

FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

April – June, 2006

[Editor's Note: In order to reduce possible confusion, the defendant in a criminal case will be referred to as such even though his/her technical designation may be appellant, appellee, petitioner, or respondent. In civil cases, parties will be referred to as they were in the trial court, that is, plaintiff or defendant. In administrative suspension cases, the driver will be referred to as the defendant throughout the summary, even though such proceedings are not criminal in nature. Also, a court will occasionally issue a change to a previous opinion on motion for rehearing or clarification. In such cases, the original summary of the opinion will appear followed by a note. The date of the latter opinion will determine the placement order in these summaries.]

Driving Under the Influence

Lovelace v. State, 30 Fla. L. Weekly D1379 (Fla. 4th DCA June 1, 2005), opinion withdrawn and superseded by, 906 So. 2d 1258 (Fla. 4th DCA 2005).

The defendant was issued a citation for misdemeanor driving under the influence on August 11, 2004. On November 15, 2004, the defendant filed a notice of expiration of speedy trial time under rule 3.191(a), Florida Rules of Criminal Procedure. The state then filed a “no information” on November 19, 2004, and the defendant moved for discharge on November 30, 2005. On December 1, 2004, the state filed a felony DUI charge in circuit court based on the same incident and prior DUI convictions. The county court subsequently failed to rule on the motion for discharge, claiming a lack of jurisdiction. The defendant petitioned for a writ of prohibition against the circuit court proceeding with the felony case.

The district court granted the writ of prohibition, holding that the county court should have granted the defendant’s motion for discharge of the misdemeanor DUI based on the expiration of the speedy trial period, thereby leaving the state unable to prosecute the defendant for felony DUI, which requires a conviction of the misdemeanor charge and two prior DUI convictions. The court observed that when the state filed the no information the speedy trial period continued to run and the state could not refile charges based on the same conduct after the applicable period (90 days) had expired, which did not include the fifteen day window (after the demand).

[Note: After initially accepting jurisdiction based on a conflict between the instant case and State v. Jackson, 784 So. 2d 1229 (Fla. 1st DCA 2001), the Supreme Court, on April 6, 2006, found no conflict and discharged jurisdiction, observing that the two cases addressed two distinct situations – one where the

misdemeanor speedy trial period had expired and one where the period had not expired. at 928 So. 2d 1176.]

Rodriguez v. State, 875 So. 2d 642 (Fla. 2d DCA 2005).

The defendant, while driving a stolen car, crashed into a motorcycle, causing the death of the motorcycle driver and serious bodily injury to the passenger. The defendant was charged with the following nine counts: (1) vehicular homicide, (2) third-degree murder, (3) DUI manslaughter, (4) leaving the scene of an accident resulting in death, (5) leaving the scene of an accident resulting in serious bodily injury, (6) DUI with serious bodily injury, (7) driving while license suspended with death resulting, (8) driving while license suspended with serious bodily injury resulting, and (9) grand theft auto. The jury found him guilty of all counts. At the sentencing hearing, the state removed the following two convictions from the scoresheet because of double jeopardy concerns: count one - vehicular homicide (because there was only one death), and count eight - driving while license suspended with serious bodily injury (because there was only one accident). Written sentences were, however, entered on all nine counts imposing the statutory maximum for each.

The district court directed the trial court, upon remand, to strike the sentences on count one (vehicular homicide) and count eight (DWLS with serious bodily injury) since the state had removed these convictions from the scoresheet because of double jeopardy concerns. Count 2, third-degree murder, was vacated based on the holding of the Florida Supreme Court that the legislature did not intend to punish the same homicide under two statutes (in this case third degree murder and DUI manslaughter). The district court ordered that both the sentence and the adjudication for third-degree murder be vacated. The adjudication was vacated to avoid scoring “unsentenced” convictions.

[Note: On remand the trial court struck the adjudication and sentence for count two and the sentence for count eight, but instead of striking the sentence on count one, resentenced the defendant on that count and struck the sentence on count three (DUI manslaughter). Upon appeal, the district court held that the trial court failed in complying with its mandate. The district court stated that the role of the trial court was “purely ministerial” and that it could not deviate from the terms of an appellate mandate. Opinion issued April 12, 2006, at 924 So. 2d 985.]

Karz v. Dickerson, 932 So. 2d 426 (Fla. 2d DCA 2006).

The defendant was convicted of a third driving under the influence offense. Despite statutory language requiring the court to order the mandatory placement of an ignition interlock device, section 316193(2)(b)1., Florida Statutes (2003), the court did not order the device as part of the defendant’s sentence and the state did not appeal. When his period of drivers license suspension expired, the defendant applied for reinstatement, at which time the department imposed the restriction of the ignition interlock device administratively. The trial court denied the defendant’s request for injunctive and declaratory relief.

The district court reversed, holding that the department had no authority to impose a restriction that the trial court had not ordered. The district court did, however, note (in a footnote) that a 2005 amendment to section 322.2715(4), Florida Statutes, appears to allow the department to take such administrative action.

Alexander v. State, 931 So. 2d 946 (Fla. 4th DCA 2006).

The defendant was charged with driving with a blood alcohol level over .08 percent and contributing to the cause of death of a human being, driving under the influence of alcohol to the extent that his normal faculties were impaired and contributing to the cause of death of a human being, and driving under the influence and contributing to the cause of injury to the person of another. After the jury found the defendant guilty of the lesser included offense of DUI in relation to all three counts, the trial court sentenced him to nine months in jail and three months probation. The defendant had objected at trial that the judge erred by excluding exculpatory testimony of a DNA expert listed on the state's witness list and by referring to the state's accident reconstructionist as an expert.

The district court reversed on the DNA issue, holding that the failure to include the DNA expert on the defendant's witness list did not prejudice the state since the expert was originally listed on the state's witness list. In addition, the testimony of the expert would arguably be relevant to the defendant's defense that his blood sample had been switched with another sample. In any case, the trial court should have conducted a Richardson hearing and considered alternatives such as a continuance before excluding the DNA expert. Having remanded on this issue the district court found it unnecessary to reach the issue of the state's accident reconstructionist expert, but did declare that it was not harmful error for the court to refer to the witness as an expert in light of subsequent jury instructions.

State v. Cino, 931 So. 2d 164 (Fla. 5th DCA 2006).

The defendant was interviewed at the scene of an accident, during which investigation the officer learned from both the defendant and the other driver that the defendant was a driver of one of the vehicles. The defendant was also observed to be emanating the strong odor of alcohol impurities and exhibiting very slurred speech. The accident investigation officer reported his observations to a second officer, who initiated a driving under the influence criminal investigation, which he commenced by advising the defendant of his Miranda rights. The defendant subsequently admitted to both the driving and the drinking. The county court suppressed the post-Miranda statements, finding that it was a violation of the crash report privilege in section 316.066(4), Florida Statutes, for the first officer to share with the second officer information derived during the traffic investigation. Upon appeal, the circuit court barred the state from relying upon the first officer's observation of intoxication or upon the other driver's statements to the first officer placing the defendant behind the wheel.

The district court granted certiorari and quashed the decision of the circuit court, holding that section 316.066(4) only prohibits the state from using as evidence at trial either the crash report or statements which were made to law enforcement during a traffic investigation by persons involved in the crash. The state is not prohibited from using an officer's observation of

a defendant's appearance or speech patterns, since they do not implicate the defendant's right against self-incrimination. The district court also noted that section 316.066(4) does not prohibit the use of statements of persons other than the defendant. However, the district court did reject the state's argument that section 316.066(4) should be read to only extend the defendant's privilege to avoid the use of protected communications at trial, holding that the protection provided should be read as co-extensive with the constitutional privilege against self-incrimination (specifically rejected was the state's attempt to use the defendant's statement to establish probable cause).

Department of Highway Safety and Motor Vehicles v. Jones, 935 So. 2d 532 (Fla. 3d DCA 2006).

The defendant was observed by a law enforcement officer weaving within a lane and traveling across a broken yellow line into an oncoming lane. After the officer stopped the defendant, he observed that the defendant's face was flushed, his eyes were watery, his speech slurred, and he smelled of alcohol. After failing sobriety tests the defendant was arrested and his drivers license was suspended. A hearing officer upheld the suspension, rejecting the defendant's claim of a lack of probable cause. Upon writ of certiorari, the circuit court reversed, holding that the failure to maintain a single lane standing alone did not establish probable cause for a traffic stop under 316.089, Florida Statutes, nor did it create even the slightest risk to others.

The district court reversed, observing that the test for the constitutional validity of a stop is an objective test and is not dependent on the enunciated reasons of the officer. The court noted that the act of the defendant driving into an oncoming lane was a violation of section 316.081, Florida Statutes, which requires a vehicle to be driven on the right half of the roadway, and thus justified the stop. In addition, the district court held that the failure to maintain a single lane alone can justify a stop under appropriate circumstances.

Department of Highway Safety and Motor Vehicles v. Garcia, 935 So. 2d 542 (Fla. 3d DCA 2006).

The defendant (Garcia) was arrested for driving under the influence and transported to a police station, where he submitted to chemical breath testing, resulting in blood alcohol readings of .094 and .086, and the suspension of his drivers license. At a subsequent administrative hearing, the law enforcement officer submitted an intoxilyzer print card with the .241 and .236 test readings of a Jose Gonzalez administered more than four hours before the defendant's tests. The hearing officer upheld the suspension, finding that the defendant had an unlawful alcohol level or .08 or higher. Upon writ of certiorari, the circuit court rejected the department's argument of harmless error, holding that the hearing officer chose to ignore discrepancies between the Breath Test Result Affidavit (Garcia) and the intoxilyzer breath card (Gonzalez). The circuit court observed that rule 15A – 6.013(2), Florida Administrative Code, specifically requires the production of both the affidavit and the card.

Upon further certiorari review, the district court agreed with the circuit court and denied the department's petition. The district court rejected the argument that the card was unnecessary

since the affidavit reflected the correct test results, holding that rule 15A – 6.013 specifically requires both the affidavit and the card and that the latter is necessary documentation of the breath test results.

Johnson v. State, 933 So. 2d 1203 (Fla. 5th DCA 2006).

The defendant was charged with felony driving under the influence, but pled nolo contendere to the lesser offense of driving under the influence and received a drivers license suspension of one year. The Department of Highway Safety and Motor Vehicles subsequently permanently revoked the defendant’s license for a fourth DUI conviction. The defendant filed a motion for post-conviction relief, claiming ineffective assistance of counsel in that he was misadvised that he would receive only a one year suspension. The trial court summarily denied the motion.

The district court reversed, holding that while a drivers license revocation is a collateral, rather than a direct, consequence of a criminal plea, where there is affirmative misadvice as to a material and immediate collateral consequence of a plea (as differentiated from collateral consequences dependent upon the commission of new crimes), the defendant has stated a facially sufficient claim.

Criminal Traffic Offenses

State v. Rothauser, 934 So. 2d 17 (Fla. 2d DCA 2006).

The defendant was charged with driving while license permanently revoked in violation of section 322.341, Florida Statutes. The trial court dismissed the information based on the belief that the statute was unconstitutional as a result of a single subject violation. Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003).

The district court reversed, holding that the defendant had allegedly violated the law after it had become an official statute through the general adoption of the Florida Statutes. While the court did not believe that the long-established rule that the legislative act of statutory adoption or codification cures any constitutional title defect was necessarily consistent with the constitutional prohibition against “log rolling,” it was bound by the general rule.

Valdes v. State, 924 So. 2d 950 (Fla. 3d DCA 2006).

The defendant was convicted of fleeing to elude at high speed and leaving the scene of an accident with property damage, as a result of a high speed chase of a stolen vehicle occupied by the defendant and another man. The only issue at trial was whether the defendant was the driver.

The district court affirmed, rejecting the defendant’s argument that testimony that the alleged passenger was a male prostitute dressed as a woman was prejudicial, noting that it was probative in relation to the issue of identity.

McKay v. State, 925 So. 2d 1133 (Fla. 2d DCA 2006).

The defendant was convicted of third-degree murder and vehicular homicide in relation to an incident in which a single death occurred. His motion seeking postconviction relief alleging a double jeopardy violation was denied by the trial court, which found that there was no double jeopardy violation because each offense contained elements the other offense did not.

The district court reversed, holding that while there was no double jeopardy violation only one conviction and sentence can be imposed for a single death. The court rejected the state's argument that the defendant was not entitled to relief because the sentences were the result of a negotiated plea agreement, observing there was no record evidence of any agreement.

Card v. State, 927 So. 2d 200 (Fla. 5th DCA 2006).

The defendant was charged with driving while license revoked as a habitual offender, in violation of section 322.34(5), Florida Statutes. At trial the state introduced the defendant's driving record, to which the defendant objected as being in violation of his right to self-confrontation. The evidence was admitted and the defendant was convicted.

The district court affirmed, holding that a self-authenticating (see section 322.201, Florida Statutes) driving record is not testimonial hearsay. The court reasoned that a driving record properly authenticated by the Department of Highway Safety and Motor Vehicles does not seem to be testimonial because it is not accusatory and does not describe specific criminal wrongdoing of the defendant, but rather merely represents the objective result of a public records search. The court added that driving records are kept for the public benefit and are not solely prepared for trial purposes. They contain neither expressions of opinion nor conclusions requiring the exercise of discretion and are not made or kept for law enforcement or trial purposes. Therefore such a record clearly falls within the type of hearsay recognized in Crawford v. Washington, 541 U.S. 36 (2004), as admissible in a criminal trial without implicating a defendant's confrontation rights.

Sroule v. State, 927 So. 2d 46 (Fla. 4th DCA 2006).

The defendant was charged with habitual driving while license revoked. At trial, the court allowed the introduction of the defendant's driver history record as evidence that his license had been revoked as a habitual traffic offender. The defendant had objected that the record was hearsay and a violation of his Sixth Amendment right of confrontation. The defendant was subsequently convicted and sentenced to a year in county jail.

The district court affirmed, holding that a driving record is not testimonial in nature and therefore the defendant did not have the right to cross-examine a witness concerning the compilation of the record. Citing the recent United States Supreme Court opinion in Crawford v. Washington, 541 U.S. 36 (2004), the district court held that while there was no dispute that a driving record containing habitualization entries maintained by the department and provided to the court does constitute hearsay, it falls under an established exception to the hearsay rule as a

certified copy of a public record. The court also referenced section 322.201, Florida Statutes, which provides that driver history records are self-authenticating, as evidence of legislative faith in the trustworthiness of such records.

[Note: On May 17, 2006, at 927 So. 2d 46, the district court denied the appellant's motion for rehearing but certified the following question to the Florida Supreme Court:

Whether a driving record as contemplated in section 322.201, Florida Statutes, is testimonial in nature, and therefore a defendant has a Sixth Amendment right under Crawford v. Washington, 541 U.S. 36 (2004), to confront and cross-examine a witness concerning the compilation of that record?]

State v. R. A., 928 So. 2d 1258 (Fla. 4th DCA 2006).

After the minor defendant pled no contest to possession of cannabis, the court withheld adjudication, placed the defendant on probation, and ordered the performance of community service, but did not impose the mandatory drivers license revocation pursuant to section 322.056, Florida Statutes. Declining to follow the precedent set in two district courts outside the jurisdiction, the trial court held that as a matter of first impression, such license suspension was not mandatory if adjudication was withheld.

The district court reversed, holding that in the absence of a decision on point in the trial court's district, the trial court was required to follow precedent from other districts. The district court then agreed with the other districts that license revocation was mandatory under section 322.056 for any juvenile found delinquent of specified drug offenses, irrespective of whether adjudication is withheld. The court noted that there was no language in the statute allowing the trial court to use discretion in applying the penalty.

State v. James, 928 So. 2d 1269 (Fla. 2d DCA 2006).

The defendant was charged with felony habitual driving while license revoked based on three prior convictions for driving with his license was suspended or revoked. The trial court granted the defendant's motion to dismiss, alleging the lack of a factual basis for one of the three underlying offenses, to wit, his license had been suspended only because the clerk's office failed to submit a clearance to the Department of Highway Safety and Motor Vehicles that he had paid the fine for an open container violation. The trial court granted the motion to dismiss.

The district court reversed, holding that the issue was whether the defendant drove while his motor license was revoked after being given notice of such revocation. *See* section 322.34(5), Florida Statutes. Specifically, the statute requires 1) the department maintain a record on the motorist, 2) the records show the requisite three separate convictions within a five-year period, and 3) the department notified the motorist. The state was not required to prove each separate conviction of driving while license suspended relied upon by the department in entering the habitual revocation.

The district court concluded as follows:

Despite his pending challenge to the prior . . . plea and conviction, [the defendant] did not dispute that the [department] records reflected the requisite convictions for the habitual traffic offender designation. His challenge was to one of the underlying convictions that resulted in that designation. Whether or not his challenge to the [prior] conviction has merit, at the time of the [instant] charge, the [department] records accurately reflected the existence of three prior convictions. Even if [the defendant] is successful in vacating his [prior] conviction, the [department] records would be affected only from the date that the conviction was set aside. Any collateral challenge to the [prior] conviction, therefore, would not impact the facts as they were when the [defendant] was stopped [for this offense]. At that time, the [department] records accurately reflected the habitual traffic offender designation; the allegations in [the defendant's] motion to dismiss do not defeat the elements of the charge. On the record before it, the trial court erred in granting [the] motion to dismiss.

Herrera-Lara v. State, 932 So. 2d 1138 (Fla. 2d DCA 2006).

The defendant was charged with possession of a counterfeit registration license plate pursuant to section 320.26 (1)(a), Florida Statutes. He filed a motion to dismiss, admitting that he was in possession of a counterfeit temporary tag but arguing that counterfeit temporary tags are not covered by the charging provision. The trial court found the defendant to have committed the offense and withheld adjudication, imposing a fine and costs.

The district court reversed, holding that temporary tags are not covered in section 320.26. After analyzing various provisions of chapter 320, the court reasoned as follows:

In light of the statutory scheme contained in chapter 320, we concluded that the legislature assigned different meanings to the terms “registration license plates” on the one hand and “temporary tags” or “temporary license plates” on the other hand. Accordingly, section 320.26, which specifically refers to counterfeit registration license plates, does not apply to [the defendant's] possession of a counterfeit temporary tag. Because [the defendant's] conduct did not constitute a violation of section 320.26(1)(a), the trial court should have granted his motion to dismiss. Therefore, we reverse the judgment and the order imposing a fine and costs and remand for the trial court to enter an order of dismissal.

State v. Gensler, 923 So. 2d 584 (Fla. 5th DCA 2006).

The defendant, while driving 90 miles per hour in a 45 mile per hour zone in an area with no street lights, proceeded through an intersection with a flashing yellow signal, and struck and killed a pedestrian who was approximately four to five feet into the right lane. The victim had alcohol and cocaine in her body. The defendant was charged with manslaughter and convicted of the lesser included offense of vehicular homicide. The district court reversed the conviction, based on a number of evidentiary errors, and remanded the case for a new trial. The trial court subsequently granted the defendant's motion to dismiss.

The district court reversed, holding that the undisputed material facts were sufficient to establish a prima facie case of vehicular homicide. Specifically, the court observed that the defendant satisfied the two elements of the crime, to wit, that she operated her vehicle in a reckless manner likely to cause death or great bodily harm (excessive speed, lack of lighting, disregarding yellow flashing light), and that her reckless operation was the proximate cause of the victim's death (harm that occurred was within the scope of the danger created). The district court rejected the defendant's contention that the victim's own independent intervening act superseded the defendant's actions, noting that unless it could be said that the victim's conduct was the sole proximate cause of the homicide or unless there is a reason why it would be unjust or unfair to impose criminal liability, the victim's conduct could not be the proximate cause. The district court also concluded that criminal liability would attach so long as the latter act was something which could reasonably be expected to follow in the natural sequence of events.

Arrests, Search and Seizure

Ellis v. State, 935 So. 2d 29 (Fla. 2d DCA 2006).

After receiving a "no record found" response from running a motor vehicle tag through the Department of Highway Safety and Motor Vehicles' database, the law enforcement officer stopped the defendant's vehicle, discovered that the defendant did not have a valid drivers license or motor vehicle registration, arrested him, and subsequently discovered contraband in a search incident to the arrest. The trial court denied the defendant's motion to suppress, finding that the officer had a reasonable belief that the defendant's vehicle was not properly registered and thus was entitled to conduct an investigatory stop.

The district court affirmed, concluding that given the experience of the officer and the facts known to her at the time, it was reasonable to infer the car was not properly registered. While conceding the possibility that the car may have been properly registered, the court observed that applicable case law does not require absolute certainty nor does it require an officer to ignore facts indicating commission of a crime simply because those facts do not rise to the level of probable cause to make an arrest. The district court stated that when known facts suggest, but do not necessarily indicate, ongoing criminal activity, an officer is entitled to detain an individual to resolve the ambiguity.

Torts

Cybroski v. Wright, 927 So. 2d 1089 (Fla. 4th DCA 2006).

Plaintiff, legal guardian of the property of the defendant's daughter, brought a civil action against the defendants for injuries sustained by defendant's daughter in a crash. The trial court granted summary judgment in favor of the defendants, concluding that section 316.614, Florida Statutes, the safety belt law, limited the use of evidence of the failure to wear a safety belt to evidence of comparative negligence (responsibility being on the driver to not operate a motor vehicle unless each passenger under 18 is restrained by a safety belt).

The district court reversed, holding that the comparative negligence amendment of section 316.614 was enacted to clarify and standardize the manner in which a plaintiff's failure to use a safety belt was to be utilized in a civil action, and to preclude the possibility that an injured plaintiff would be penalized twice for failing to use an available seat belt. There is no indication the Legislature intended to eliminate a parent's liability for failing to protect his or her child. Thus, section 316.614 did not displace the common law right to bring a cause of action for a parent's failure to exercise a duty of care.