FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

April - June 2012

[Editor's Note: In order to reduce possible confusion, the defendant in a criminal case will be referenced 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 referenced 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 control its placement order in these summaries.]

I. Driving Under the Influence (DUI)

Bribiesca-Tafolla v. State, 93 So. 3d 364 (Fla. 4th DCA 2012).

The district court granted in part and denied in part defendant's motion for rehearing. The district court withdrew its April 18, 2012, opinion and substituted the instant opinion. The court affirmed the convictions for two counts of DUI causing serious bodily injury, concluding the state's evidence was sufficient to prove corpus delicti. The district court trial court did not abuse its discretion in finding the state's evidence sufficient to prove the corpus delicti of DUI causing serious bodily injury before allowing the state to introduce the defendant's admission of being the driver of the truck at the time of the crash. The court relied on Tanzi v. State, 964 So. 2d 106, 116 (Fla. 2007) ("[T]he trial court did not abuse its discretion in finding the corpus delicti and admitting [the defendant's] confession.").
http://www.4dca.org/opinions/June%202012/06-13-12/4D10-2243%20(rehearing).pdf

Yacoub v. State, 85 So. 3d 1179 (Fla. 4th DCA 2012).

The district court reversed the defendant's conviction and sentence for felony driving under the influence and remanded the case for resentencing to misdemeanor driving under the influence. The felony DUI was based on the defendant's guilty pleas to two prior DUI convictions within the past 10 years. The district court found that the state did not carry its burden of proof to show that either counsel was provided or that the right to counsel was properly waived on both prior DUI convictions. Although there was a stipulation between the parties that on one of the two prior DUI convictions the defendant was represented by the public defender's office, and that the second DUI was punishable by imprisonment, no proof was offered by the state on the second DUI showing that the

defendant validly waived her right to counsel or was represented by an attorney on that DUI conviction.
http://www.4dca.org/opinions/April%202012/04-18-12/4D10-2400.op.pdf

Ianieri v. State, 84 So. 3d 1263 (Fla. 4th DCA 2012).

The district court, utilizing an abuse of discretion standard, reversed and remanded the case for the sole purpose of establishing a payment plan consistent with the defendant's ability to pay. The defendant was sentenced to incarceration followed by a period of probation and an immediate payment of restitution after being convicted upon a guilty plea of two counts: (1) driving under the influence causing or contributing to serious bodily injury; and, (2) driving under the influence causing or contributing to injury to a person or property. The district court relied on the holding in Shacraha v. State, 635 So. 2d 1051 (Fla. 4th DCA 1994), which provided that where the evidence did not show the defendant's ability to immediately pay the restitution, as in this case, the trial court should set a later date for payment or create a payment schedule based on the defendant's ability to pay.
http://www.4dca.org/opinions/April%202012/04-18-12/4D10-3512.op.pdf

Turner v. State, 85 So. 3d 1228 (Fla. 4th DCA 2012).

The district court reversed an order summarily denying the defendant's motion for postconviction relief following the defendant's convictions on three counts: DUI manslaughter (impairment), DUI manslaughter (unlawful blood alcohol level), and vehicular homicide. The defendant entered a plea after being erroneously told that he could face up to 45 years of incarceration (15 years for each count running consecutively) instead of the maximum of 15 years. The erroneous advice constituted an involuntary plea.
http://www.4dca.org/opinions/May%202012/05-02-12/4D10-2464.op.pdf

State v. Monserrate-Jacobs, 89 So. 3d 294 (Fla. 5th DCA 2012).

The district court granted the state's petition for certiorari review of a post-trial juror interview. The defendant was charged with DUI-Manslaughter. The state presented evidence that blood samples taken from defendant on the night in question reflected that he had a blood alcohol level of .178. The blood kit utilized, as well as the vials of defendant's blood, was entered into evidence. The defendant conjectured the blood draw must somehow have been contaminated either through defective outdated tubes and/or an expired blood kit. The jury asked to examine the blood kit during deliberations, in front of defendant's counsel; no objections were raised. Following a guilty verdict, defendant filed a motion for juror interview, based on his belief that a particular juror had observed an expiration date on the blood kit and informed the other jurors of her findings. The district court held defendant's allegations were too speculative to permit a juror interview. The district court held the defendant failed to allege facts that would support his supposition that a juror had somehow ascertained the expiration date for the blood kit,

and the defendant also failed to allege that there was, in fact, an expiration date visible on the kit.
http://www.5dca.org/Opinions/Opin2012/052812/5D12-944.op.pdf

II. Criminal Traffic Offenses

State v. Gaulden, ___ So. 3d ___ (Fla. 1st DCA 2012), 2012 WL 1216263, 37 Fla. L. Weekly D867, April 12, 2012, 1D11-4288.

The district court reversed the trial court's dismissal of a case involving leaving the scene of a crash involving death. The trial court concluded that where the defendant kept driving after his passenger became separated from the moving vehicle, collided with the road, and suffered fatal injuries, there was no "crash" within the meaning of section 316.027(1)(b), Florida Statutes. The trial court's ruling and interpretation of the statute were given a de novo review by the district court.

The district court looked to the statutory purpose of section 316.027, Florida Statutes, i.e., to render aid to crash victims as soon as possible, and to the ordinary meaning of the term "crash," and held that as applied to section 316.027, "a driver must stop when his vehicle is a participant in, or had an effect on, a collision that results in injury or death." The district court also found that there was no requirement for the vehicle itself to crash or have impact, only that it contributed to causing the collision, which in this case was between the decedent and the roadway.
http://opinions.1dca.org/written/opinions2012/04-12-2012/11-4288.pdf

III. Arrest, Search and Seizure

K.S. v. State, 85 So. 3d 566 (Fla. 4th DCA 2012).

The district court reversed the trial court's denial of the defendant's motion to suppress in a case involving carrying a concealed weapon, possession of less than twenty grams of marijuana, and possession of paraphernalia by a juvenile. The district court found that while the officer had a legal basis to properly issue a traffic violation for an inoperable tag light, and could properly ask the defendant to exit the car after the defendant kept rummaging around the floorboard/center console area, the officer had no reasonable belief that the defendant was armed and dangerous. Therefore, the officer's pat-down of the defendant which led to the discovery of the "weed grinder" and other illegal contraband, was impermissible.
http://www.4dca.org/opinions/April%202012/04-18-12/4D11-345.op.pdf

Smith v. State, 87 So. 3d 84 (Fla. 4th DCA 2012).

The district court reversed the trial court's denial of the defendant's motion to suppress in a case involving possession of cocaine and misdemeanor possession of cannabis. The officer saw an SUV parked in front of a vacant lot in a residential area at

approximately 2:30 a.m. with its lights off and a person seated in the driver's seat. Although the officer observed no illegal activity, the officer turned on his overhead emergency lights, lit up the interior of the SUV with his spotlight, and approached the SUV to check it out. On nearing the vehicle, the officer smelled marijuana and then observed contraband while speaking to the driver, which led to the defendant's arrest. The district court found that given the totality of the circumstances, the officer "seized" the defendant when the officer parked "catty corner" to the defendant's vehicle, activated his emergency overhead lights, and used a spotlight to light up the defendant's SUV. Because the officer had no reasonable suspicion to "seize" the defendant before the officer detected the odor of the marijuana, the district court reversed the denial of the motion to suppress and remanded the case to vacate the defendant's convictions.
http://www.4dca.org/opinions/April%202012/04-25-12/4D10-4790.op.pdf

Sanchez v. State, 88 So. 3d 389 (Fla. 4th DCA 2012).

The district court held that before denying the defendant's motion to return property, which was seized from the defendant's vehicle following his arrest for burglary of an occupied dwelling, the trial court must hold an evidentiary hearing affording the defendant the opportunity to ensure that he does not have a possessory interest in any seized property. Citing Brown v. State, 613 So. 2d 569, 570 (Fla. 2d DCA 1993), the court found that once the trial court assumed jurisdiction of the case, it had the inherent power to "assist the true owner in the recovery of property held *in custodial legis*." In addition, if the defendant filed a facially sufficient motion requesting the return of the property, an evidentiary hearing must be held. In this case, the district court did not see that an evidentiary hearing was held and remanded the case for the trial court to hold the hearing.
http://www.4dca.org/opinions/May%202012/05-16-12/4D10-4021.op.pdf

Rose v. State, ___ So. 3d ___ (Fla. 1st DCA 2012), 2012 WL 1836699, 37 Fla. L. Weekly D1199, May 22, 2012, 1D11-346.

The district court reversed the defendant's conviction for possession of a firearm by a convicted felon and remanded the case for a new trial based upon a finding of judicial error. The district court found that the comments made by the state during opening statements regarding the defendant's refusal to allow a search of his vehicle were impermissible comments on the defendant's Fourth Amendment right. Failure of the trial court to grant the defendant's motion for mistrial was not harmless error beyond a reasonable doubt given the defense theory, supported by testimony from the defendant and his grandmother, that the car and the firearm belonged to his grandmother and the defendant was unaware of the gun's presence until retrieving the car's registration from the glove compartment during pursuit by the police on a traffic charge.
http://opinions.1dca.org/written/opinions2012/05-22-2012/11-0346.pdf

Henderson v. State, 88 So. 3d 1060 (Fla. 1st DCA 2012).

The district court affirmed convictions for possession of a firearm by a convicted felon, fleeing or attempting to elude a police officer, and driving while license suspended. The defendant argued the circuit court erred by denying his motion to suppress because the arresting officer did not have reasonable suspicion or probable cause to stop his vehicle pursuant to the fellow-officer rule, by denying his motion for judgment of acquittal because the state failed to prove constructive possession of a firearm. While the court agreed with the defendant's argument regarding the lack of reasonable suspicion, the district court affirmed the lower court on the grounds that the defendant's act of fleeing or attempting to elude police officers obviated the necessity of determining whether there was reasonable suspicion or probable cause for the initial attempt to stop. The court relied on Green v. State, 530 So. 2d 480 (Fla. 5th DCA 1988) and State v. McCune, 772 So. 2d 596, 597 (Fla. 5th DCA 2000), which are factually similar, in arriving at their conclusion to affirm.

The district court also held the defendant failed to show the trial court erred as a matter of law by denying his motion for judgment of acquittal on the charge of felon in possession of a firearm. Because the defendant was the sole occupant and driver of the car when apprehended, he had exclusive possession of the firearm in the vehicle, regardless of the vehicle's ownership, and thus his knowledge of the contraband and his ability to maintain control of it was inferred.
http://opinions.1dca.org/written/opinions2012/06-01-2012/11-0863.pdf

State v. Sarria, 97 So. 3d 282 (Fla. 4th DCA 2012.

The district court granted the state's challenge to two motions to suppress filed by two defendants who occupied a car in which marijuana was discovered after a traffic stop. The district court held the strong odor of raw cannabis emanating from the car's interior gave the officer probable cause to both arrest the occupants and search the vehicle. The court relied on State v. Williams, 967 So. 2d 941, 941 (Fla. 1st DCA 2007) ("the odor of burnt cannabis emanating from a vehicle constitutes probable cause to search all occupants of that vehicle"). The court also held once the officer detected the distinct odor of raw cannabis, he had probable cause to search the car and arrest the defendant; it did not matter if he arrested first and searched later.
http://www.4dca.org/opinions/June%202012/06-20-12/4D11-2473.op.pdf

IV. Torts/Accident Cases

Heartland Express v. Torres, 90 So. 3d 365 (Fla. 1st DCA 2012).

The district court granted certiorari relief in part and quashed an order regarding questions asked through deposition of the defendant's risk manager, and designated corporate representative, related to an investigation of a traffic accident. The court denied relief for additional questions. The court held answering certain questions would require the disclosure of work product, which disclosure may cause irreparable injury to the petitioner. The court upheld the positions that information received by attorneys prepared in anticipation of trial by investigators or non-attorneys has been determined to

qualify for work-product protection. This protection extends to information gathered in an investigation conducted in anticipation of litigation.
http://opinions.1dca.org/written/opinions2012/06-25-2012/12-0596.pdf

Health First v. Cataldo 92 So. 3d 859 (Fla. 5th DCA 2012).

The district court denied the defendant's appeal from final judgment and upheld the circuit court's verdict in favor of plaintiff. The defendant challenged the plaintiff's withdrawal of claims on the eve of trial, plaintiff's attorney's closing argument at trial, and attorney's fees awarded pursuant to offers of judgment. The plaintiff was driving when she was rear-ended by a vehicle owned by the defendant, and driven by its employee. The defendant admitted the employee was acting within the course and scope of his employment and to liability. The case was tried solely on damages.

The district court found the plaintiff was within her right to withdraw any claims at any time, and the circuit court was within its discretion to not allow a continuance. The district court also found no conclusive evidence that the plaintiff's attorney's closing arguments, which were not objected to at the time they were made, were "so highly prejudicial and of such collective impact as to gravely impair a fair consideration and determination of the case by the jury." Murphy v. International Robotic Systems, Inc., 766 So. 2d 1010 (Fla. 2000). The court found the trial court did not abuse its discretion by refusing to order a new trial. The court also found the finding of attorney's fees proper, as the previously made proposals of settlement were not too ambiguous to support a fee award.
http://www.5dca.org/Opinions/Opin2012/062512/5D10-1686.op.pdf

V. Drivers' Licenses

Arenas v. Department of Highway Safety and Motor Vehicles, 90 So. 3d 828 (Fla. 2d DCA 2012).

The district court granted the defendant's petition for writ of certiorari after the defendant properly invoked "second-tier certiorari" seeking reversal of the circuit court decision on review of a DHSMV (Department of Highway Safety and Motor Vehicles) administrative order suspending the defendant's driver's license. Based upon the Florida Supreme Court decision in Department of Highway Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070 (Fla. 2011), the district court remanded the case to the circuit court to determine whether it will either grant the defendant's petition for certiorari and remand the case to the DHSMV for a determination of the lawfulness of the defendant's arrest for DUI, or whether the circuit court will allow the defendant to file a declaratory action under chapter 86, Florida Statutes.

The defendant was arrested for DUI and refused to submit to a breath test, resulting in a suspension of his driver's license. The state subsequently declined to prosecute the DUI violation and violation for refusing the breath test. The hearing officer, following the then-controlling law, failed to determine the legality of the arrest

leading to the defendant's refusal to take a breath test. Under the Hernandez opinion rendered during the pendency of the defendant's appeal, the defendant must have the opportunity to challenge whether his refusal was incident to a lawful arrest. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/April/April%2027,%202012/2D11-1289.pdf

Lawrence v. Department of Highway Safety and Motor Vehicles, 90 So. 3d 350 (Fla. 2d DCA 2012).

The district court granted the defendant's petition for writ of certiorari after the defendant properly invoked "second-tier certiorari" seeking reversal of the circuit court decision on review of a DHSMV (Department of Highway Safety and Motor Vehicles) administrative order suspending the defendant's driver's license. Based upon the Florida Supreme Court decision in Department of Highway Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070 (Fla. 2011), the district court remanded the case to the circuit court to determine the mechanism by which the lawfulness of her stop may be decided.

The defendant was arrested for DUI and refused to submit to a breath test, resulting in a suspension of her driver's license. Unlike the Arenas case, however, the state prosecuted the case against the defendant, allowing her to enter a plea and be sentenced on a reduced charge of reckless driving. But like the Arenas case, above, the defendant must have the opportunity to challenge whether her refusal was incident to a lawful arrest. Although the defendant's suspension and probation are now over, the district court found that the trial court should also determine whether the criminal proceeding provided an adequate mechanism to challenge the lawfulness of the stop. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/May/May%2023,%202012/2D09-710.pdf

Roark v. Department of Highway Safety and Motor Vehicles, ___ So. 3d ___ (Fla. 2d DCA 2012), 2012 WL 1870863, 37 Fla. L. Weekly D1204, May 23, 2012, 2D10-5261.

The district court granted the defendant's petition for writ of certiorari after the defendant properly invoked "second-tier certiorari" seeking reversal of the circuit court decision on review of a DHSMV (Department of Highway Safety and Motor Vehicles) administrative order suspending the defendant's driver's license. Based upon the Florida Supreme Court decision in Department of Highway Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070 (Fla. 2011), the district court remanded the case to the circuit court to determine the mechanism by which the lawfulness of her stop may be decided.

The defendant was arrested for DUI, submitted to a breath tests reflecting a blood alcohol level between .129 and .136, and resulting in a suspension of his driver's license. Unlike the Arenas case, however, the state prosecuted the case against the defendant, allowing him to enter a plea and be sentenced on a reduced charge of reckless driving. But like the Arenas case, above, the defendant must have the opportunity to challenge whether her refusal was incident to a lawful arrest. Although the defendant's suspension

and probation are now over, the district court found that the trial court should also determine whether the criminal proceeding provided an adequate mechanism to challenge the lawfulness of the stop. But even if the lower court finds the stop was unlawful, the court may still determine whether the additional evidence of the breath test is admissible. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/May/May%2023,%202012/2D10-5261.pdf

Rudolph v. Department of Highway Safety and Motor Vehicles, ___ So. 3d ___ (Fla. 2d DCA 2012), 2012 WL 1869927, 37 Fla. L. Weekly D1202, May 23, 2012, 2D11-2222.

The district court granted the defendant's petition for writ of certiorari after the defendant properly invoked "second-tier certiorari" seeking reversal of the circuit court decision on review of a DHSMV (Department of Highway Safety and Motor Vehicles) administrative order suspending the defendant's driver's license. Based upon the Florida Supreme Court decision in Department of Highway Safety & Motor Vehicles v. Hernandez, 74 So. 3d 1070 (Fla. 2011), the district court remanded the case to the circuit court to determine the mechanism by which the lawfulness of her stop may be decided.

The defendant was arrested for DUI, submitted to breath tests reflecting a blood alcohol level between .129 and .137, which resulted in a suspension of her driver's license. Similar to the Arenas case above, the state dropped the charges against the defendant. The defendant must have the opportunity to challenge whether her refusal was incident to a lawful arrest. However, the district court also found, similar to the Roark case above, that even if the lower court finds the stop to be unlawful, the court may still determine whether the additional evidence of the breath test is admissible. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/May/May%2023,%202012/2D11-2222.pdf

Department of Highway Safety and Motor Vehicles v. Robinson, 93 So. 3d 1090 (Fla. 2d DCA 2012).

The district court denied the DHSMV's (Department of Highway Safety and Motor Vehicles) petition for second-tier certiorari review of the circuit court's order invalidating the suspension of defendant's driver's license and certified a question of great public importance to the Florida Supreme Court.

The defendant was arrested for DUI, and refused to submit to a breath-alcohol test, after which his license was suspended. Defendant requested a formal hearing and subpoenaed the arresting officer. When the arresting officer failed to appear, defendant moved to have the suspension revoked. The hearing officer denied the request and instead offered a continuance to enforce the subpoena. Defendant declined the continuance; therefore the hearing officer affirmed the suspension. Defendant filed a writ of certiorari with the circuit court, claiming a violation of due process by failing to invalidate the suspension after the arresting officer failed to appear. The circuit court agreed and reinstated defendant's license.

The district court disagreed with the DHSMW reliance on Department of Highway Safety & Motor Vehicles v. Lankford, 956 So. 2d 527 (Fla. 1st DCA 2007), finding the relied upon language "no provision in the pertinent statute and rule that authorizes invalidation of a DUI license suspension because a witness did not provide the hearing officer with a good reason for failing to bring evidence pursuant to a subpoena duces tecum," to be dicta. However, the court noted that the courts in Florida were ruling "both ways" on this issue and using different reasoning for granting or denying petitions. The court acknowledged the issue was likely to appear again in the court and certified the following question to the supreme court:

"When a suspendee seeks formal review of a driver's license suspension pursuant to section 322.2615(a), Florida Statutes, is it a violation of due process to suspend the license after a subpoenaed witness fails to appear and the suspendee cannot enforce the subpoena within the statutorily mandated thirty-day period for formal administrative review?"

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/June/June%2027,%202012/2D11-5121.pdf

Department of Highway Safety And Motor Vehicles v. Cherry, 91 So. 3d 849 (Fla. 5th DCA 2012).

The district court granted the DHSMV's (Department of Highway Safety and Motor Vehicles) petition for second-tier certiorari review of the circuit court's order invalidating the suspension of the defendant's driver's license and quashed the lower court's ruling, finding the department's hearing officer did not depart from the essential requirement of the law in sustaining the driver's license suspension of the defendant for refusal to submit to a breath alcohol test. The court noted where a license is suspended for refusal to submit to a breath test, the hearing officer's review at a formal review hearing includes the following instructive language, "[w]hether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer." § 322.2615(7)(b), Fla. Stat. (2010). The court held that without any credible excuse, the defendant provided no valid breath samples, which "constitute[d] a refusal to submit to the breath test."
http://www.5dca.org/Opinions/Opin2012/062512/5D11-3147.op.pdf