## IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2010-CV-30 Lower Case No.: 2010-TR-8834

HENRY RIOS, Appellant,

v.

STATE OF FLORIDA, Appellee.

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Appeal from the County Court for Orange County, Faye Allen, County Court Judge.

Robert L. Sirianni, Jr., Esq., for Appellant.

Richard M. Colon, Assistant General Counsel, for Appellee

Before POWELL, EVANS, and THORPE, JJ.

PER CURIAM.

## FINAL ORDER AFFIRMING TRIAL COURT

Rios appeals his conviction for Careless Driving. We have read the briefs, the transcript of the proceedings, and reviewed the filings in the record on appeal. After careful consideration, we affirm.

As to his first point, in response to a question asked of him on direct examination by his trial counsel, Rios testified as to what he told investigating FHP Trooper Mathews at the crash scene. Thereafter, in response to a question asked by the trial judge, the trooper related what Rios told him at the scene. There was no motion to strike and disregard Rios' testimony, and there was no objection to Trooper Mathews' testimony or motion to strike and disregard. Therefore, Rios has failed to preserve the point for appeal, and has waived the accident report privilege. *See* Padovano, *Florida Appellate Practice* § 8:2 (2011 ed.); *Salama v. McGregor*, 656 So. 2d 215 (Fla. 5th DCA 1995) and cases therein cited.

Regarding his second point, we conclude that the testimony of the other driver involved in the crash and that of the trooper was substantial competent evidence to support the trial judge's decision. Credibility of witnesses, resolution of conflicting testimony, and weight of the evidence is the sole province of the finder of fact, the trial court, and not this circuit court on appeal. *See Winkler v. Lawyers Title Ins. Co.*, 41 So. 3d 414 (Fla. 3d DCA 2010).

## AFFIRMED.

**DONE AND ORDERED** at Orlando, Orange County, Florida, on this <u>1st</u> day of <u>April</u>, 2011.

/S/

ROM W. POWELL Senior Circuit Judge

/S/

**ROBERT M. EVANS** Circuit Judge /S/ JANET C. THORPE Circuit Judge

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing order was furnished via U.S. mail on this <u>4th</u> day of <u>April</u>, 2011, to the following: **Robert L. Sirianni, Jr., Esq.,** 400 North New York Ave., Ste. 215, Winter Park, Florida 32789, and **Richard M. Coln, Assistant General Counsel,** P.O. Box 570066, Orlando, Florida 32857; and **Honorable Faye Allen**, 425 N. Orange Avenue, Orlando, Florida 32801.

/**S**/

Judicial Assistant