

FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

January - March, 2003

[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

State v. Clarke, 834 So. 2d 398 (Fla. 2d DCA 2003).

The defendant was charged with DUI manslaughter. At trial, the state attempted to introduce evidence of a medical blood test after the trial court excluded the legal blood test results upon finding that the officer did not have probable cause for ordering the latter test. This order was affirmed by the district court, after which the defendant filed a demand for a speedy trial. At trial, the defendant objected to certain witnesses and documents the state intended to use to establish the Robertson/Bender predicate for admission of the medical test results, alleging that the state had not complied with the rules of discovery. The trial court found a substantial discovery violation on the part of the state and excluded documents and witnesses. The state moved for an extension of the speedy trial time, which motion was denied and the defendant subsequently discharged.

The district court reversed, holding that the trial court misapplied the applicable law regarding the granting of an extension of speedy trial time when an interlocutory appeal is taken from a trial court's ruling, to wit, the trial court must grant this extension for the period necessary to complete the appellate proceedings unless it makes a factual determination that the appeal was taken for delay, upon grounds which are frivolous and not fairly debatable. The court concluded:

Our decision then turns on whether the record here reflects that the trial judge made a factual finding that the petition was filed for the purpose of delay and was frivolous and not fairly debatable. Although the trial court did not make these specific findings, it is clear from the record that the trial judge was frustrated with the State's lack of diligence in determining the proper witness needed to present its case. However, the record does not suggest that he reached the

conclusion that the petition was filed in bad faith. Accordingly, we must reverse for it was error for the trial court to deny the request for an extension of speedy trial while the petition was being considered in the appellate court.

Stoletz v. State, 842 So. 2d 866 (Fla. 2d DCA 2003).

The defendant was charged with one count of driving under influence causing death, two counts of driving under the influence causing serious bodily injury, and one count of felony driving while license suspended (habitual offender) as a result of an accident in which she collided with two disabled cars at an accident scene. The result of her blood alcohol test was 0.241. She pled nolo contendere to the driving while suspended charge and a jury found her guilty of the lesser included offense of driving under the influence. She was sentenced to five years imprisonment on the suspended license charge, followed by one year probation on the DUI conviction (her second), a special condition of which was nine months incarceration. The judge also permanently revoked the defendant's driving privilege pursuant to section 316.655(2), Florida Statutes, which allows a court to suspend or revoke a license following any conviction for a violation of chapter 316 if the totality of the circumstances warrants a suspension or revocation. The defendant appealed, challenging only the trial court's order of permanent revocation, arguing that the appropriate authority for DUI license revocations was section 322.28(2)(a)(2), Florida Statutes, which requires a five-year revocation for a second DUI conviction.

The district court affirmed, holding that both sections 316.655(2) and 322.28(2)(a)(2) authorized a permanent revocation. In relation to the latter the court pointed out that the specified revocation period was not less than five years and that no other provision in section 322.28 prohibits a court from imposing a term longer than five years. The district court then certified conflict on this issue with Whipple v. State, 789 So.2d 1132 (Fla. 4th DCA 2001).

State v. Schreiber, 27 Fla. L. Weekly D2519 (Fla. 4th DCA Nov. 20, 2002), opinion withdrawn and superseded by, 835 So. 2d 344 (Fla. 4th DCA 2003).

The defendant was arrested at the scene of a single-car crash after the officer noticed a strong odor of alcohol. The defendant was taken to a hospital where she received treatment for two fractured ankles. At the hospital the defendant consented to an officer's request for blood samples (implied consent warning was not given), the results of which yielded blood alcohol content readings of .15 and .14. At her driving under the influence trial, the court granted the defendant's motion to strike that portion of the information which provided that the defendant had driven with a .08 blood alcohol level and the defendant's motion to suppress the results of the blood tests. The trial court, however, denied the defendant's motion to suppress the medical records which the state had subpoenaed. The circuit court certified the following question of great public importance:

Does the standard DUI jury instruction, which includes both the impairment theory and the unlawful blood alcohol theory, have the effect of giving an

instruction on the statutory presumptions or impairment in section 316.1934(2), Fla. Stat. (2001), such that it is error to give the standard DUI jury instruction where blood alcohol results were admitted via the traditional predicate?

The district court answered the question in the negative, holding that the instruction does not improperly instruct the jury on the implied consent presumption of impairment, since the jury can be instructed on driving with an unlawful blood alcohol level (provided blood test results have been introduced via the Robertson predicate, that is, the test was reliable, performed by a qualified operator with the proper equipment, and supported by expert testimony) absent proof of any impairment. The district court went on to find that there was no error in the trial court's finding that the defendant's consent was not knowing and voluntary under the totality of the circumstances. The court further held that the officer lacked authority to compel a blood test pursuant to section 316.1933(1), Florida Statutes, since the defendant's only injuries were two fractured ankles (from which she fully recovered); therefore, there was no serious bodily injury of a human being.

[Note: The district court withdrew the above opinion and replaced it with an opinion dated January 22, 2002, at 28 FLW D278. In that opinion, the court modified footnote 2 to provide that if the defendant's medical records are admitted, such evidence would provide alternative evidentiary support for the giving of a jury instruction encompassing the DUBAL theory of DUI, citing Baber v. State, 775 So. 2d 258 (Fla. 2000)].

State v. Catt, 839 So. 2d 757 (Fla. 2d DCA 2003).

As a result of her involvement in an accident, the defendant was charged with driving under the influence causing serious bodily injury, driving under the influence causing property damage, and child neglect. The defendant's small child, who was not in a car seat, had been ejected from the vehicle when the defendant rear-ended a truck pulling a boat. The officers ordered a blood test on the defendant, pursuant to section 316.1933, Florida Statutes, after the child had been airlifted to a hospital. The trial court suppressed this blood test, finding that while the requesting officer had probable cause to believe the defendant was under the influence (alcohol on the defendant's breath), there was not probable cause to believe that a serious bodily injury had resulted from the accident.

The district court reversed, holding that the testimony provided by the officer was sufficient to establish probable cause to believe the accident had caused serious bodily injury, to wit, that the child had been ejected from the car and rolled on the road, when such testimony is combined with the decision of the emergency medical technicians (not the officer) to airlift the child to an out-of-county hospital. The district court concluded as follows:

The trial court also faulted the State for not calling any of the EMTs to testify at the hearing. However, the issue at the hearing was not what the EMTs knew about the child's condition. Rather, the question was what the police

officers knew about the child's condition and whether that knowledge was sufficient to give the officers probable cause to believe that the child had suffered serious bodily injuries. Therefore, the lack of direct testimony by the EMTs cannot form the basis for finding that the officers lacked probable cause.

Department of Highway Safety and Motor Vehicles v. Friend, 837 So. 2d 1071 (Fla. 1st DCA 2003).

The circuit court granted certiorari and set aside an administrative order suspending the defendant's drivers license. The district court quashed the decision of the circuit court and reinstated the administrative order suspending the license, concluding that the findings of fact made by the hearing officer were supported by competent substantial evidence and that the circuit court had applied the wrong standard of review. The district court, observing that the only issue in dispute was whether the officer had probable cause to arrest the defendant, held that the record contained at least some evidence that he did.

State v. Cameron, 837 So. 2d 1111 (Fla. 4th DCA 2003).

The defendant was convicted of DUI manslaughter, vehicular homicide, and driving under the influence with property damage. The trial court granted the defendant's motion for a new trial on all counts, based on the opinion of the Florida Supreme Court in Miles v. State, 775 So.2d 950 (Fla 2000), which was rendered two days after the verdict. Miles held that rule 11D-8.012(3), Florida Administrative Code, which deals with blood tests for alcohol, was inadequate because it failed to ensure the reliability of blood test results, and thus the state was not entitled to the statutory implied consent presumptions.

The district court reversed, holding that Miles was inapplicable since the evidence in the instant case did not impugn the integrity of the blood specimens, as was the situation in Miles. Specifically, the blood was kept refrigerated at all times with only brief exceptions (e.g., overnight mail delivery) which would not affect the sample's integrity. In addition, the district court observed that any presumption of impairment was a moot concern since there was sufficient evidence of actual impairment such that there was no doubt that the jury would have found impairment even without an erroneous jury instruction.

Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003).

The defendant received his fourth driving under the influence conviction in 1987, resulting in the permanent revocation of his drivers license. At that time he was told that he would be eligible for a hardship license after five years. When the defendant applied for a hardship license in 1999, he was informed he was no longer eligible due to a change in the law which made four-time offenders ineligible for any restricted license, to wit, the adoption of chapter 98-223, Laws of Florida, effective July 1, 1998. The defendant filed a challenge to chapter 98-223, alleging that it was unconstitutional as encompassing more than one subject in

violation of the single subject requirement of the Florida Constitution. The trial court granted the defendant relief.

The district court affirmed, holding that while the bill involved drivers licenses, vehicle registrations, and operation of motor vehicles, the section of the bill (section 2) entitled “Alternative to bad check diversion program” lacked a logical or natural connection to the subject matter of the bill.

The Supreme Court affirmed the district court decision, stating that a provision assigning bad check debt to a private debt collector is not naturally or logically connected to the subject matter of the bill. The Court rejected as irrelevant the department’s argument that section 2 of the bill correlates directly to sections 1 (drivers license suspension for worthless checks) and 3 (notification of such drivers license suspensions) in light of the fact that section 2 had a complete lack of correlation to the traffic-related provisions of the bill (sections 6-14). The Court held that chapter 98-223 thus violated article III, section 6, of the Florida Constitution (single subject requirement).

Gilreath v. State, 842 So. 2d 189 (Fla. 2d DCA 2003).

The defendant pled no contest to several offenses arising out of a driving under the influence with serious personal injury. His appeal and various post-conviction motions were denied at the trial and appellate levels. In the instant motion for post-conviction relief, the defendant argued that as a result of a defect in chapter 11D-8.012, Florida Administrative Code, and the mishandling of his blood sample, his test result of .15 was fatally defective, based on the holding in State v. Miles, 775 So. 2d 950 (Fla. 2000). The defendant argued that the state should not have had the benefit of the presumption of impairment, and if he had known this, he would have proceeded to trial, since his no contest plea was based on a material mistake of law and not knowingly and voluntarily entered.

The district court affirmed, holding that since the defendant’s convictions were final, he could only benefit from a major decisional change in the law which would be applied retroactively. The district court observed that the Miles opinion espoused a mere evolutionary refinement in the law and thus should not be retroactively applied.

McGhee v. State, 847 So. 2d 498 (Fla. 4th DCA 2003).

The defendant was convicted of one count of DUI manslaughter and five counts of driving under the influence causing property damage after entering an open plea to those offenses. He was sentenced on the property damage charges to concurrent terms of six months probation and the following “mandatory” special conditions: \$250 fine, attendance at a substance abuse course, fifty hours of community service, and immobilization of his car for ten days. The defendant had contended that the trial judge erred in determining that these special conditions were mandatory as a matter of law. The district court (after rejecting the defendant’s argument

on the DUI manslaughter conviction that the defendant was entitled to a downward departure since he committed the offense in an unsophisticated manner as being unsupported in the record), affirmed the misdemeanor sentences in part and reversed in part.

The district court observed that section 316.193(3)(c)1, Florida Statutes, provides that driving under the influence with property damage shall be punished as a first degree misdemeanor pursuant to sections 775.082 and 775.083, Florida Statutes. In relation to the community service requirement and the immobilization, the court then noted that the driving under the influence provision, section 316.193(6), which mandates these sanctions, references only unaggravated driving under the influence, and thus the provisions of chapter 775 would apply and thus there would be no mandatory community service or immobilization. Similarly, the mandatory fine provision in section 316.193(2) applies by its terms only to unaggravated driving under the influence offenses and thus would not be mandatory. The court did, however, hold that the sanctions of probation and the substance abuse course contained in section 316.193(5) did by its terms apply to all offenses contained in section 316.193 and thus would apply to driving under the influence offenses with property damage conviction. The court then remanded for resentencing.

State v. Bodden, 872 So. 2d 916 (Fla. 2d DCA 2002).

The defendant was issued a citation for driving under the influence and submitted to a test to determine his blood alcohol content, the results of which were .060 and .065. He also submitted to a urine test, which resulted in a positive for marijuana. He was subsequently charged with the possession of cannabis and drug paraphernalia, in addition to driving under the influence. The trial court barred the state from using the results of the urine test in the defendant's driving under the influence case and then certified the following question to the district court as being of great public importance:

In administering Florida's implied consent law, is the Florida Department of Law Enforcement required to adopt rules in accordance with the Florida Administrative Procedures Act governing the collection, preservation, and analysis of urine samples obtained by law enforcement pursuant to section 316.1932(1)(a), Florida Statutes?

The district court affirmed, holding that the requirement in the implied consent law that the defendant is deemed to have given consent to an "approved" test requires the development of a standard rule promulgated under the Administrative Procedures Act. The court rejected the state's argument that under the applicable statutory provision only a test to determine the alcohol content of a person's blood or breath had to be an approved test. The court resolved the ambiguity in the statute in favor of the defendant and held that the reference to an approved test included a urine test. The court concluded that:

. . . an 'approved' urine test is one in which the method of administrative and the

analysis of the test are ‘performed substantially according to methods approved by’ the FDLE. We acknowledge, however, that the methodology for administering a urine test should be somewhat less complex than the methodology necessary for administering a breath or blood test.

The court also held that a non-approved urine test taken pursuant to the implied consent law is not admissible as a scientific test pursuant to the traditional rules regarding the admissibility of evidence since consent was not given voluntarily (that is, consent based on misinformation is not voluntary).

[Note: In an opinion On Motion for Certification, issued on March 28, 2003, 28 FLW D831, the court granted the state’s motion for certification of the question to the Supreme Court. The court observed that the ruling in the case will affect prosecutions statewide and will require administrative action to correct the problem identified.]

Criminal Traffic Offenses

Rosa v. State, 847 So. 2d 495 (Fla. 3d DCA 2003).

The defendant was convicted of various offenses, including two counts of aggravated battery on a law enforcement officer, as a result of crashing into a law enforcement vehicle after a high-speed chase. That crash damaged the bumper of the vehicle, caused a strobe light to fall off the dashboard, cracked a turn signal light, and caused the door of the officer’s vehicle to strike the first officer and injure his arm and shin area.

The district court, however, reversed the aggravated battery conviction in relation to the second officer, holding that there was insufficient evidence to prove the offense. The court stated that:

The offense of aggravated battery which arises from a defendant’s ramming of another vehicle must be proven through the introduction of evidence that the occupants of the rammed vehicle were injured, jostled, moved about within the vehicle, or had to brace themselves for protection against the impending impact. See V.A. v. State, 819 So. 2d 847, 849 (Fla. 3rd DCA 2002). There is no evidence in this case that [the second officer] was injured, jostled, moved, or had to brace himself so as to protect against the impact of [the defendant’s] vehicle. We cannot infer from the record, including the testimony of police officers concerning the collision, that the impact from [the defendant’s] vehicle was of such magnitude so as to cause [the second officer] to move. The evidence in this case, taken in the light most favorable to the State . . . is thus insufficient for a jury to conclude that there was a battery upon [the second officer].

State v. Koczvara, 837 So. 2d 591 (Fla. 2d DCA 2003).

The defendant was charged with the unauthorized possession of a drivers license in violation of section 322.212, Florida Statutes, based on her possession of two drivers licenses with altered license numbers. The trial court granted the defendant's motion to dismiss based on its conclusion that section 322. 212 does not prohibit possession of a divers license with an altered license number.

The district court reversed, holding that the prohibition in section 322.212(1)(a) against the knowing possession of a forged or fictitious license covers the possession of an altered license number, since both forged and fictitious denote unauthorized changes made to a document that cause the document to convey information that is not true. The court noted that:

Accordingly, a driver's license need not be entirely fabricated to be forged or fictitious. Material alterations to a license will create a forged or fictitious license. And a driver's license with a falsely altered license number is as much a forged or fictitious license as a license with a false name, a false address, or a false photograph. Knowing possession of a license on which such basic identifying information has been altered is a violation of section 322.212(1)(a).

The district court also observed that the fact that there is a separate statutory prohibition against possession of a driver's license with an altered birth date, to wit, section 322.212(5)(b), is irrelevant and does not transform the plain meaning of forged or fictitious in section 322.212(1)(a). The court noted that the birth date provision merely carves out a misdemeanor exception to the general felony prohibition in section 322.212.

Finally, the court rejected the defendant's argument that the prosecution of a case for possession of a forged driver's license should require the establishment of a "specific intent to injure or defraud," similar to that contained in the general forgery statute. The court pointed out that section 322.212 contained no such element and therefore it would be improper to impose it on the state.

Quest v. State, 837 So. 2d 1106 (Fla. 4th DCA 2003).

The defendant was convicted of driving with a suspended license pursuant to section 322.34(2), Florida Statutes, which provides that the criminal offense of driving on a suspended license can occur only if the defendant had knowledge of the suspension, as knowledge is defined therein. At trial, the state offered evidence of such knowledge in the form of a certified copy of the defendant's driver history record, which did not reflect that the defendant had been notified of the suspension at issue. In addition, the defendant denied having received notice of the suspension at issue (having recently moved), although he did admit to having received some correspondence regarding previous suspensions.

The district court reversed, holding that the knowledge element in section 322.34(2) had not been satisfied. In addition, the court rejected the state's contention that the defendant should be imputed knowledge of the suspension since he had twice previously been cited for driving on a suspended license, concluding that "[knowledge] of the particular suspension at issue, whether by way of direct proof or one of the statutory presumptions, must be established in order to support a conviction . . ."

Dicks v. State, 840 So. 2d 408 (Fla. 4th DCA 2003).

The defendant was convicted of four separate violations of section 322.212, Florida Statutes, for the possession of four false drivers licenses and identification cards. Section 322. 212 prohibits the possession of "any" forged drivers license or identification card.

The district court reversed, holding that only one conviction was permissible, given the statutory reference to "any" conviction. The court noted that the Florida Supreme Court had held in relation to a comparable provision relating to weapon possession that since the word "any" was ambiguous, it should be construed in favor of the criminal defendant. See State v. Watts, 462 So. 2d 813 (Fla. 1985).

Morgan v. State, 840 So. 2d 1151 (Fla. DCA 5th 2003).

As a result of an accident occurring in 1997, the defendant was convicted of vehicular homicide in 1999. His sentence of ten years was affirmed on appeal. The defendant subsequently filed a motion for post-conviction relief, alleging four grounds for relief.

The district court denied relief on the first three grounds, which related to the ineffectiveness of counsel, but reversed on the fourth, to wit, that the sentence was illegal. The district court observed that the evidence supported a conviction for the third degree felony (maximum five years) rather than the second degree felony (maximum ten years) of vehicular homicide. Specifically, the court noted that the record lacked evidence raising the offense from a third to a second degree felony, that is, that the defendant failed to stop and render aid at the accident. The case was remanded for further proceedings on this issue.

Drivers Licenses

Huesca v. State, 841 So. 2d 585 (Fla. 2d DCA 2003).

As a result of a no contest plea reserving the right to appeal his motion to suppress, the defendant was convicted of the unlawful manufacture of marijuana. Among other sentences, the trial judge directed the Department of Highway Safety and Motor Vehicles to revoke the defendant's drivers license pursuant to section 322.055(1), Florida Statutes, which mandates that

the court direct such revocation for conviction of various offenses relating to controlled substances.

The district court reversed the revocation, holding that section 322.055(1) was inapplicable since the unlawful manufacture of marijuana was not one of the offenses enumerated in that provision.

Arrest, Search and Seizure

Faulkner v. State, 834 So. 2d 400 (Fla. 2d DCA 2003).

The defendant was a passenger in a car registered in his name and driven by an unlicensed driver. The vehicle was stopped for running a stop sign, at which time the defendant attempted to exit the vehicle, but was ordered by the officer to remain in the vehicle. The officer subsequently had the defendant exit the vehicle, at which point he realized the defendant was listed on the vehicle registration as the owner. The defendant explained that he had asked the driver to operate the vehicle because he had too much to drink. The defendant was subsequently subjected to a search, resulting in the discovery of, and conviction for, possession of cocaine and drug paraphernalia.

The district court reversed, citing Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999), for the proposition that “a command preventing an innocent passenger from leaving the scene of a traffic stop to continue on his independent way is a greater intrusion upon personal liberty than an order simply directing a passenger out of the vehicle.” The district court went on to state that:

When an innocent passenger is directed to exit a vehicle, he is detained only in a legal sense; his movement is restricted merely to the extent that there is a single place he may not go. But a passenger who is ordered to remain in the vehicle suffers a far greater intrusion upon his personal liberty because he is forbidden [to] go anywhere other than that one place. In other words, he is fully detained in both law and fact. [citation omitted] We conclude that it is illegal to detain a passenger in this manner absent a reasonable suspicion that the passenger has committed a crime or is a threat.

The court then held that the defendant’s subsequent consent, following as it did illegal police activity, placed a heavy burden on the state to prove by clear and convincing evidence that there was an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior illegal action. The state had proved no such break in the chain; to the contrary, the detention continued when the officer ordered the defendant to the rear of the car and questioned him without a reasonable suspicion that he had engaged in criminal conduct or posed a threat.

Sparks v. State, 842 So. 2d 876 (Fla. 2d DCA 2003).

The defendant was stopped for a headlight that was not working, after which the officer asked for his drivers license and registration, and subsequently issued a citation for the headlight infraction. The defendant first consented, and then withdrew consent, for a search of his vehicle. A canine unit subsequently arrived and alerted on narcotics. The defendant, after having his motion to suppress denied, was convicted of the possession of contraband.

The district court reversed, holding that while a person may not be detained for a traffic violation for any longer than necessary to issue a citation, that was not the case herein. The court stated that:

The testimony in this case indicates that once the citation was completed, [the defendant] was detained for some period of time. Although the deputy was unclear as to the time that elapsed, he did acknowledge that he completed writing the citation for the headlight prior to the arrival of the canine unit and that he did not give [the defendant] the citation or otherwise indicate to him that he was free to leave. Accordingly, the time between the completion of the writing of the citation and the arrival of the canine unit was an illegal detention. The trial court, therefore, erred by denying the motion to suppress.

Moody v. State, 842 So. 2d 754 (Fla. 2003).

While he was driving, the defendant was recognized by a law enforcement officer as an individual with a suspended license. The defendant was subsequently stopped to confirm his driving status since the officer needed to know the defendant's date of birth to do so. After being stopped, the defendant admitted that he did not have a drivers license and was arrested. His vehicle was towed and a routine inventory search turned up a handgun which was used in a homicide. The defendant was subsequently arrested for the possession of a firearm, charged and convicted of felony murder, and sentenced to death.

The Supreme Court vacated the judgment and sentence, holding that the traffic stop of the defendant was unlawful because it was not based on a reasonable suspicion. The Court stated that since the state had failed to demonstrate any exception to the exclusionary rule, the fruits of the unlawful stop should have been suppressed. The Court based its conclusion on the staleness doctrine, which it held had been misapplied by the trial court. The Supreme Court examined the period of time between when the officer had knowledge that the driver had an invalid license and when the stop occurred. Specifically, it was noted that it had been a year or two since the officer had any contact with the defendant and as long as three years since the officer had checked the defendant's driving status. During this time the defendant could have easily obtained a valid license. Thus, the officer was acting on a hunch or mere suspicion and had illegally detained the defendant.

Nulph v. State, 838 So. 2d 1244 (Fla. 2d DCA 2003).

The defendant pled no contest to trafficking in and possession of illegal drugs and paraphernalia, reserving her right to appeal the denial of a motion to suppress evidence. The defendant was a passenger in a vehicle driven by a person whom law enforcement personnel had under surveillance for drug activity. The actual stop of the vehicle was for a careless driving violation.

The district court reversed the denial of the motion to suppress and applied the facts of the case to the law in the following manner:

Although we cannot say that the detention was unreasonably long had the detective decided at the outset to issue a citation [for careless driving], that is not what occurred. After twenty minutes into the detention, the detective still had not decided whether to issue a citation and was only continuing the detention to investigate his suspicions of drug activity. This was improper because the detective did not articulate a reasonable suspicion that the vehicle occupants were committing a crime, and although the detective suspected [the driver] of being a drug dealer, the detective did not have a basis to suspect that either [the driver or defendant] was in possession of drugs at the time of the traffic stop. The detective indicated, in response to questioning by the State, that the stop was not based “on the Carroll Doctrine or any probable cause that [the vehicle] contained narcotics.”

Torts/Accident

Wright v. Ring Power Corporation, 834 So. 2d 329 (Fla. 5th DCA 2003).

The plaintiff was rear-ended by the defendant’s driver when he abruptly stopped while making a left turn after stopping for a stop sign at an intersection without a traffic signal. After the trial court denied the plaintiff’s motion for a directed verdict on the issue of negligence, the jury found the defendant to have not been negligent.

The district court reversed, holding that while the presumption of negligence attaches to the driver of the rear vehicle in a rear-end collision, such presumption can be rebutted by presenting evidence which fairly and reasonably tends to show that the presumption is misplaced. The district court applied the standard adopted by the Supreme Court of Florida, that is, that evidence of a sudden stop without more is insufficient to overcome the presumption of negligence, and concluded that in the absence of evidence that the stop could not have reasonably been expected (in this case the intersection was bordered by a school and multiple business and residential establishments), the presumption was, as a matter of law, not overcome. Thus, the trial court should have granted the plaintiff’s motion for a directed verdict on the issue of negligence.

Citrus County v. McQuillan, 840 So. 2d 343 (Fla. 5th DCA 2003).

The plaintiff decedent was involved in a one-car accident caused by her losing control as she was traveling at a high rate of speed on a county road when the wheels of her car left the side of the road, resulting in the plaintiff decedent “jerking” the vehicle back onto the road, at which point the car went out of control and her death occurred. At trial, the plaintiff introduced evidence that there was a ninety-degree drop off of three to five inches from the road surface to the shoulder due to a recent re-paving of the road. The jury agreed that this created a hazard and found the defendant county 20 percent negligent.

The district affirmed on the negligence issue, holding that there was adequate substantial evidence to support the jury’s determination. The court pointed out that there were numerous witnesses to the fact of the drop off in elevation from the road to the shoulder, as well as expert testimony on the extent of the drop-off. The court then concluded that:

Building on that, the plaintiff’s experts testified as to the hazardous nature of such a drop off for vehicles traveling at the speed limit. According to these experts, the [defendant’s] traffic manual provided the highway department should allow no drop offs greater than three inches and the state manual indicates there should be no drop offs from the pavement to the shoulder of a road. This is adequate to support the jury’s conclusion that accidents may be caused by drop offs, like the one established in this case, and thus are reasonably foreseeable.

Civil Infractions

Jones v. State, 842 So. 2d 889 (Fla. 2d DCA 2003).

The defendant was stopped for failing to have lights or reflectors and operating without due regard for public safety while riding a horse at a full speed gallop down a street at 11:30 p.m. Upon dismounting, the officer observed a rifle on the horse’s saddle and subsequently discovered a knife on the defendant’s body and a crack pipe in his jacket. The trial court denied the defendant’s motion to suppress, finding the stop was valid for two reasons, to wit, the sheer unusualness of a person riding a horse at night at a full gallop on a paved road and the potential endangerment to others.

The district court reversed, holding that under section 316.073, Florida Statutes, a person on horseback is not subject to provisions regulating motor vehicles, but rather is subject to provisions applying to pedestrians. The district court rejected the argument that there was probable cause that the defendant violated section 316.2045(1), Florida Statutes, which prohibits impeding, hindering, stifling, or restraining traffic or passage or endangering the safe movement of vehicles or pedestrians, relying on the finding of the trial court that there was no evidence that the defendant endangered others (supported by the officers testimony), nor was there evidence

that the defendant actually impeded any traffic or passage. In the absence of probable cause, the stop was illegal and evidence seized as a result thereof should have been suppressed.

Loper v. State, 840 So. 2d 1139 (Fla. 1st DCA 2003).

The district court held that the failure to file a traffic citation with the court having jurisdiction over the alleged offense within five days of issuance was not a jurisdictional prerequisite to the prosecution of a defendant.