

FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

October - December, 2004

[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

Sehnal v. State, 884 So. 2d 478 (Fla. 4th DCA 2004).

In 1995, the defendant entered a guilty plea to a charge of felony driving under the influence and, as a condition of the plea, accepted a permanent lifetime suspension of her driver's license. At the time of the plea, she was advised that she could apply for a work permit license after five years. In 1998, the legislature enacted legislation which prevented persons with lifetime suspensions from applying for a work permit. In 2003, the defendant filed a motion to vacate her 1995 plea, claiming that the 1998 change in the law made her plea involuntary. She had never previously filed an application for a work permit license.

The trial court denied the motion, stating it was untimely filed, since any motion for post-conviction relief based on a change in the law had to be filed within the two-year window within which she could have or should have known that there had been a change in the law, which in this case began in 2000. The court observed that had the defendant then made an application for a work permit license, she would have learned that a work permit license was not permissible and thus would have been able to challenge her plea as involuntary in a timely fashion.

The district court affirmed, holding that the two-year limit for filing a motion for post-conviction relief pursuant to rule 3.850, Florida Rules of Criminal Procedure, began to run on the day the defendant gained or should have gained knowledge of the change in the law, that is, the earliest date she was allowed to apply for a work permit (five years after her conviction). Since she waited more than two years after this date to file, her motion was untimely.

Evans v. Hamilton, 885 So. 2d 950 (Fla 4th DCA 2004).

At a civil trial involving an automobile accident, the defendants cross-examined one of the plaintiffs concerning his alleged refusal to take a blood alcohol test, after the trial court had rejected the plaintiff's objection that such information was protected by the accident report privilege contained in section 316.066, Florida Statutes.

The district court affirmed, holding that the privilege against self-incrimination underlying the accident report privilege was not invoked in relation to the issue of refusal to take the test. The court observed that there was precedent for the proposition that the state does not compel a defendant to refuse to submit to a blood-alcohol test by giving the defendant the choice to submit to the test or not submit, and thus such refusal may be admitted into evidence.

Farrall v. State, 902 So. 2d 820 (Fla. 4th DCA 2004).

The defendant was charged with two counts each of DUI manslaughter, UBAL manslaughter, and vehicular homicide. After the trial court suppressed the defendant's motion to suppress blood vials and serum drawn from him at the hospital, the jury entered a verdict finding him guilty of two counts each of driving under the influence, driving with an unlawful blood alcohol level, and reckless driving.

The district court affirmed, rejecting the defendant's argument that, after giving notice of its intent to seek a subpoena for his hospital records and blood samples, the state disregarded the ten-day waiting period mandated by rule 1.351(b), Florida Rules of Civil Procedure, and seized the evidence prematurely by way of a search warrant. The court reasoned as follows:

In this case, the state initially sought appellant's blood samples by way of a subpoena, but later obtained a search warrant to seize the same evidence. Thus, the subsequent issuance of a search warrant negated the need for a subpoena as well as any argument that notice was deficient. Because the state abandoned the subpoena in favor of a validly obtained search warrant, the trial court correctly denied [defendant's] motion to suppress.

Department of Highway Safety and Motor Vehicles v. Brandenburg, 891 So. 2d 1071 (Fla. 5th DCA 2004).

The defendant was arrested for driving under the influence, after which her license was suspended for 180 days pursuant to section 322.2615(1)(a), Florida Statutes. After serving the suspension, the defendant pled nolo contendere to, and was convicted of, driving under the influence. As part of the sentence, the trial court revoked the defendant's license for six months, nunc pro tunc to the date of the arrest. The department, pursuant to section 322.28(2)(b), Florida Statutes, revoked the defendant's license for a period of six months, commencing from the date of her conviction. This had the effect of ignoring the trial court's nunc pro tunc order. The trial court granted the defendant's motion to show cause why the department should not have been held in contempt and the department agreed to remove the revocation, pending an appeal. The county court certified the following question to the district court:

Does the revocation of a defendant's driver's license pursuant to Florida Statute 322.28(1)(a)(1) from the date of conviction as part of a sentence violate equal protection or due process laws or double jeopardy or the separation of powers under the state and federal constitutions wherein the defendant has already served a driver's license suspension as a result of her arrest for DUI pursuant to Florida Statute 322.2615 prior to trial?

After noting that the department's conduct in disregarding the court order was egregious conduct, given the other procedural mechanisms available to it to resolve the issue, the district reversed and remanded. The district court noted that the procedures involved in sections 322.21615 and 322.28 are different, the former being an administrative matter, the latter of a criminal nature. In relation to this distinction, the Legislature clearly mandated two periods of suspension or revocation.

In response to the certified question, the district court held that there was no double jeopardy violation, but declined to address issues concerning equal protection, due process, and separation of powers because they had not been argued to the trial court and had not been fully briefed. On the double jeopardy issue, the court explained that the concept applies to double or multiple criminal punishments and pointed out that sections 322.28 and 322.2616 are purely administrative provisions and that the requirements they impose fall within the legislative constitutional power to insure public safety on the highways. The district court concluded that the Legislature clearly has mandated two periods of suspension or revocation in the context of DUI arrests and subsequent convictions. These periods may or may not overlap, but they are being imposed for two different events: arrest and conviction.

Nordelus v. State, 889 So. 2d 910 (Fla. 4th DCA 2004).

The defendant was convicted of DUI manslaughter and DUI with property damage. As a result of the manslaughter conviction, the defendant's drivers license was permanently revoked pursuant to section 322.28(2)(e), Florida Statutes. His motion for postconviction relief pursuant to rule 3.850, Florida Rules of Criminal Procedure, was denied by the trial court.

The district court reversed, holding that the requirement in section 322.28(2)(e) that the court shall permanently revoke the license of any person convicted of DUI manslaughter had a definite, immediate, and largely automatic effect on the range of the defendant's punishment, and thus was of a direct (rather than collateral) nature. Being a direct consequence, the trial court was required to advise the defendant of its existence. The district court certified conflict on this issue with State v. Caswell, 28 Fla. L. Weekly D2492 (Fla. 1st DCA 2003), and State v. Bolware, 28 Fla. L. Weekly D2493 (Fla. 1st DCA 2003).

Gluhareff v. State, 888 So. 2d 733 (Fla. 5th DCA 2004).

The defendant pled guilty to operating an aircraft while under the influence of alcohol in violation of section 860.13, Florida Statutes, reserving two dispositive legal questions for review, to wit, vagueness and preemption.

The district court rejected both challenges, holding that the statute was sufficiently specific to give notice and adequate warning to persons of common intelligence as to the proscribed conduct of flying under the influence, and that the Federal Aviation Administration regulations do not manifest an intent to preempt state regulation of alcohol misuse by pilots either expressly or through “field preemption.”

Souza v. State, 889 So. 2d 952 (Fla. 5th DCA 2004).

The defendant was convicted of DUI manslaughter. At the sentencing hearing the state sought to qualify the defendant for sentencing under the Prison Releasee Reoffender Act by demonstrating that he had been released from custody about two years before the commission of the DUI manslaughter, which the state argued qualifies as one of the crimes to which the act applies. The trial court agreed with the state that the act applied, even though only the generic offense of “manslaughter” was listed in section 775.082(9)(a), Florida Statutes.

The district court affirmed, holding that the legislature referenced “manslaughter” without any limitation. The court observed that the act listed a number of other crimes (for example, murder) in their broadest sense without differentiating between type or degree.

State v. Colorado, 890 So. 2d 468 (Fla. 2d DCA 2004).

The defendant was in a vehicle involved in a one-car accident in which the other occupant was killed. The state charged him with DUI manslaughter, vehicular homicide, and driving without a valid drivers license causing death. Prior to trial the court ruled inadmissible the defendant’s admission that he was the driver of the vehicle on the ground that the state’s evidence did not satisfy the requirements for corpus delicti. The state appealed the pretrial ruling.

The district court affirmed, holding that the state had not proved that part of the corpus delicti that the criminal agency of another person was the cause of the death. The court pointed out that there were no witnesses who could identify the defendant as the driver, that the car was not registered in the defendant’s name, and that there was no evidence that placed him behind the wheel (for example, positions of bodies after accident). The court concluded as follows:

In this case, the State was unable to produce any evidence that placed [the defendant] behind the wheel of the car. The corpus delicti rule prevents it from relying solely on [the defendant’s] admission to establish this critical element. We reject the State’s novel suggestion that the commission of a crime could be shown by substituting the victims because there is no record evidence that [the defendant] suffered personal injuries so as to establish a corpus delicti for DUI

with personal injuries. Furthermore, “the fact of death” is a basic element of the corpus delicti for homicide cases. [Citation omitted] The harm contemplated by each charge against [the defendant] – DUI manslaughter, vehicular homicide, and driving without a valid license causing death – is death. The fact that both men were intoxicated shows the second, criminal agency, prong of the corpus delicti, but no more.

Department of Highway Safety and Motor Vehicles v. McClane, 891 So. 2d 596 (Fla. 5th DCA 2004).

The defendant’s vehicle struck a curb in Altamonte Springs, lost control, and crashed into a concrete fence and tree in Maitland. He was subsequently extricated from his vehicle and transported to a hospital, where a blood test revealed a blood alcohol level of 0.162. Alcohol was detected on the defendant’s breath both at the scene of the accident and the hospital. An officer from Altamonte Springs investigated the scene and then made contact with the defendant at the hospital. As a result of the test, the officer suspended the defendant’s driving privilege, a decision subsequently upheld by a hearing officer after a formal hearing.

Upon petition for writ of certiorari, the circuit court quashed the hearing officer’s decision, concluding that the officer had acted outside his geographic jurisdiction. The court observed that the police report indicated that no damage occurred in Altamonte Springs and that the police report incorporated by reference a Maitland Fire Department report placing the crash in that city. The court decided that the officer had no jurisdiction to investigate the accident and that the hearing officer had no substantial competent evidence upon which to uphold the suspension.

Upon further certiorari review, the district court quashed the decision of the circuit court, holding that the evidence overwhelmingly demonstrated that, at the very least, the defendant operated his vehicle in Altamonte Springs with an unlawful blood alcohol level immediately prior to losing control of the vehicle, and thus the officer had jurisdiction to investigate that crime.

Traffic Court Rules

Amendments to the Florida Rules of Traffic Court, 890 So. 2d 1111 (Fla. 2004).

The Supreme Court made various technical corrections in the traffic rules, including the addition of titles to rule subdivisions. The rules amended, effective January 1, 2005, are rule 6.190 (Procedure on Failure to Appear; Warrant), rule 6.200 (Pleas and Affidavits of Defense), rule 6.500 (Pronouncement and Entry of Penalty; Penalizing Official), and rule 6.580 (Completion of Driver School; Conditions).

In addition, the Court declined to adopt a proposed rule 6.292 (Conviction of Criminal Traffic Offense), which would allegedly have clarified the effect of a withheld adjudication in

the criminal traffic offense context and conform it with its civil infraction counterpart. The Court noted that adoption of this rule would conflict with its decision in Raulerson v. State, 763 So. 2d 285 (Fla. 2000).

Criminal Traffic Offenses

Creed v. State, 886 So. 2d 301 (Fla. 4th DCA 2004).

The defendant fled the scene of a drug transaction conducted with undercover police and was chased by two vehicles driven by the police, neither of which had any police insignia, flashing lights, or sirens. He was subsequently convicted of various offenses, including fleeing a police officer.

The district court affirmed all non-traffic convictions, but reversed the fleeing a police officer conviction, section 316.1935(1), Florida Statutes. After observing that the officers had not identified themselves as police until the stop was effectuated, the court held:

Under the evidence as presented by the state, when [defendant] was operating his vehicle, although duly authorized law enforcement officers were following him, none of them ordered him to stop. Even if they had yelled at him to stop, he had to know he had been directed to stop the vehicle by a duly authorized law enforcement officer. The evidence showed that [the defendant] did not know they were police until after the vehicle was stopped and he was running away.

Thompson v. State, 887 So. 2d 1260 (Fla. 2004).

The defendant pled guilty to a felony charge of knowingly driving with a license that had been suspended or revoked pursuant to section 322.34(2)(c), Florida Statutes. In a motion for postconviction relief, the defendant argued that because the two predicate driving while license suspended (DWLS) convictions used to charge him with felony DWLS had occurred prior to October 1, 1997 (date legislation went into effect to include a knowledge element for the offense, that is, a knowledge that the license was suspended or revoked), he could only be charged with a misdemeanor. In support of his argument, the defendant cited the opinion in Huss v. State, 771 So. 2d 591 (Fla. 1st DCA 2000). The trial court denied the motion, concluding that Huss constituted a change in decisional law that should not be retroactively applied. Upon appeal, the district court affirmed, agreeing with the trial court that the Huss ruling was not retroactive.

In Huss, the First District held that because Huss's prior convictions had occurred before the statutory amendment that added the knowledge element, the convictions could not be used under the amended statute for the purposes of enhancement to felony DWLS. The First District explained that the law under which [the defendant] received his prior convictions is no longer in effect, and for purposes of enhancement under the new statute for multiple convictions, the statute by its plain wording applies only to a "conviction" for the offense prescribed by the

present statute.

The Supreme Court noted that the general rule was that an alleged change of law will not be considered in a postconviction relief proceeding unless the change 1) emanates from the United States or Florida Supreme Court, 2) is constitutional in nature, and 3) constitutes a development of fundamental significance. The Court then agreed with the district court that Huss did not qualify since it was not a change in decisional (rather than statutory) law of either Supreme Court.

The Supreme Court, however, went on to consider the matter in terms of due process, that is, whether all the elements of the offense had been satisfied. The Court observed that the DWLS convictions under the pre-1997 statute, which did not contain a knowledge element, do not qualify as prior convictions under the current amended statute, which contains knowledge as an element of the DWLS offense. Thus, the defendant pled to an offense for which the state could not demonstrate all of the elements, specifically, two prior convictions of DWLS with knowledge of cancellation, suspension, or revocation. Because the defendant's predicate convictions occurred under the pre-1997 statute, which did not include knowledge as an essential element of the offense, the state did not prove knowledge in the defendant's previous convictions, thereby precluding their use as predicate offenses. Since the due process clause of the Fourteenth Amendment forbids a state from convicting a person of a crime without proving the elements beyond a reasonable doubt, the defendant's felony conviction must be reversed. The Court did, however, uphold the second degree misdemeanor conviction of the defendant, since his previous convictions satisfy the element of knowledge in relation to the present charge.

Daniel v. Village of Royal Palm Beach, 889 So. 2d 988 (Fla. 4th DCA 2004).

After the plaintiff was tried and acquitted on the charge of reckless driving, she brought an action for false arrest and malicious prosecution. The trial court entered a summary judgment against the plaintiff.

The district court affirmed, holding that the plaintiff had not established an absence of probable cause in relation to malicious prosecution and had failed on the false arrest case since there existed probable cause for the arrest. The district court cited to three witnesses to the driving of the plaintiff (swerving in and out of traffic, purposely slowing her vehicle and speeding up, using various verbal and hand gestures) in support of the existence of probable cause. The court also found it irrelevant that the plaintiff was eventually arrested, pursuant to the "fellow officer rule," for aggravated assault rather than reckless driving, observing that the validity of the arrest does not turn on the offense announced at the time, but rather whether there was a valid charge for which a person could have been arrested.

State v. Demille, 890 So. 2d 454 (Fla. 2d DCA 2004).

The defendant was convicted of various offenses in circuit court, including driving while license suspended. On this offense, the defendant was sentenced to drug offender probation.

The district court reversed, holding that driving while license suspended was not an enumerated offense subject to drug offender probation pursuant to section 948.034(1), Florida Statutes. The district court observed that upon remand the trial court could resentence the defendant to regular probation on this offense.

Arrests, Search and Seizure

Faunce v. State, 884 So. 2d 504 (Fla. 1st DCA 2004).

The defendant was driving at about 10 to 15 miles per hour in a 35 mile per hour zone. An officer following him ran a check on his license plate, which revealed no violations of the law, but decided nonetheless to stop the defendant's vehicle. The officer subsequently learned that the defendant's license had been suspended, after which a consensual search uncovered contraband drugs. At trial, the defendant filed a motion to suppress. During the suppression hearing, the officer testified that there had been burglaries in the area and that he thought the defendant's slow speed may have indicated driving under the influence or mechanical difficulty with the vehicle. The trial court denied the motion and the defendant entered a nolo contendere plea, reserving the right to appeal denial of his motion to suppress.

The district court concluded that the motion to suppress was incorrectly granted. The court conceded that driving twenty miles under the speed limit might give rise to a reasonable suspicion in some situations, but noted that in this case the defendant was driving on a bumpy dirt road on a dark night in his own neighborhood. In addition, the district court observed that the defendant was not swerving (negating driving under the influence), not having difficulty controlling his vehicle (negating mechanical problems), and that there had been no burglaries in the vicinity of the stop. The court also stated that if the defendant was having mechanical difficulties he would not have motioned the officer to pass him.

State v. Baez, 894 So. 2d 115 (Fla. 2004).

After being notified of a vehicle parked at night near a normally abandoned warehouse, law enforcement arrived on the scene to find the defendant "slumped" over the wheel of a parked white van. The officer knocked on the passenger-side window with a flashlight and the defendant awoke. After being asked if he was alright, the defendant exited the vehicle. The officer requested identification, in response to which the defendant supplied a driver's license, a computer check of which revealed an outstanding out-of-state warrant for the defendant's arrest. The defendant was then transferred from one police vehicle to another, resulting in the discovery of cocaine in the vehicle where the defendant had been seated. The defendant was charged with possession of cocaine. The trial court denied the defendant's motion to suppress,

which argued the defendant was unlawfully detained while the officer ran the computer check. The defendant was subsequently found guilty by a jury.

The district court reversed, finding that after the officer had inspected the defendant's license the consensual encounter had ended and thus the defendant was detained in violation of his Fourth Amendment rights while the officer was holding his identification. The Supreme Court quashed the district court's opinion, applying the following totality of the circumstances analysis:

Here, the issue was not whether the reason for the stop had been eliminated by facts which developed after the stop had been made. Rather, the police officer was given the driver's license in a consensual encounter. The question was whether the police officer could then retain what he was consensually given long enough to do the computer check. The totality of the circumstances presented demonstrates that . . . the officer did have a reasonable basis and reasonable suspicion to investigate [defendant] further. [The defendant] was found in a suspicious condition — slumped over the wheel of his van — in a location in which he should not normally have been — a dimly lit warehouse area at night. [The defendant] voluntarily exited his vehicle, and when asked for identification, gave his driver's license to the officer. The officer had sufficient cause to further investigate by doing a computer check based on [the defendant's] suspicious behavior. It was not unreasonable for the officer to proceed with the computer check when he had not yet eliminated reasonable concern and justified articulable suspicion of criminal conduct. Unlike [a distinguished case], the officer here had not eliminated all criminal suspicion.

Johnson v. State, 888 So. 2d 122 (Fla. 4th DCA 2004).

The defendant was the passenger in a car stopped for an equipment violation of section 316.610, Florida Statutes, to wit, a cracked brake light. He was ordered out of the vehicle, searched, and found to be in possession of contraband drugs. At trial his attorney raised only the defense of the unlawfulness of the defendant being ordered out of the vehicle. The defendant subsequently filed a pro se motion for postconviction relief alleging ineffectiveness of counsel. This motion was summarily denied by the trial court.

The district court reversed and remanded for an evidentiary hearing on the issue of ineffectiveness of counsel in relation to the basis for the stop. The court observed that the Florida Supreme Court had held in Doctor v. State, 596 So. 2d 442 (Fla. 1992), that a traffic stop for a cracked lens cover on a rear light, where the light itself was still operative, was illegal. Since the trial court had denied the motion to suppress on the basis of a valid stop pursuant to section 316.610, the case was remanded for an evidentiary hearing on the motion to suppress.

State v. Stone, 889 So. 2d 999 (Fla. 5th DCA 2004).

The defendant was stopped for riding his bicycle at night without lights. After examining the defendant's identification, the officer returned and asked the defendant if he possessed any weapons or drugs. After admitting he had a gun on his hip, the defendant was charged with carrying a concealed weapon. The trial court granted the defendant's motion to suppress.

The district court reversed for the following reasons: 1) The police officer was under no obligation to inform the defendant that he was free to go when he was handed back his identification; 2) it could not be said that the stop of the defendant was prolonged in any meaningful sense merely because the police officer asked a single question about whether he was in possession of weapons or drugs; and 3) checking law enforcement data banks for outstanding warrants after a stop is a procedure employed by police officers that does not require any action on the part of the detainee, is performed quickly by electronic means and is not constitutionally invasive of the privacy rights of the detainee.

Torts/Accident Cases

Poe v. IMC Phosphates MP, 885 So. 2d 397 (Fla. 2d DCA 2004).

The plaintiff's decedent was killed when he drove his vehicle at night from a public highway onto an abandoned entrance of an old phosphate mine, crashing into a large metal pipe which had been positioned about twenty feet inside the entrance to the defendant's property as a barrier to vehicles. The entrance was at the end of a T intersection, where motorists were required to make a right or left turn. The trial court entered summary judgment in favor of the defendant.

The district court reversed, holding that summary judgment was precluded since there were genuine issues of fact in the record giving rise to two distinct legal theories of the defendant's liability. Specifically, the court observed that one theory revolves around the fact that the traveler reasonably believes that the land is a highway, but the landowner fails to exercise reasonable care to maintain it in a reasonably safe condition for travel (section 367, Second Restatement of Torts). Since there were questions whether the defendant knew or should have known that motorists would reasonably believe that the entrance to its property was a continuation of the public highway, additional questions arise as to whether the defendant failed to exercise reasonable care to maintain the entrance in a reasonably safe condition for travel and whether such failure was proximate cause of the collision.

The district court based its alternative theory on section 386, Second Restatement of Torts, which states that a possessor of land who creates or permits to remain thereon an excavation or other artificial condition so near an existing highway that he realizes or should realize that it involves an unreasonable risk to others accidentally brought into contact with such condition while traveling with reasonable care upon the highway, is subject to liability for physical harm thereby caused to persons who are traveling on the highway, or foreseeably

deviate from it in the ordinary course of travel. In applying this theory, the court noted the following issues were relevant: 1) whether the excavation of other artificial condition on the property in fact involved an unreasonable risk of harm to others; (2) whether the owner realized or should have realized that an excavation or other artificial condition on his property involved an unreasonable risk to others; (3) whether the person or persons sustaining injury were traveling with reasonable care upon the highway; and (4) whether it was foreseeable that the person or persons injured might deviate from the highway in the ordinary course of travel and come into contact with the excavation or other artificial condition.

Davis v. Dollar Rent A Car Systems, 909 So. 2d 297 (Fla. 5th DCA 2004).

The plaintiff's decedent was killed when making a left turn at an intersection adjacent to the defendant's (non-commercial property owner's) land. The plaintiff brought a wrongful death action, alleging that foliage on the defendant's property obscured the view of the plaintiff's decedent prior to her being broadsided by a dump truck. The trial court granted summary judgment in favor of the defendant, adopting a blanket rule that there is no common law duty owed by a private landowner whose property obscures the view of motorists on an adjacent highway or intersection.

The district court reversed, concluding that the foreseeable zone of risk standard must be applied and that its application precludes the entry of a summary judgment. The court specifically rejected the traditional view that a duty may be owing only in relation to artificial conditions (foliage planted by the landowner). Applying a duty of care standard, the court held that there were matters (such as evidence of obscuring foliage and the fact that the defendant had contracted for its removal) which would present factual issues for a jury.

The district court concluded by certifying the following question to the Supreme Court:

Does the foreseeable zone of risk analysis established in McCain apply to private owners of non-commercial property containing foliage that blocks motorists' view of an adjacent intersection and causes an accident with resulting injuries?

Cano v. Conway, 889 So. 2d 162 (Fla. 4th DCA 2004).

The plaintiff minor was injured while walking his bicycle across a six-lane roadway, the first two lanes, but not the third lane, of which was stopped. The plaintiff testified that he believed he could make it across the lane since the defendant's vehicle was about one half the length of a football field away. The defendant testified that he slammed on the brakes, but was unable to stop before colliding with the plaintiff. The trial court granted the defendant's motion for directed verdict based on previous "child-darting" cases.

The district court reversed, citing to conflict in testimony between the plaintiff and defendant as to whether the latter had time to stop. The court distinguished the "child-darting" cases, observing they were decided before the Florida Supreme Court adopted the doctrine of comparative negligence.

Civil Traffic Infractions

S. A. S. v. State, 884 So. 2d 1167 (Fla. 2d DCA 2004).

The defendant made an un signaled left hard turn from the left lane of a street ending in a T-intersection. The right lane was marked for right-turn only, the lane the defendant was in was unmarked. The officer stopped the defendant for a violation of section 316.155, Florida Statutes, entitled “When signal required.” The officer did not issue a citation for the infraction, but did charge the defendant with the possession of marijuana discovered during the stop.

The district court reversed the conviction, holding that the officer lacked probable cause to stop the defendant. The court pointed to the language in section 316.155(1) stating that a turn signal must be given “in the event any other vehicle may be affected by the movement,” and observed as follows:

In [defendant’s] case, there was no evidence that any vehicle was in fact affected by the vehicle’s turn. [The defendant] was third in a line of vehicles in the left lane waiting for the light to turn green. There was no oncoming traffic, and there was no possibility of oncoming traffic because the intersection formed a T. Indeed, the trial court’s findings acknowledged the only way a vehicle in [the defendant’s] position could have affected nearby traffic would be through ‘an awkward [maneuver],’ in which a vehicle in the left lane would be ‘about to turn right . . . into a lane where [a driver in the right turning lane was] trying to turn or pretty close.’ Under those particular circumstances, the trial court stated the driver in the right turning lane would want to know the intent of the driver in the left lane. On the other hand, ‘it would not be of significance to [a driver in the right turning lane] if the [the driver in the left lane] were taking a left and their signal clearly indicated it.’ Although we find the trial court’s hypothetical fact pattern interesting, we do not think section 315.155 requires automobile operators to contemplate all hypothetical situations that would warrant using a turn signal in that brief moment before the decision to use the signal is made.

The district court concluded that there was no evidence that another driver was actually affected by the turn, thereby removing the presence of probable cause for the stop and rendering it an illegal stop.