persuaded by the State's argument that officer safety considerations justified the officer's order for Aguiar, a passenger, to get back into the vehicle. The Aguiar court agreed with holdings in similar cases that the inconvenience in detaining the individual was "de minimus" when balanced against legitimate concerns for the officer's safety. In addressing the threat that vehicle passengers can pose to police officers, the court stated:

When an officer approaches any vehicle stopped for a traffic infraction, the officer needs to be on vigilant alert, ready to react to violence that could come from any occupant inside the vehicle. A departing passenger is a distraction that divides the officer's focus and thereby increases the risk of harm to the officer. As that passenger moves further from the vehicle, it becomes impossible for the officer to watch the departing passenger and the remaining occupants.

The Aguiar court stated that even if detaining a departing vehicle passenger is more burdensome than ordering a stopped passenger out of a vehicle, such infringement is minimal because "(1) the passenger's planned mode of travel has already been lawfully interrupted; (2) the passenger has already been 'stopped' due to the driver's lawful detention; and (3) routine traffic stops are brief in duration." The Fifth District Court of Appeal concluded that the U.S. Supreme Court has clearly held in Brendlin and Johnson "that all occupants of a stopped vehicle are reasonably seized for the duration of a traffic stop," and therefore even a passenger of said vehicle "is not free to terminate the encounter[.]"

**COMMENTS:** The Aguiar court explained that its rationale is consistent with two U.S. Supreme Court cases that addressed vehicle passengers' Fourth Amendment rights during traffic stops, but acknowledged that the Florida appellate courts are split on the specific issue of whether an officer may legally detain a passenger who wants to leave during a traffic stop—and it certified the conflict. If the Florida Supreme Court agrees that it has conflict jurisdiction, it will perhaps render a future opinion resolving the conflict.

Laura B. Coln  
Regional Legal Advisor  
Florida Department of Law Enforcement  
Orlando Regional Operations Center

**Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.**