

FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

October - December, 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

Kirby v. State, Supreme Court, 28 FLW S571, opinion filed October 9, 2003.

The defendant caused a traffic accident which generated both a civil claim for damages by the injured victim and a criminal prosecution for driving under the influence resulting in the serious bodily injury to another. Prior to resolution of the criminal charge, the defendant settled the civil claim for the \$25,000 policy limit on his insurance. The defendant was subsequently convicted on the DUI with serious bodily injury charge and sentenced to five years probation, a downward departure from the permissible guidelines sentence of 51 months' incarceration. As justification for the departure the trial court found that the need for restitution to the victim outweighed the need for a prison sentence and that the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant showed remorse. At the subsequent restitution hearing, the trial court denied restitution as being foreclosed by the settlement and release in the civil case. The state sought restitution for losses above the \$25,000 insurance limits.

The district court reversed, holding that the civil settlement between the victim and the defendant did not bar the state from seeking restitution since the state was not a party to the settlement and its interests went beyond the interests at stake in the civil settlement (specifically, deterrence, rehabilitation, retribution, and shifting a financial burden off the taxpayers).

Upon further review the Supreme Court observed that section 775.089(1), Florida Statutes, requires the court to make restitution for damages "unless it finds clear and compelling

reasons not to order such restitution.” The Court then observed:

In light of the statutory requirement that restitution be imposed, the legal question becomes whether a settlement and release of liability by the victim of ‘any and all claims’ against the defendant executed prior to the disposition of the criminal case constitutes a clear and compelling reason not to order restitution as a matter of law. We conclude that it does not, because of both the unique purposes of restitution and the clear legislative intent as expressed in the restitution statute.

The Court went on to note that while a victim’s wishes concerning restitution are relevant, they are not dispositive. The Court quoted approvingly the following language from a California opinion:

Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment give restitution a more precise deterrent effect than a traditional fine.

While a settlement agreement with, and release of, a defendant’s insurance company may reflect a victim’s willingness to accept the amount paid in full satisfaction of all civil liability, it does not reflect the willingness of the People to accept that sum in satisfaction of the defendant’s rehabilitative and deterrent debt to society. A restitution order pursuant to a defendant’s plea is an agreement between the defendant and the state. The victim is not party to the agreement, and a release by the victim cannot act to release a defendant from his financial debt to the state any more than it could terminate his prison sentence.

The Supreme Court observed that if the defendant’s position was that the settlement agreement precluded an award of restitution, it was incumbent upon him to bring it to the trial court’s attention. If the settlement agreement did indeed preclude restitution, the victim’s need for restitution could then not serve as a basis for a downward departure. The Court concluded that “a settlement agreement between the victim and the defendant executed prior to the disposition of a criminal case does not constitute a clear and compelling reason for the trial court not to order restitution as a matter of law.”

Servis v. State, 855 So. 2d 1190 (Fla. 5th DCA 2003).

The defendant was convicted of DUI manslaughter as a result of running a stop sign and colliding with a motorcycle and another vehicle, killing the motorcyclist. At closing argument, the state ridiculed the defendant and his theory of defense, gave a personal opinion as to the cause, suggested that evidence which was not presented at trial provided additional grounds for

finding the defendant guilty, expressed a personal opinion on the credibility of witnesses (medical examiner and police officers), misstated the law (the jury could find the defendant guilty as long as his blood alcohol level was .08 at some point during the night rather than when driving), gave a personal opinion on the defendant's guilt or innocence, and gratuitously showed the jury an autopsy photograph of the victim.

The district court reversed, holding that the collective import of the state's closing argument was so prejudicial as to constitute fundamental error, that is, so extensive that its influence pervaded the trial, gravely impairing a calm and dispassionate consideration of the evidence and the merits by the jury. Specifically, in relation to the blood alcohol level comment, the district court observed that section 316.193, Florida Statutes, requires that a person have a blood alcohol level above .08 while driving or in physical control of a vehicle. On the autopsy photographs issue, the court stated such photographs would only be admissible to the extent that they fairly and accurately establish a material fact and are not unduly prejudicial, a test not met since the victim's picture, which had no bearing on the state's closing argument, was inflammatory and prejudicial (when coupled with the state's comment that the jury should avoid a third tragedy in the case).

Jenkins v. State, 855 So. 2d 1219 (Fla. 1st DCA 2003).

The defendants in the consolidated cases were both convicted of driving under the influence, their appeals reaching the district court through a petition for writ of certification on the one hand and certification of a question of great public importance on the other. The issue involved was raised in motions to suppress the results of all breath tests between January 1, 1997, and July 6, 1999, based upon the alleged failure of the Florida Department of Law Enforcement to properly adopt and promulgate rules regulating the use of breath testing devices. The upshot was the following certified questions (as restated by the district court):

Whether FDLE was required to engage in the rule-making process pursuant to chapter 120, Florida Statutes, the Administrative Procedures Act (APA), when it designated a sole source for the alcohol solution and created and used the COA form.

If FDLE was required to promulgate a rule, what is the proper remedy when FDLE promulgated the COA form as a rule through the procedures delineated in chapter 120, Florida Statutes, after the administration of the breathalyzer tests in these cases, but prior to the challenges in the instant cases being heard.

The district court observed that section 120.55(15), Florida Statutes, defines a rule as an "agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by

existing rule.” Applying this definition, the court held that the creation of the Certificate of Accuracy (COA) form did constitute action pursuant to a rule, but that the designation of a corporation as the sole source for the alcohol reference solution was not action pursuant to a rule.

In response to the second question, the court held that although FDLE may have been late in complying with chapter 120, as a practical matter the use of the unpromulgated COA form did not diminish the reliability of the tests. Noting that the department had already initiated the rule-making procedure for the adoption of the COA form as a rule by the time the motion in the instant cases was heard, the court found that there was no question the department was acting expeditiously and in good faith and thus the state should be allowed to rely upon the COA form and be entitled to the statutory presumption of impairment. The district court then concluded:

Ultimately, the question here is not one of lack of procedures . . . which may result in prejudice to a defendant because of inaccurate results. Rather, the question is whether a technical violation of administrative procedures which has been subsequently cured should invalidate a statutory presumption of impairment. Where . . . protection of a defendant’s due process rights mandates the severe remedy of denying the State utilization of the statutory presumption, the remedy in circumstances such as those in the instant case should be to require the State to prove the legitimacy of the existing procedure – which the State has done here.

Sorrell v. State, 855 So. 2d 1253 (Fla. 4th DCA 2003).

The defendant was convicted of driving while his license was permanently revoked in violation of section 322.341, Florida Statutes.

The district court, after rejecting the defendant’s various attacks on the evidence, reversed the conviction based on the Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So.2d 782 (Fla. 2003). In Critchfield, the Supreme Court declared unconstitutional under the single subject rule a provision making fourth DUI offenders subject to a permanent revocation. That bill also contained a provision creating section 322.341, Florida Statutes. In relation to the evidentiary issues, the court held that the state established that the defendant’s license had been revoked through the admission of a copy of the defendant’s driving record (it being unnecessary to prove the underlying DUI convictions forming the basis for the revocation) and that an indication in the record that the defendant had been given notice of the revocation was sufficient to establish the notice requirement.

[Note: On October 15, 2003, the district court granted the state’s motion for rehearing and clarification and withdrew the August 27, 2003 opinion. The new opinion changed the ultimate disposition from a reversal of conviction and discharge to a remand for a new trial on any lesser included offense as allowed under rule 3.510(b), Florida Rules of Criminal Procedure. The district court based its opinion on the fact that the defendant’s trial was non-jury rather than jury, concluding that there was no authority for the proposition that in a non-jury trial a judge only has the inherent power to find a defendant guilty of a lesser included offense when the parties argue that guilt on a lesser charge is a potential outcome. The court based this conclusion on the fact

that a judge, unlike a jury, is presumed to know of all lesser included offenses. at 28 FLW D2378.]

Department of Highway Safety and Motor Vehicles v. Bailey, 870 So. 2d 47 (Fla. 2d DCA 2003).

The defendant's drivers license was permanently revoked in 1991 for his fourth driving under the influence conviction. In 2001, the defendant sought a hardship driving permit, which request was denied by the department in light of a statutory prohibition (adopted in 1998), against fourth offenders obtaining a hardship license. The department based its decision on certified copies of three DUI convictions and a computerized driving record. The circuit court entered an order determining that the administrative hearing officer had insufficient evidence to deny the application for the hardship permit and ordered reinstatement of the license.

The district court granted the department's petition for writ of certiorari and quashed the trial court's order, holding that it had exceeded its scope of review. The district court first pointed out that the circuit court did not have the benefit of the opinion in Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003), in which the Supreme Court had declared the 1998 amendment prohibiting the issuance of a hardship licence to fourth offenders unconstitutional as a violation of the "single subject" rule. In light of this decision, even if the computerized driving record was sufficient evidence of the conviction, the defendant could still apply for the hardship permit. The court then stated:

However, the circuit court did exceed the scope of certiorari review when it ordered the Department to reinstate [the defendant's] license. The circuit court's review should have been limited to whether the hearing officer afforded [the defendant] procedural due process and observed the essential requirements of the law and whether the administrative findings were supported by competent, substantial evidence. [citations omitted]. From the record before us, it is unclear whether the hearing officer made any factual findings other than [the defendant] had four DUI convictions. On remand, the circuit court must determine, in light of the criteria set out in section 322.271(4) Florida Statutes (1997), whether the hearing officer's findings were supported by competent, substantial evidence and whether, in light of those findings, the hearing officer abused his discretion in denying [the defendant's] hardship permit.

Upon remand, the district court did indicate that if the record does not contain the factual finding relevant to the defendant's eligibility, the circuit court should order the hearing officer to enter an appropriate order or hold another hearing.

Stone v. State, 856 So. 2d 1109 (Fla. 4th DCA 2003).

The defendant was observed driving his 49cc Yamaha scooter, after which he was summoned by an officer. The officer had knowledge that the defendant's drivers license had

been suspended as recently as the previous month and had observed that the defendant had not been wearing a protective helmet or eye protection. The defendant showed the officer that his license had recently been reinstated. However, after detecting the odor of alcohol, the officer administered field sobriety tests, which the defendant failed, resulting in the arrest of the defendant for driving under the influence. The trial court denied the defendant's motion to suppress and the defendant was convicted.

The district court affirmed, holding that the officer, based on the reasonable suspicion that the defendant was committing the misdemeanor offense of driving on a suspended license (based on his knowledge of the defendant's recent suspension), had probable cause to make the original stop of the defendant. The district court did not consider the issue of whether the stop was consensual, observing that the trial court had implicitly rejected this contention by addressing the probable cause issue. The district court did, however, disagree with the finding of the trial court that the officer also had probable cause to believe the defendant was committing safety violations relating to the lack of a helmet and eye protection, noting that the relevant requirements in section 316.211, Florida Statutes, are inapplicable to motorcycles with motors under 50 cubic centimeters. The court also held that the failure of the defendant to have insurance was irrelevant since that requirement did not apply to motorcycles under 50 cc.

Nicholas v. State, 857 So. 2d 980 (Fla. 4th DCA 2003).

After being observed making a left hand turn from the right hand lane (of two lanes going in that direction), the defendant was immediately stopped for driving under the influence, resulting in a violation of his probation. The defendant was not charged with any traffic infraction.

The district court reversed, holding that the limited observation of the defendant (following him for a very short period of time) was not sufficient to provide evidence of "erratic driving" as required in caselaw as a prerequisite for a stop. The court observed that beside the fact of a limited observation time, no one was endangered or interfered with by the defendant's driving. The district court then stated:

To conclude, we recognize that there is no statutory definition of erratic driving and it is necessarily determined on a case by case basis. However, in light of the case law . . . and the facts of this case, we hold that [the defendant's] turn did not amount to erratic driving. As a result, [the officer] did not have a founded suspicion that [the defendant] was under the influence. The stop was therefore improper as was the subsequent denial of the motion to suppress.

Department of Highway Safety and Motor Vehicles v. Gordon, 860 So. 2d 469 (Fla. 1st DCA 2003).

Pursuant to an agreement between the state attorney and the defendant, which agreement contained a representation that the defendant's previous driving under the influence conviction

occurred more than five years prior to the instant offense (actually it was only fourteen months), the defendant was sentenced to the mandatory minimum penalties for a second DUI committed more than five years from a prior offense and her drivers license was revoked for six months. The department subsequently notified the defendant that her license was revoked for five years in accordance with section 322.28(2)(a)2., Florida Statutes. The circuit court granted the defendant certiorari relief after the defendant argued that the department, as an agent of the state, should have been bound by the agreement between the state attorney and the defendant.

The district court granted the department's petition for writ of certiorari and reinstated the order of revocation. The district court, noting that the administrative revocation of a drivers license for driving under the influence was an administrative remedy rather than a punishment, held that when a revocation is made mandatory by statute, it is an administrative function (designed to protect the public) rather than the imposition of a criminal sentence, which was the subject of the agreement.

State v. Caswell, First District, 28 FLW D2492, opinion filed October 31, 2003.

The defendant pled "no contest" to driving under the influence (apparently her fourth offense), but was not informed prior to the plea that as a consequence of the DUI conviction the Department of Highway Safety and Motor Vehicles could permanently revoke her license pursuant to section 322.28(2)(e), Florida Statutes. The circuit court granted certiorari, essentially ruling that revocation of a driver's license, a statutorily mandated administrative act, is a direct consequence of a plea to a specified driving offense, requiring defense counsel to warn the defendant prior to the entry of the plea.

The district court granted certiorari, observing that case law in existence long before the circuit court addressed the issue established that revocation of a drivers license was not a punishment of the offender, but rather, under chapter 322, Florida Statutes, an administrative remedy for the public protection that mandatorily follows conviction for certain offenses. The district court then stated:

Because license revocation under the mandatory provisions of chapter 322 is not a 'punishment,' regardless of whether it is ordered by the Department of Highway Safety and Motor Vehicles or by a court, it is not a 'direct consequence' of the defendant's plea, as that term was defined by Florida courts before the circuit court addressed this case. In this context, a 'direct consequence' of a plea is one that has a 'definite, immediate, and largely automatic effect on the range of the defendant's punishment.' Major v. State, 814 So. 2d 424, 431 (Fla. 2002). The voluntariness of a defendant's plea depends only upon whether the defendant is aware of the direct consequences of the plea. Id. at 428. The trial court and defense counsel are not required to advise a defendant of the collateral consequences of the plea. [citations omitted]

Observing that the circuit court, in granting certiorari, had thus departed from the essential requirements of law, the district court held that a miscarriage of justice had resulted and quashed the circuit court order.

Nelson v. State, 870 So. 2d 57 (Fla. 2d DCA 2003).

The defendant was convicted of two counts of DUI manslaughter, two counts of DUI with serious bodily injury, and driving while license suspended or revoked. He was sentenced to consecutive sentences of fifteen years on the manslaughter counts and five years on the serious bodily injury counts, for a total of forty years. In response to a subsequent motion to correct illegal sentence based on Heggs v. State, 759 So. 2d 620 (Fla. 2000), the trial court again sentenced the defendant to forty years to be served consecutively. This was an upward departure sentence based on a finding that the defendant was “not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct.”

The district court reversed, holding that the departure sentence was inappropriate since there was no evidence (as the state conceded) of an escalating pattern demonstrated by progression from nonviolent to violent crimes, increasingly violent crimes, or increasingly serious criminal activity.

Bautista v. State, 863 So. 2d 1180 (Fla. 2003).

The Supreme Court accepted for consideration the following rephrased question certified from the Fourth District Court of Appeal:

Does the “a/any” test adopted in Grappin v. State and State v. Watts preclude multiple convictions of DUI manslaughter where multiple deaths occur in a single DUI crash?

The Court answered the question in the negative, holding that multiple convictions for DUI manslaughter may arise from multiple deaths in a single DUI crash. In ascertaining the legislative intent, the Court was not persuaded that the statutory reference in section 316.193(3)(c)3., Florida Statutes, to the death of “any” human being constituting DUI manslaughter mandated an interpretation that the killing of multiple persons in a single DUI incident constitutes a single offense of DUI manslaughter. The Court observed that DUI manslaughter, while listed in the chapter relating to traffic offenses, fell within the general category of homicide offenses, which are clearly punishable by the number of victims rather than by reference to the particular act leading to the deaths. The Supreme Court then observed:

Applying a common-sense approach to the DUI manslaughter statute leads to one inexorable conclusion. Any reasonable consideration of the language of the statute, the history of its enactment, the uniform statutory treatment of manslaughter offenses, and the case law in existence makes it clear that the

legislative intent is that each death in a DUI crash is to be charged and punished as a separate offense.

The Court, however, refused to discard the “a/any test” under all circumstances, observing that it may be used where there is an ambiguity in the law, but should not be used to create ambiguity where none exists.

Bielik v. State, 860 So. 2d 525 (Fla. 4th DCA 2003).

The defendant pled no contest to several counts of felony driving under the influence. At sentencing, the trial court declined to consider as a mitigating factor the fact that the offense was allegedly committed in an “unsophisticated manner and was an isolated incident for which the defendant had shown remorse,” citing State v. Warner, 721 So. 2d 767 (Fla. 4th DCA 1998), as precluding, as a matter of law, the consideration of this mitigating factor.

The district court reversed and remanded, observing that Warner had been overruled by the Supreme Court in State v. VanBebber, 848 So. 2d 1046 (Fla. 2003). The district court then declined the state’s invitation to affirm based on the particular facts of the case, noting that the trial court had not considered the merits of the defendant’s argument (and had even indicated it would consider a downward departure).

Case v. State, 865 So. 2d 557 (Fla. 1st DCA 2003).

The defendant was charged with driving while under the influence. At first appearance, the court asked the defendant if he wished to waive his right to counsel and enter a plea. When the defendant answered in the affirmative, the court accepted the plea and sentenced the defendant to probation. The defendant was subsequently denied the right to withdraw this plea, the court rejecting his claim that the plea was involuntary since he had not been informed that his license would be suspended and that the trial court had failed to determine whether his waiver of counsel had been made knowingly and intelligently. The circuit court affirmed the county court’s denial of the motion, reasoning that the license suspension was not a direct consequence of the plea and that since the defendant was not imprisoned at the time of the plea, he was not entitled to counsel.

Upon petition for writ of certiorari, the district court quashed the circuit court decision and remanded with instructions that the defendant be allowed to withdraw his plea. First, the district court held that there was no merit in the defendant’s argument that his plea was rendered involuntary because he was never informed that his license would be suspended, see Bolware [infra]. The court, however, found that the circuit court departed from the essential requirements of the law when it held that the defendant was neither entitled to counsel nor to a hearing on the waiver thereof. The district court observed that a defendant charged with a misdemeanor punishable by possible imprisonment was entitled to counsel unless the trial judge issues a written order guaranteeing that the defendant will never be incarcerated as a result of the

conviction (which had not occurred). In addition, the court held that the failure to determine whether the waiver of counsel and knowing and voluntary (Faretta inquiry) was per se reversible error.

Criminal Traffic Offenses

Buswell v. State, 855 So. 2d 687 (Fla 2d DCA 2003).

The defendant was placed on drug offender probation as a sanction for a driving while license suspended conviction. The district court reversed for resentencing, holding that drug offender probation unambiguously applies only to violations of chapter 893 (Drug Abuse Prevention and Control).

State v. Bolware, 924 So. 2d 806 (Fla. 1st DCA 2003).

The defendant pled “no contest” to driving while license suspended or revoked (apparently his fourth offense), but was not informed prior to the plea that as a consequence of the conviction the Department of Highway Safety and Motor Vehicles could revoke his license for five years pursuant to section 322.27(5), Florida Statutes. The circuit court granted certiorari, essentially ruling that revocation of a driver’s license, a statutorily mandated administrative act, is a direct consequence of a plea to a specified driving offense, requiring defense counsel to warn the defendant prior to the entry of the plea.

The district court granted certiorari, observing that case law in existence long before the circuit court addressed the issue established that revocation of a drivers license was not a punishment of the offender, but rather, under chapter 322, Florida Statutes, an administrative remedy for the public protection that mandatorily follows conviction for certain offenses. The district court then stated:

Because license revocation under the mandatory provisions of chapter 322 is not a ‘punishment,’ regardless of whether it is ordered by the Department of Highway Safety and Motor Vehicles or by a court, it is not a ‘direct consequence’ of the defendant’s plea, as that term was defined by Florida courts before the circuit court addressed this case. In this context, a ‘direct consequence’ of a plea is one that has a ‘definite, immediate, and largely automatic effect on the range of the defendant’s punishment.’ Major v. State, 814 So. 2d 424, 431 (Fla. 2002). The voluntariness of a defendant’s plea depends only upon whether the defendant is aware of the direct consequences of the plea. Id. at 428. The trial court and defense counsel are not required to advise a defendant of the collateral consequences of the plea. [citations omitted]

Observing that the circuit court, in granting certiorari, had thus departed from the essential requirements of law, the district court held that a miscarriage of justice had resulted and quashed the circuit court order.

Warren v. State, 856 So. 2d 1095 (Fla 5th DCA 2003).

Pursuant to the entry of a plea, the defendant was convicted of felony driving under the influence and felony driving with a suspended or revoked license as an habitual traffic offender. Upon appeal, the defendant objected that his trial counsel had been ineffective in failing to object to the driving with a suspended or revoked license charge being reclassified as a felony, based on the decision in Huss v. State, 771 So. 2d 591 (Fla. 1st DCA 2000). In Huss the court held that the prior convictions for driving while license suspended necessary to support the felony offense must have been committed with knowledge that the defendant's license was suspended or revoked.

The district court affirmed, distinguishing Huss from the instant case of driving while having habitual traffic offender status. The district court observed that the trial court had correctly determined that it was the fact that the defendant's license was revoked as a result of being designated by the department as an habitual traffic offender based on his driving record, rather than the convictions for the underlying traffic offenses, which was the element of the offense.

McLean v. State, 870 So. 2d 50 (Fla. 2d DCA 2003).

The defendant was convicted of aggravated assault on a law enforcement officer, fleeing and eluding, and reckless driving. At sentencing, the trial court imposed a \$150 discretionary court improvement trust fund cost pursuant to section 939.18, Florida Statutes (2001), which authorizes a court to impose an additional court cost if "it finds that the person has the ability to pay the additional assessment."

The district court reversed, holding that the trial court did not consider the defendant's financial resources or orally announce the imposition of the discretionary cost assessed. The district court noted that in deciding whether to assess this discretionary cost the trial court must consider the financial resources of the defendant as well as other relevant factors. Trial courts are also obligated to orally announce the imposition of discretionary costs.

State v. Veilleux, 28 Fla. L. Weekly D1804 (Fla. 2d DCA Jul. 30, 2003), opinion withdrawn and superseded by, 859 So. 2d 1224 (Fla. 2d DCA 2003).

The defendant was charged with forgery as a result of allegedly signing a name not his own to traffic citations for reckless driving and driving without a valid drivers license. The trial court excluded the citation from evidence pursuant to the requirement in section 316.650(9), Florida Statutes, that traffic citations "shall not be admissible evidence in any trial."

The district court denied the state's petition for writ of certiorari, holding that there was no basis to discern a legislative intent to make an exception to the unambiguous language of section 316.650(9). The court held that the trial court had not departed from the essential requirements of the law, given that it had followed precedent from the district court opinion on the issue. Dixon v. State, 812 So. 2d 595 (Fla. 1st DCA 2002). The district court then disagreed with the dissenting opinion on the issue that the applicable statute was procedural in nature and thus need have been approved by the Supreme Court, citing to Supreme Court precedent:

Even if we were to agree with the dissent that section 316.650(9) is purely procedural, the constitutional limitation on the legislature's enactment of procedural law is not absolute. Rather, such violation occurs when the "legislatively imposed 'procedure' is interfering with and intruding upon the procedures and processes of this Court and conflicts with this Court's own rule regulating the procedure." Jackson v. Department of Corrections, 790 So. 2d 381 (Fla. 2000).

[Note: On November 7, 2003, the district court granted in part the state's motion for rehearing and certification, rewriting parts of the opinion, and certifying the following question to the Supreme Court: "When the sole issue in a criminal prosecution is the placement of a forged signature on a traffic citation, may the state introduce the citation bearing the signature into evidence to prove the forgery, notwithstanding the language of section 316.650(9), Florida Statutes?"]

Williams v. State, 865 So. 2d 5 (Fla. 4th DCA 2003).

The defendant was convicted of felony driving while license suspended (DWLS) based on the existence of two previous convictions.

The district court reversed, initially rejecting a 1995 conviction because the statute in effect at that time did not require the presently-required element of knowledge. See Badger v. State, 798 So.2d 890 (Fla. 4th DCA 2001). The court then held that a 1998 conviction (occurring after the change in the law) did not qualify because the only supporting evidence was the Department of Highway Safety and Motor Vehicles driver history record. The court distinguished the instant situation from that in Ward v. State, 807 So. 2d 808 (Fla. 4th DCA 2002), a fourth offense felony driving under the influence case in which there were not certified copies of convictions, The district court noted that in Ward there was corroborating evidence of previous DUI convictions in addition to the driving history record (booking photograph, physical description, etc.). The court summarized as follows:

In the present case there is no such corroborative evidence of any prior DWLS conviction except for the 2000 conviction. We approved the additional evidence as sufficient in Ward and would do the same if similar evidence had been adduced in this case. Nevertheless we wish to make clear that the safest course is for the state to adduce certified copies fo the prior qualifying

convictions. Relying on the sufficiency of other evidence to prove qualifying convictions for felony driving offenses needlessly runs the risk of a reversal. It is much the best for the state to adduce its own official records, the certified copies of the convictions themselves.

Maddox v. State, 862 So. 2d 783 (Fla. 2d DCA 2003).

The defendant was stopped for an improper lane change, at which time he failed to provide a drivers license and proof of insurance. When questioned as to his name and date of birth, he gave the officer his brother's name and date of birth. The officer then issued the defendant citations in his brother's name for improper lane change and failure to provide proof of insurance. A subsequent search of the car provided information leading to the defendant's real identity and the fact that his drivers license was suspended. The defendant was then charged with, and convicted of, forgery (among other offenses).

The district court affirmed all convictions, but chose only to discuss the issue of the admissibility of the traffic citations in the forgery case in light of the statutory prohibition in section 316.650(9), Florida Statutes, against the admissibility of a citation in evidence in any trial. The court certified conflict with Dixon v. State, 812 So. 2d 595 (Fla. 1st DCA 2002) and held that the citations were admissible, reasoning as follows:

. . . we do not believe the trial court erred in admitting the citations as evidence of the forgeries. Although sections 316.650(9) does provide that traffic citations "shall not be admissible evidence in any trial," that statutory proscription does not apply to the facts of this case. Based on our reading of the statute, we conclude that the purpose of the statute is to protect the person to whom the citation is issued. Here, the citation was issued to a person the deputy believed to be [defendant's brother]; the deputy charged [the defendant's brother] with two civil infractions. When the deputy learned that [the defendant] was, in fact, not [his brother] but rather [himself] he withdrew the charges against [the brother] and retained the documents as evidence of the criminal offenses of forgery. [The defendant] misrepresented himself to be [his brother] and signed the ticket to carry out the misrepresentation. [The defendant] was not on trial for either of the civil infractions, nor was [his brother]. In fact, after the withdrawal of the citations, the charges of improper lane change and failure to show proof of insurance were no longer pending against anyone. Thus, the documents were not "citations" as contemplated by the statute, but rather were documentary evidence of [the defendant's] criminal conduct. Thus, the statute does not apply.

Bryan v. State, 862 So. 2d 822 (Fla. 5th DCA 2003).

The defendant was convicted of felony driving while license suspended or revoked pursuant to a plea of nolo contendere, preserving no appellate issues. He was sentenced to a term

of incarceration, suspended upon the successful completion of two years community control. The defendant was subsequently charged with violating community control, at which time he moved to withdraw his original plea, asserting that his prior convictions did not elevate the original offense to a felony. The trial court denied the motion.

The district court affirmed, rejecting the defendant's argument that his record lacked the requisite prior "knowing" convictions to support the felony conviction, as required by Huss v. State, 771 So. 2d 591 (Fla. 1st DCA 2002). The district court reiterated its prior holding that Huss was not a retroactive change in the law (and noted that another district court had certified conflict with this holding).

O'Quinn v. State, 850 So. 2d 1020 (Fla. 5th DCA 2003).

The defendant was convicted of and sentenced for driving under the influence resulting in serious bodily injury and felony driving while license suspended, revoked, or canceled. He subsequently filed a motion for post-conviction relief, alleging ineffective assistance of counsel in that his attorney had not advised him that he did not qualify for felony prosecution on the driving while license suspended/revoked charge since his prior convictions did not include a "knowing" element as required in Huss v. State, 771 So. 2d 591 (Fla. 1st DCA 2000). The trial court found that the defendant was aware that his license was suspended at the time of the instant offense and denied the motion.

The district court reversed, observing that Huss was the controlling law when the defendant pled and was sentenced. Since the defendant plead guilty to an offense which could not have been classified as a felony, the district court found there had been ineffective assistance of counsel and allowed the defendant to withdraw the plea.

Arrests, Search and Seizure

State v. Rivers, 861 So. 2d 1208 (Fla. 2d DCA 2003).

The defendant's vehicle was stopped when the officer did not see a license plate. As the officer approached the vehicle, he noticed a temporary tag in the rear window, but could not read the numbers. The officer walked up to the defendant, intending to tell her the reason for the stop and to ask her to tape the tag to the window to make it visible from outside the car. Upon recognizing the defendant as the subject of an outstanding search warrant, the officer arrested her and conducted a search, resulting in the discovery of cocaine. The trial court granted the defendant's motion to suppress based on the fact that the officer illegally continued the traffic stop beyond the time necessary to investigate the defendant's temporary tag.

The district court reversed, holding that the officer did not impermissibly continue the

traffic stop on the basis of the temporary tag, but based on his independent knowledge of the outstanding warrant. The court observed that the officer's recognition of the defendant supplied the probable cause to justify the continued detention and that the subsequent search was incident to such lawful detention.

Marshall v. State, 864 So. 2d 1139 (Fla. 1st DCA 2003).

The defendant was stopped for crossing over a solid line and onto the shoulder of the road. The officer asked the defendant some questions and then issued a warning citation for failure to maintain a single lane. A second officer arrived on the scene after the issuance of the citation and conferred with the first officer, determining there were inconsistencies in the defendant's answers to questions. The second officer then retrieved his dog, which performed an external sniff of the defendant's vehicle, alerting on the presence of drugs. The defendant was subsequently arrested and convicted on cocaine charges.

The district court reversed and remanded, rejecting the trial court's finding that the completion of the issuance of this citation occurred "at almost the same instant." The court noted that the only direct testimony relating to the amount of time between the critical events was the testimony by one officer that it was approximately 10 minutes. The district court held that the continued detention of the defendant beyond the issuance of the citation was illegal.

Torts/Accident Cases

Moran v. Florida Security Electronics, 861 So. 2d 57 (Fla. 3d DCA 2003).

The plaintiff sued the defendant in relation to a rear-end collision, in which the plaintiff stopped suddenly for a left-turning vehicle and was struck by the defendant's vehicle. The trial court denied the plaintiff's motion for a directed verdict and the jury returned a verdict for the defendant.

The district court reversed and remanded for a trial on damages, holding that the trial court should have granted the motion for a new trial. The court observed that the applicable Supreme Court standard was that in a rear-end collision a rebuttable presumption of negligence attaches to the rear driver, that is, the defendant. The district court then stated that the mere subjective testimony of the defendant that he did not personally expect anyone to make a left turn did not meet the reasonable person standard, given that the collision occurred in an area with businesses on both sides of the street, an area in which there would be reasonable expectation of left turns.

Alexander v. Penske Logistics, 867 So. 2d 418 (Fla. 3d DCA 2003).

The personal representative of the plaintiff brought a wrongful action against the

defendant as a result of an accident in which the plaintiff decedent was killed as his vehicle was pulling out from a side street and was hit by the defendant's truck. At trial a Florida Highway Patrol traffic homicide investigator testified, as an expert, to the effect that the decedent pulled out into the highway when the defendant's truck was so close that the truck driver did not have time to avoid the collision. Privately retained accident reconstruction experts testified for both sides. The jury returned a verdict in favor of the defendants.

The district court affirmed, rejecting the plaintiff's argument that a law enforcement officer should not be allowed to testify as an expert since the jury would give such testimony undue weight. The court observed that if the officer is qualified as an expert, that officer may testify as such, with any concern about jury favoritism confronted at voir dire. The district court then failed to find error in allowing the officer to "effectively" tell the jurors that the defendant driver did not receive a citation, noting that the officer was never asked whether the defendant received a citation and never testified on the issue. The court stated that the rule against disclosing "who got the ticket" cannot be extended to prohibit the offering of otherwise proper expert testimony by an officer in a traffic accident case. Finally, the district court held that the expert testimony should not have been excluded under the accident report privilege contained in section 316.066(4), Florida Statutes, since the traffic homicide investigation was conducted independently of the accident investigation and was preceded by Miranda warnings.