

FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

October – December, 2005

[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

Esler v. State, 915 So. 2d 637 (Fla. 2d DCA 2005).

The defendant was charged with driving under the influence with serious bodily injuries and leaving the scene of a crash with injuries. The charges arose from an incident in which a man in a wheelchair was hit by a car in a parking lot, which car then fled the scene. Later that same day in another city the defendant was approached at the scene of a one-vehicle crash and admitted to driving the vehicle. The defendant, who appeared to be extremely intoxicated, was then transported to the scene of the wheelchair accident, where she was questioned and charged with driving under the influence. After Miranda warnings, the defendant admitted that she had been present at the hit-and-run scene. At trial, there was no physical evidence connecting any of the damage at that scene to the defendant's vehicle. The defendant was convicted as charged.

The district court affirmed in part and reversed in part, explaining as follows:

There can be no conviction for DUI with serious bodily injury without proof that the defendant was driving a vehicle and was impaired at the time of the crash. There must be proof independent of a confession that the defendant was driving the vehicle involved in the crash in order to make that determination. [citations omitted]. The State failed to present the necessary independent proof that [the defendant] was the driver of the vehicle involved in the [wheelchair] crash. Therefore, [the defendant's] conviction for DUI with serious injury must be reversed.

As for the corpus delicti of leaving the scene of a crash with injuries, the State must prove by evidence independent of the defendant's statements that a

victim was struck by an automobile which fled the scene. [citation omitted]. Clearly the State met its burden to prove the corpus delicti with regard to this offense because [the wheelchair victim] testified he was hit by a car which fled the scene. [The defendant's] confession was properly admitted into evidence as to this offense. Thus, we affirm the [defendant's] conviction for leaving the scene of a crash with injuries.

Accordingly, the judgments and sentences for leaving the scene of a crash with injuries and for driving while license cancelled, suspended, or revoked are reaffirmed. The judgment and sentence for DUI with serious bodily injury are reversed, and this matter is remanded to the trial court to discharge [the defendant] for this offense only.

Cornelius v. State, 913 So. 2d 1176 (Fla. 4th DCA 2005).

The defendant entered into a plea bargain in 1997 to resolve a felony driving under the influence charge, which included a lifetime revocation of his drivers license. At the time of the plea, the law allowed persons under lifetime revocations to obtain work permits. In 1998, the legislature amended section 322.271(2)(b), Florida Statutes, to preclude the issuance of restricted licenses to persons under lifetime revocations. This amendment was in effect when the defendant would otherwise have been eligible for a restricted license under the previous law and he was denied reinstatement. The defendant moved for postconviction relief alleging that his plea was involuntary based on the change in the statute. The trial court denied the motion.

The district court, observing that a defendant need only be informed of the direct consequences of a plea (that is, those having a definite, immediate, and largely automatic effect on the range of the defendant's punishment), held that the trial court needed only to have informed the defendant of the lifetime revocation. The court continued:

The possibility of a reinstatement of driving privileges is not a direct consequence of a plea. Reinstatement depends upon the department's review of the applicant's entire driving record and fitness to drive. The granting of a work permit was not automatic, even under the statute in existence at the time of defendant's plea. It is an administrative proceeding and not part of the criminal proceeding.

Had the opportunity to apply for a work permit been crucial to his agreement to plead guilty, then it should have been part of the plea bargain. It was not and nothing in the plea hearings or plea agreement even mentions reinstatement.

In a special concurrence, Judge Klein suggested that application of the statute herein may provide a basis for an ex post facto constitutional challenge.

Department of Highway Safety and Motor Vehicles v. Tarman, 917 So. 2d 899 (Fla. 3d DCA 2005).

The defendant was stopped for speeding, admitted he had consumed alcohol, and failed roadside sobriety tests. A subsequent computer check revealed that the defendant had a revoked license for a previous driving under the influence conviction. The department seized the defendant's vehicle pursuant to the law authorizing the forfeiture of a vehicle driven by a person under the influence whose license has been suspended for a prior DUI conviction. At the preliminary hearing, the defendant argued that while he did not have a valid license at the time of the stop, his driver's license revocation from an out-of-state DUI conviction had expired almost two years previously. The department argued that it had not received notice of the out-of-state conviction until five months before the instant stop and had not actually revoked the defendant's license until three months before the stop. The trial court found that, while the department's records indicated the defendant's license was revoked, it was fundamentally unfair to revoke the defendant's license two years after the conviction and thus the license was not properly revoked. Thus, there was insufficient probable cause to constitute a violation of the forfeiture act.

The district court reversed, holding that the defendant was driving with a revoked license. The court reasoned as follows:

Here, [the defendant] admitted that he had a prior conviction for DUI, that he was driving under the influence of alcohol and marijuana, and at the very least, he was driving without a valid license. The trooper testified that [the defendant] was clocked at eighty five miles per hour and failed roadside sobriety and breathalyzer tests. Given [defendant's] admissions, the trooper's testimony and the Department's records which show that [the defendant's] license was revoked and had never been reinstated, the Department had probable cause for the seizure of [the defendant's] vehicle.

State v. Kutik, 914 So. 2d 484 (Fla. 5th DCA 2005).

The defendant was involved in an accident in which his front seat passenger was killed. The defendant was transported to a hospital and administered medical blood tests. A police officer obtained the defendant's blood alcohol level from his medical records, having neither received the defendant's permission to review the medical records nor requested that the blood be drawn and tested pursuant to section 316.1933(1), Florida Statutes, despite evidence of alcohol use (bottles, odor of alcohol, and evidence of bar hopping). Over a year later, the state sought a subpoena for the defendant's records, with notice to his attorney, pursuant to section 395.3025, Florida Statutes. The trial court granted the defendant's motion to exclude the defendant's records without recourse for the state to seek a future subpoena, finding that the police had not made a good faith effort to comply with the subpoena requirements of section 395.3025.

The district court affirmed, holding that the arresting officer should have requested a blood draw pursuant to the applicable DUI provision, section 316.1933(1), given the fact that he had probable cause based upon his examination of the physical evidence at the scene of the

accident and the testimony of witnesses. Failing to do this, the officer should have contacted the state attorney to obtain a subpoena for medical records after notice to the defendant's attorney. The district court concluded that such actions constituted a lack of good faith and thus the state was precluded from obtaining the medical records.

Department of Highway Safety and Motor Vehicles v. Pipkin, 927 So. 2d 901 (Fla. 3d DCA 2005).

The defendant was signaled to stop for erratic driving by an off-duty municipal police officer who was outside his jurisdiction but in a marked police cruiser. The actual stop, however, was concluded inside the city limits. After observing the defendant, the officer called for an on-duty officer, who conducted field sobriety tests on the defendant, resulting in his arrest for careless driving and driving under the influence. The defendant subsequently refused to take a chemical test, resulting in a drivers license suspension and a formal administrative review. At the review only the second officer testified regarding the off-duty officer's account of the defendant's driving pattern outside the city limits. The administrative hearing officer sustained the license suspension. The circuit court reversed the suspension, concluding that the conduct (a routine traffic offense) giving rise to the stop and subsequent arrest occurred outside the off-duty officer's jurisdiction and therefore the stop was illegal.

The district court affirmed, holding that the off-duty officer's actions outside his jurisdiction could only be sustained as the actions of a private citizen who has the right to arrest a person who commits a felony in his presence. Since the driving giving rise to the suspicion was a civil infraction which in no way constituted a felony, the stop and subsequent arrest were illegal.

Schwartz v. Department of Highway Safety and Motor Vehicles, 920 So. 2d 664 (Fla. 3d DCA 2005).

The defendant was stopped for playing his car stereo at an excessive volume, subsequent to which he performed poorly on field sobriety tests and refused to take a breathalyzer test. At his administrative hearing, the defendant argued that the initial stop was invalid. The hearing officer rejected the argument and sustained the drivers license suspension. The circuit court denied certiorari, concluding that a driver may not challenge the legality of an initial stop in an administrative license suspension hearing.

The district court denied certiorari, but held that the circuit court's determination that the validity of a stop which ultimately leads to a DUI arrest cannot be challenged in an administrative hearing was incorrect in light of the language in section 322.2615(7)(b), Florida Statutes, and relevant case law. The district court nevertheless upheld the suspension, noting that the hearing officer actually considered and ruled on the propriety of the stop, which was based on an objectively reasonable basis as required in Dobrin v. Department of Highway Safety and Motor Vehicles, 874 So. 2d 1171 (Fla. 2004).

Criminal Traffic Offenses

Inman v. State, 916 So. 2d 59 (Fla. 2d DCA 2005).

The defendant was given a traffic citation for driving a seated, two-wheeled, battery-powered electric vehicle on a public street and was subsequently charged with driving while license suspended or revoked. After the trial court denied his motion to dismiss, the defendant pled nolo contendere, reserving his right to appeal the denial of the motion.

The district court affirmed, holding that the defendant was operating a motor vehicle as the term is used in the driving while license suspended or revoked provision, section 322.34(2), Florida Statutes. The court observed that the definition of “motor vehicle” in chapter 322 is found in section 322.01(26), Florida Statutes, to wit, “any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003.” The district court explained that the only exception possibly applicable to the defendant’s SUNL E-21 Electric Scooter was “motorized bicycle.” However, the court noted that the definition of that term in section 316.003(2), Florida Statutes, included only vehicles propelled solely by human power or propelled by a combination of human power and an electric helper motor. Since the defendant’s vehicle did not have both an electric motor and pedals for user-generated propulsion, it fell outside the definition of “motorized bicycle.” The court then observed that the defendant’s vehicle fell not only within the definition of “motor vehicle,” but also the definition of “electric vehicle” in section 320.01(37), Florida Statutes, since it was powered by an electric motor. Finally, the district court rejected the defendant’s argument that the rule of lenity should be applied, since his vehicle was a new item which the legislature had not categorized, concluding that since his vehicle was not in a category excluded from the definition of motor vehicle the rule of lenity was inapplicable.

Arrests, Search and Seizure

State v. Perez-Garcia, 917 So. 2d 894 (Fla. 3d DCA 2005).

The defendant was stopped for an inoperative left-rear brake light, although his vehicle had functioning right and center stop lamps. He was subsequently charged with possession of illegal drugs and driving with a suspended driver’s license (but no civil traffic infraction). The trial court concluded that the stop was illegal, finding that the vehicle complied with the requirement of section 316.222(1), Florida Statutes, which requires that motor vehicles be equipped with two or more stop lamps.

The district court reversed, holding that the stop was justified (irrespective of the subjective belief of the officer) by the provision in section 316.610, Florida Statutes, allowing the stop of a vehicle in an unsafe condition. The court noted that the issue of whether a left-rear brake light is statutorily required was irrelevant given that there was well-reasoned authority for

the proposition that a vehicle traveling the highway with an inoperable brake light is in an unsafe condition. The district court added that it was further supported in its conclusion by the fact that most of the provisions of Chapter 316, Florida Statutes, including section 316.610, are noncriminal in nature, designed to advance safe travel on the public thoroughfares rather than to punish for intentional deviancy from societal-defined norms.

State v. Tanner, 915 So. 2d 762 (Fla. 2d DCA 2005).

The defendant was a passenger in a vehicle lawfully stopped for an expired tag. After writing the driver a traffic citation, a drug dog (called to the scene) alerted on drugs in the vehicle. The defendant was directed to leave her purse in the vehicle, a search of which (the purse) resulted in the discovery of illegal drugs. The trial court granted the defendant's motion to suppress the drugs, concluding that the officer had no basis upon which to seize the purse and that there were insufficient records relating to the training and performance of the drug dog to validate the search of the car.

The district court affirmed, holding that while the lawful stop of the vehicle was adequate to allow a dog sniff for illegal drugs within a reasonable time frame, the defendant had done nothing to warrant her individual detention, nor was there an independent reasonable suspicion to believe that her purse contained contraband. The district court then declined to address the "dog" issues, observing that its resolution of the case made it unnecessary.

Torts/Accident Cases

Blake v. Singer, 914 So. 2d 994 (Fla. 4th DCA 2005).

The plaintiff's vehicle was rear-ended by the defendant's vehicle while the former was stopped at a green light for emergency vehicles proceeding through an intersection. The plaintiff had moved into the defendant's lane shortly before the collision, but had been 50 to 100 feet ahead of the defendant. Both vehicles were traveling between two and five miles per hour when the crash occurred. The trial court denied the plaintiff's motion for a directed verdict on liability.

The district court reversed, observing that a sudden stop by a front driver, in and of itself, is insufficient to overcome the presumption of negligence in a rear-end collision. Rather the court noted that only a sudden stop at a time and place where it could not reasonably be expected by the rear driver would qualify to rebut the presumption. In the instant case, according to the defendant's own testimony, the plaintiff was at least 50 feet ahead when she pulled in front of the defendant and there were emergency vehicles in the intersection. The court thus concluded that the defendant's explanation was insufficient to create an issue of fact and the plaintiff's motion for a directed verdict should have been granted.

Hewitt v. Avis Rent-a-Car System, 912 So. 2d 682 (Fla. 1st DCA 2005).

The plaintiff passenger was injured in a crash with the driver of a stolen automobile operated during a high-speed chase. The vehicle was owned by defendant rental car company and was found with the defendant's keys in the ignition. At trial, evidence was introduced that the defendant had not enforced sufficient safeguards to prevent the theft, use, and/or removal of its motor vehicles from its premises. The trial court granted the defendant's motion for summary judgment, based on the lack of a relationship between the defendant and the operator of the stolen vehicle and the absence of any duty on the part of the defendant to prevent its cars from being stolen. The trial court also characterized the theft as an intervening act of criminal conduct precluding liability.

The district court reversed, concluding that the question of whether the defendant's conduct created a foreseeable zone of risk, giving rise to a duty to lessen the risk by taking precautions to protect others from such risk, was for the fact-finder. The court listed the following special circumstances that could arguably create the zone of risk: the high number of thefts at the defendant's facility during the short span of time preceding the accident; the general access its employees had to the vehicles' keys; the absence of any safeguards by management against theft; management's failure to take prompt action despite its awareness that its employees were involved in criminal activity; the failure to promptly report vehicle thefts to law enforcement; and the knowledge that defendant had, or should have had, of the harm that often occurs from the careless operation of stolen vehicles by thieves.

Davis v. Bruhaspati, Inc., 917 So. 2d 350 (Fla. 1st DCA 2005).

The plaintiff's decedent was the driver of the front vehicle in a three-vehicle chain collision. The middle vehicle was driven by the first co-defendant and the rear car, which generated the collision, was driven by the second co-defendant. The second co-defendant had pursued the first co-defendant after the former had fled a gas station without paying for the gas, at one point cutting off the first co-defendant in an apparent attempt to detain him. The trial court granted judgment in favor of the first co-defendant, reasoning that while the first co-defendant's petty theft may have been a cause in fact of the death, it was not the proximate or legal cause of the death because there was a clear break between the theft and the negligence of the second co-defendant in ramming the first co-defendant's vehicle.

The district court reversed, distinguishing between the duty element of negligence, which focuses on whether the defendant's conduct created a "zone of risk" and is a minimal threshold legal requirement (and thus within the scope of the court's function), and the proximate causation element, which is concerned with whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred and is a question for the fact-finder. In the instant case the court stated that it could not say that no reasonable person could differ in concluding that an accident on a public road was unforeseeable as the second vehicle pursued the first vehicle. The district court then indicated that the first co-defendant's actions must be viewed as a continuum beginning with the theft of the gasoline and continuing by fleeing through traffic, and as such could support a finding of negligence. The court noted support for a possible finding of such negligence in the testimony of witness, including the first co-defendant himself.

The district court also reversed a summary judgment in favor of the first co-defendant's father, the owner of the vehicle, holding that under the dangerous instrumentality doctrine, an owner of a motor vehicle is strictly and vicariously liable when he voluntarily entrusts a motor vehicle to an individual whose negligence causes damage to another.

Servello & Sons v. Sims, 922 So. 2d 234 (Fla. 5th DCA 2005).

The plaintiffs' vehicle was struck from the rear by the defendant's vehicle while the former was stalled on a roadway while in the intermittent process of being towed by another of the plaintiffs' vehicles. The defendant had testified that he was unable to brake quickly enough when a vehicle he was following abruptly changed lanes to avoid the plaintiffs' vehicle. The jury returned a verdict apportioning the fault between the plaintiffs' (33% for each vehicle) and the defendant (34%). The trial court granted the plaintiffs' motion for a directed verdict finding the defendant 100% liable.

The district court reversed and reinstated the jury verdict, holding that the rebuttable presumption that attaches to the driver of the rear vehicle in a rear-end collision had been successfully rebutted with the presentation of evidence from which the jury could conclude that the plaintiffs' negligence had contributed to the collision. Specifically, the district court observed that the plaintiffs, by failing to remove a disabled vehicle from the highway, may have violated section 316.071, Florida Statutes. In addition, it was noted that the jury had been charged that a violation of this provision was evidence of negligence.

Woodson v. Ivey, 917 So. 2d 993 (Fla. 5th DCA 2005).

The plaintiff's decedent in a wrongful death case was killed in a collision with a truck while attempting to return the defendant employer's motorcycle to its place of business. Decedent was not licensed to operate a motorcycle as required by sections 322.03(4) and 322.12(5)(a), Florida Statutes. In finding liability the jury determined that the 1) decedent's death arose out of and in the course of his employment, 2) the defendant was not acting within the course and scope of his employment, 3) there was negligence on the part of the defendant that was a legal cause of the death, and 4) there was negligence on the part of the decedent that was a legal cause of death. The trial court denied the defendant's motion to set aside the verdict.

The district court reversed, holding that section 440.11(1), Florida Statutes, extended workers' compensation immunity to supervisors and managers when the conduct causing the injury is within the scope of such person's managerial or policymaking duties. The court noted that the defendant's decision to have the decedent return to work on a motorcycle was not outside the scope of the defendant's managerial duties, even if the decision was a poor one. The court then stated that if the claim was for the negligent entrustment of a motor vehicle, it would also fail because of the decedent's negligent operation of the motorcycle. Finally, the district court, in dicta (contained in a footnote), expressed doubt that violations of sections 322.03(4) or 322.12(5)(a), can create liability on the part of anyone other than the operator of the motorcycle. The court, however, left open the unraised issue of whether section 322.36, Florida Statutes, which makes it a misdemeanor for a motor vehicle owner to permit an unlicensed person to operate such vehicle, creates a private cause of action.

