FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

January-June, 2009

[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

Thompson v. State, 1 So. 3d 1107 (Fla. 4th DCA 2009).

The petitioner sought a writ of prohibition to prevent further prosecution for felony driving under the influence (DUI). He contended that the trial court erred in denying his motion for discharge on speedy trial grounds. He argued that he was not served with a summons or formally arrested for the upgraded felony DUI charge until after the speedy trial period had run. The district court denied the petition, stating that the petitioner received actual notice of the felony filed by the state before the speedy trial period expired.

Rafine v. State, 1 So. 3d 1251 (Fla. 4th DCA 2009).

Appellant filed a rule 3.850 postconviction motion alleging that counsel was ineffective in failing to advise him that his prior uncounseled DUI convictions could not be used to enhance his fourth DUI offense to a felony. The appellant did not allege that but for counsel's allegedly deficient performance he would have not have entered a plea and would have insisted on going to trial. The district court affirmed without prejudice for the appellant to file an amended motion stating a facially sufficient claim.

Appellant also alleged that his sentence on count two, driving while license permanently revoked, was illegal because a 1997 offense involved a bicycle, not a motor vehicle. The district court affirmed the trial court's summary denial of this claim, stating that the allegedly improper revocation was not a defense to the charge of driving with revoked license.

Tengbergen v. State, 9 So. 3d 729 (Fla. 4th DCA 2009).

The district court affirmed the defendant's conviction for DUI manslaughter, stating that none of the three issues required reversal. The issues concerned: (1) alleged

error in denying suppression of his post-Miranda statements; (2) alleged error in admitting a police officer's opinion on accident reconstruction without qualifying the officer as an expert; and (3) alleged error in failing to conduct a hearing under Richardson v. State, 246 So. 2d 771 (Fla. 1971).

Gonzales v. State, 9 So. 3d 725 (Fla. 4th DCA 2009).

The district court affirmed the defendant's conviction and sentence for felony DUI, possession of cocaine, resisting without violence, and battery. The court disagreed with the defendant's contention that the trial court erred in denying his motion to sever the possession of cocaine charge from the felony DUI charge. The court held that, under rule 3.150, Florida Rules of Criminal Procedure, there was no showing that the severance of charges was "appropriate to promote a fair determination of the defendant's guilt or innocence of each offense."

State v. Davis, __ So. 3d __, 2009 WL 1675803, 34 Fla. L. Weekly D1215, Fla. App. 4 Dist., June 17, 2009 (NO. 4D08-1216).

The district court reversed and remanded an order dismissing a felony DUI charge against the defendant. The dismissal was entered as a sanction for the state's loss of the video recording of the defendant's performance of roadside sobriety tests.

The district court concluded that the state's loss of material exculpatory evidence need not always result in dismissal of the criminal charge. The appellate court reversed the order dismissing the felony DUI charge and remanded to the trial court with instructions that it consider a sanction short of dismissal to address the loss of the tape. The district court rejected the option of allowing the state to try the case without informing the jury that the videotape existed. The court suggested that the trial court could preclude the state from introducing the roadside sobriety tests or instruct the jury that it may infer that the lost evidence is exculpatory.

Montanez v. State, 1 So. 3d 1174 (Fla. 5th DCA 2009).

The district court affirmed a felony DUI conviction, rejecting arguments that the trial court erred in denying the defendant's motion for judgment of acquittal and in allowing the state to introduce a certified copy of the defendant's driving record to prove prior DUI convictions.

The defendant was arrested after a crash in which a truck ran through a highway guard rail. The driver's side of the door was open and the officer observed that the air bag had deployed and a bottle of alcohol was visible on the floorboard. The defendant asserted that the state failed to prove *corpus delicti* because there was no evidence that he was in physical control of the vehicle. The district court held that *corpus delicti* may be shown by circumstantial evidence, which does not need to be uncontroverted or overwhelming. The court held that the evidence presented was sufficient to prove *corpus*

delicti. The district court also held that the defendant had not preserved for review the issue as to introduction of his driving record to prove prior DUI convictions.

State v. Kelly, 999 So. 2d 1029 (Fla. 2008).

The Florida Supreme Court rephrased the Fourth District Court of Appeal's certified question as follows:

"What is the scope of a criminal defendant's right to counsel under Article I, section 16 of the Florida Constitution concerning the state's use of prior uncounseled misdemeanor convictions to enhance a later charge from a misdemeanor to a felony?"

The case resulted from the state's request that the supreme court recede from Hlad v. State, 585 So. 2d 928 (Fla. 1991), and State v. Beach, 592 So. 2d 237 (Fla. 1992) in light of Nichols v. United States, 511 U.S. 738 (1994), holding that the prosecution may use an uncounseled misdemeanor conviction—which is invalid for purposes of imposing imprisonment in a direct proceeding—to impose enhanced imprisonment in a collateral proceeding.

In Hlad, the Florida Supreme Court held that the state may not use a criminal defendant's prior uncounseled misdemeanor DUI convictions to increase a subsequent DUI charge from a misdemeanor to a felony, where the prior uncounseled misdemeanors led to actual imprisonment or were punishable by more than six months' imprisonment. *See* 585 So. 2d at 928-30. Beach clarified elements a defendant must assert through an affidavit to preserve an alleged instance of Hlad error. See 592 So. 2d at 239.

In the present case, the supreme court reaffirmed a modified version of its Hlad/Beach framework, stating that its decision was explicitly premised upon independent state law grounds.

The events leading to the defendant's felony DUI charge occurred when sheriff's deputies arrested him for his fourth DUI offense. Following an evidentiary hearing, the circuit court entered an order dismissing the state's felony DUI information for lack of jurisdiction. The state appealed to the Fourth District Court of Appeal. In the district court, the state asserted that the circuit court had abused its discretion by following Hlad and Beach instead of the decision of the United States Supreme Court in Nichols. The Fourth District affirmed the order of the circuit court, but certified the above-stated question as one of great public importance due to the confusion surrounding whether Hlad and Beach remain binding precedent post-Nichols.

The state argued before the supreme court that Florida's misdemeanor right-to-counsel standard should mirror the federal standard enunciated in Nichols. The court disagreed, holding that ". . . the Florida standard already differs from its federal counterpart. Therefore, we decline to follow a more limited federal standard that would afford Florida's criminal defendants less constitutional protection, or fewer constitutional

rights, than they currently enjoy under the Florida Constitution and under Hlad and Beach."

The supreme court approved the holding of the district court and remanded to the district court for further proceedings.

See also Driver's License cases below.

Criminal Traffic Offenses

West v. State, 4 So. 3d 34 (Fla. 1st DCA 2009).

The defendant appealed from the trial court's order convicting her of a charge of leaving the scene of an accident with death. The district court reversed and remanded based on a conclusion that the trial court had erred in failing to show it had made an effort to find a witness unrelated to the victim who was capable of identifying the victim.

Matheny v. State, __ So. 3d __, 2009 WL 1771631, 34 Fla. L. Weekly D1285, Fla.App. 1 Dist., June 24, 2009 (NO. 1D08-3776).

The district court affirmed the convictions and sentence of the defendant, who was found by a jury to be guilty as charged of fleeing a law enforcement officer who had activated the siren and lights on a patrol vehicle, and resisting an officer without violence. The trial court classified the defendant as a habitual felony offender and sentenced him to seven years' incarceration on count one and time served on count two.

For the first time on appeal, the defendant argued that the evidence was insufficient to prove the two charged offenses. Following an analysis of the facts and law, the district court held that the defendant failed to meet the heavy burden of proving fundamental error by the trial court.

Burford v. State, 8 So. 3d 478 (Fla. 4th DCA 2009).

The district court affirmed the defendant's conviction of manslaughter by culpable negligence but vacated the conviction of vehicular homicide, the lesser of the two offenses. The court affirmed the denial of his motion for a new trial because his objections were not adequately preserved, and, even if they had been, the prosecutor's remarks were not a comment on the right to silence.

The defendant was arrested when an officer observed him operating a vehicle without functioning tail lights. The defendant stopped but then sped off, ran a red light, and struck a pickup truck. The driver of the truck died at the scene.

A jury found the defendant guilty of manslaughter by culpable negligence (Count 1), vehicular homicide (Count 2), and fleeing a law enforcement officer (Count 3). He

was sentenced to 15 years on Count 1 and five years on Count 3, to run consecutively, and held in abeyance any sentence as to Count 2. The district court found that convictions on the first two counts were double jeopardy, and vacated Count 2.

Wynkoop v. State, __ So. 3d __, 2009 WL 1675566, 34 Fla. L. Weekly D1230, Fla.App. 4 Dist., June 17, 2009 (NO. 4D07-1467).

The district court reversed the conviction and sentence of defendant who was found guilty of manslaughter by culpable negligence in the death of his nine-year-old stepdaughter when a freight train collided with the vehicle he was driving.

The defendant argued that excluded expert evidence regarding the design of the train crossing and the operation of the train horn raised reasonable doubt as to whether his conduct had caused the accident, and thus should have been admitted. The district court held that the trial court infringed on the defendant's right to present a theory of defense and to hold the state to its burden of proving beyond a reasonable doubt that his actions rose to the level of culpable negligence.

The state cross-appealed the trial court's issuance of a downward departure sentence arguing that it was not supported by legal grounds. The defendant's wife (mother of the deceased child) begged the court not to sentence the defendant to jail time because she would be adversely affected, emotionally and financially. The trial court modified the sentence based on that mitigator, which the district court held was unsupported by law. The court stated that if the defendant was convicted again in a new trial, the court may consider whether any of the statutory parameters justify a downward departure in sentencing. The court stated: "we think it is appropriate for the legislature to consider whether the applicable statute should include these grounds in a tragic case such as this."

In re: Standard Jury Instructions in Criminal Cases, Report No. 2008-07, 3 So. 3d 1172 (Fla. 2009).

The Florida Supreme Court authorized publication and use of new jury instructions (expressing no opinion as to the correctness of the instructions), including instruction 16.12 -- Leaving a Child Unattended or Unsupervised in a Motor Vehicle, which is a crime under section 316.6135, Florida Statutes, given the state's proof of elements beyond a reasonable doubt.

In re: Standard Jury Instructions in Criminal Cases, Report No. 2008-08, 6 So. 3d 574 (Fla. 2009).

The Florida Supreme Court authorized publication and use of new jury instructions, with modification of chapter 28, Traffic Offenses, renaming it "Transportation Offenses," in light of new instructions relating to boating under the influence.

New transportation-related instructions authorized are: 7.8(a) – Boating Under the Influence Manslaughter; 11.17(c) – Traveling to Meet a Minor; 11.17(d) – Traveling to Meet a Minor Facilitated by Parent or Custodian; 28.1(a) – Driving Under the Influence Causing Property Damage or Injury; 28.5(a) – Racing on a Highway; 28.14 – Boating Under the Influence; 28.15 – Boating Under the Influence Causing Property Damage or Injury; 28.16 – Felony Boating Under the Influence; and 28.17 – Boating Under the Influence Causing Serious Bodily Injury. Also authorized were amendments to the following instructions: 7.8 – Driving Under the Influence Manslaughter; 28.1 – Driving While Under the Influence; 28.2—Felony Driving Under the Influence; and 28.3 – Driving Under the Influence Causing Serious Bodily Injury.

Arrest, Search and Seizure

Merriel v. State, 7 So. 3d 587 (Fla. 1st DCA 2009).

The defendant appealed from the trial court's order denying a motion to suppress incriminating evidence. The district court affirmed the denial.

The defendant pled no contest to trafficking in cocaine and reserved the right to appeal the denial of a dispositive motion to suppress incriminating evidence. In affirming denial of the motion, the district court held that law enforcement officers were authorized to stop the defendant's car, detain the defendant in a police van, and drive the car back to the defendant's home, which they then searched pursuant to a warrant. The district court agreed that the traffic stop was constitutionally authorized because (1) officers reasonably feared for their safety in executing a search warrant with the suspect inside a home; and (2) incriminating evidence was found in the defendant's vehicle that had just left the home that officers would have searched but for their safety concerns. The officers testified that they did not search the house while the defendant was inside, based on their belief that there were dangerous dogs inside, as well as a small child.

The district court relied upon Lassiter v. State, 959 So. 2d 360 (Fla. 5th DCA 2007), in which the Fifth District affirmed the denial of a motion to suppress evidence of cocaine obtained after officers stopped a defendant's car rather than execute a search warrant in a house believed to contain a volatile chemical mix. As in the present case, the officers stated that they wanted to detain the suspect away from the home so as not to tip off others associated with the narcotics lab they believed was operating there.

The district court distinguished Henderson v. State, 685 So. 2d 970 (Fla. 2d DCA 1996), upon which the defendant relied in arguing for suppression of the incriminating evidence. In Henderson, the court held that the trial court should have suppressed evidence found in a car parked on a street outside the curtilage of the defendant's home's and, therefore, outside the scope of the search warrant. The court noted that, unlike the facts in Henderson, the defendant's car had recently left the home/curtilage and, in addition, the officers feared for their safety in executing a search warrant with the suspect inside the home. The court noted that "cases such as this require us to take note of the

realities of law enforcement and police officers' duty to conduct operations safely while assiduously honoring suspects' constitutional rights. We find no infringement of appellant's rights in this case under the particular circumstances presented here."

Panter v. State, 8 So. 3d 1262 (Fla. 1st DCA 2009).

The defendant pled nolo contendere to narcotics charge and appealed the denial of his motion to suppress physical evidence and his admissions as products of an illegal search. The district court reversed and remanded with directions to grant the motion to suppress and to discharge the offenses. The court held that the state failed to prove that the deputy had a reasonable, well-founded, particularized suspicion of criminal activity to justify an investigatory stop.

At the suppression hearing, the deputy testified that he was parked on neighborhood watch patrol when he observed two men in a white van pull into a driveway. The deputy knew the neighborhood to be a high-crime area where illegal drugs were used. From several blocks away, the deputy saw a male exit a house, approach the driver's side of the van, reach inside the vehicle, and engage in a "hand-to-hand transaction" of an unknown nature. The deputy testified that he thought the transaction was suspicious because the man had come out of one of three houses that had a history of narcotics sales and that there was "a certain way they do hand-to-hand exchanges."

The deputy followed the van six blocks until it parked at a convenience store. The deputy parked his patrol vehicle such that he did not block the van. He observed no traffic infraction and denied using his blue lights upon initial contact with the van. When the defendant exited the van, the deputy got out of his car and made contact. The deputy received permission to search the defendant and his passenger and found no contraband on either person. The passenger, who was the registered owner of the van, declined permission to search the van. The deputy called a canine unit and a police dog "alerted" on the van. The deputy searched the van and found a nylon pouch containing syringes and cocaine. The defendant and his passenger were taken into custody, given their Miranda rights, after which the defendant admitted the pouch was his. Two other deputies gave consistent testimony.

The district court agreed with the defendant that, under Terry v. Ohio, 392 U.S. 1 (1968), the deputy was not justified in conducting the investigatory stop. The court reversed the judgment.

Davison v. State, __ So. 3d ___, 2009 WL 1378125, 34 Fla. L. Weekly D986, Fla. App. 1 Dist., May 19, 2009 (NO. 1D08-332).

The defendant appealed the denial of his motion to suppress evidence he admitted was in his car after a traffic stop. The district court affirmed.

Police stopped the defendant after observing that his rear auto tag light was not illuminating the license plate. The district court concluded that, contrary to the defendant's assertion, the officers did not rely upon the distance from which his license plate was legible, but upon the absence of any illumination of the tag as a basis for the traffic stop. Under section 316.610, Florida Statutes, the officer was authorized to stop the car for violation of the tag light requirement and thus had probable cause to believe that the defendant had committed a traffic violation. Therefore, the court held that the stop was lawful and the trial court properly denied the motion to suppress.

Taylor v. State, 13 So. 3d 77 (Fla. 1st DCA 2009).

The defendant appealed a conviction of trafficking in cannabis in excess of 25 pounds. He argued that the trial court erred in denying his motion for judgment of acquittal (JOA) due to lack of evidence of his constructive possession of the cannabis, which was in a large grocery bag inside a vehicle between the defendant and his co-defendant. The district court affirmed.

Police stopped the driver (defendant) after observing the vehicle run a stop sign. The deputy asked the passenger (co-defendant) to remain inside the car for safety reasons. The deputy noticed excessive nervousness and other "criminal indicators" in the defendant's behavior during a routine traffic stop. While questioning the passenger about details of the vehicle's ownership, the deputy detected the odor of raw marijuana and asked the passenger to exit the vehicle. The deputy read Miranda rights to the defendant and the passenger and issued a warning citation for the traffic violation. He then saw through the passenger's window, in plain view, a bag of marijuana. The defendant and the passenger were placed alone in separate patrol vehicles. The deputy searched the vehicle and saw a large grocery bag containing six bundles of cannabis wrapped in newspaper and duct taped. The deputy found a significant amount of cash in the door handle on the passenger's side and on his person. Police also recorded incriminating cell phone conversations during the time that the defendant was alone in the police car.

The district court held that the defendant (the driver) jointly possessed the premises of the vehicle with the owner/passenger. The defendant testified that he knew of the small bag of cannabis but not the large bundles in the grocery bag. The state relied upon (1) evidence of odor of raw cannabis noticed by the deputy; (2) audiotape of defendant's cell phone statement "they got us with 30 pounds"; and (3) evidence that the defendant had dominion and control over the large bag of cannabis because of its close proximity to him as he drove the car. The court held that this evidence established that the defendant had knowledge and control of the contraband in the large bag.

Harris v. State, 11 So. 3d 462 (Fla. 2d DCA 2009).

The defendant appealed judgments and sentences for possession of cocaine, marijuana, and paraphernalia, arguing that the trial court erred in denying his motion to suppress. The district court reversed and remanded.

Police stopped the defendant after they observed that a trailer hitch obstructed his vehicle's tag and they could not read it from a distance of 30 to 50 feet. After the stop, the officers detected an odor of fresh marijuana coming from inside the vehicle. During a search, they found marijuana inside the defendant's pocket and cocaine in the glove box of the vehicle.

The defendant argued that the trial court erred in denying his motion to suppress, which was based on a contention that he was improperly stopped for violating section 316.605, Florida Statutes, which provides that letters and numbers on license plates shall be "free from defacement, mutilation, grease and *other obscuring matter* so that they will be plainly visible and legible at all times 100 feet from the rear or front." The district court construed the relevant portion of the statute to mean that the "obscuring matter" would not include a trailer hitch properly attached to the vehicle's bumper. The court found no Florida cases on point, and thus relied upon cases from other states, noting that its decision aligned with the minority view.

L.B.B. v. State, 998 So. 2d 1217 (Fla. 2d DCA 2009).

The defendant appealed the trial court's denial of his motion to suppress evidence of marijuana found incident to his arrest for riding a bicycle without a bell. The defendant argued that, because a person cannot be arrested and charged with a criminal offense for a bicycle infraction, evidence discovered incident to his arrest should have been suppressed. The district court reversed and remanded for discharge.

Amison v. State, 5 So. 3d 798 (Fla. 2d DCA 2009).

The defendant pleaded no contest to possession of marijuana in excess of 20 grams and then appealed the order denying his motion to suppress evidence. The district court reversed the order, stating that the trial court erred in concluding that, under the circumstances, no reasonable suspicion of unlawful activity was required for the stop of the defendant's vehicle.

The defendant's pickup truck was stopped as it backed away from a river around dusk by an officer of the Florida Fish and Wildlife Conservation Commission in order to conduct a "resource inspection." The officer stated that he detected the odor of marijuana coming from the vehicle after the stop. The defendant and his passenger admitted to smoking a joint, and the officer found a bag of marijuana in a toolbox in the truckbed. The officer stated that he did not observe the defendant participating in hunting, fishing, or any other regulated activities and saw no guns or fishing poles. He had no reason to believe the defendant was involved in criminal activity or violated traffic laws. The officer stated he believed he had authority to detain anyone for regulatory inspection in the wildlife management area.

The district court held that the plain language of the relevant statutes limits the power of a wildlife officer to make arrests to circumstances when the officer has probable cause to believe laws or rules are being violated. The court concluded that the officer

lacked reasonable suspicion to stop the vehicle and, therefore, reversed the denial of the motion to suppress and remanded for the trial court to grant the motion, entitling the defendant to discharge.

State v. Bell, ___ So. 3d ___, 2009 WL 1424006, 34 Fla. L. Weekly D1030, Fla. App. 2 Dist., May 22, 2009 (NO. 2D08-4451).

The state appealed a trial court's order suppressing a law enforcement officer's seizure of illegal drugs and paraphernalia. The district court reversed and remanded, relying on Illinois v. Wardlow, 528 U.S. 119 (2000), in concluding that the officer who stopped the defendant had reasonable suspicion to do so.

In Wardlow, as in the present case, police cars converged on an area known for narcotics trafficking. An officer decided to investigate the defendant after observing him flee. Reasonable suspicion was present because the officer knew the area to be a high-crime area and because flight suggests evasion, which is a pertinent factor in determining reasonable suspicion. The district court stated that the defendant in the present case exhibited behavior even more suspicious than that of the defendant in Wardlow. Thus, the officer was authorized to block the defendant's vehicle with her cruiser, order the defendant from the vehicle, and observe the interior of the car where she saw in plain sight a bag later found to contain cocaine.

State v. Evans, 9 So. 3d 767 (Fla. 2d DCA 2009).

The state appealed an order granting the defendant's motion to suppress evidence found in his vehicle after a valid traffic stop. The district court reversed and remanded based on the fact that the defendant gave police consent to search the vehicle.

The defendant was charged with cocaine possession and resisting an officer without violence. The officer testified that he stopped the defendant for failing to stop at a stop sign. The officer learned via his computer that the defendant's driver's license was suspended and told him he could not drive the car. As the officer was leaving, he asked the defendant whether there were narcotics or weapons in the car. After the defendant replied that there were none, the officer asked for, and the defendant granted, permission to look inside the vehicle. The officer observed cocaine in the driver's door handle. The defendant was not in custody and had been told he was free to leave. The district court found that, based on a totality of circumstances, the consent to search the car was voluntary and the trial court should have denied the motion to suppress.

Wynn v. State, ___ So. 3d ___, 2009 WL 1606530, 34 Fla. L. Weekly D1158, Fla. App. 2 Dist., June 10, 2009 (NO. 2D08-928).

The defendant appealed the denial of his dispositive motion to suppress the evidence of possession of cocaine and paraphernalia. The district court agreed with the defendant's contention that the contraband was seized during an illegal search. The court reversed and remanded with directions to discharge him.

Law enforcement officers testified that they stopped a car in which the defendant was a passenger because they believed he matched the description of a suspect in a recent robbery. As two deputies moved toward the car, the defendant was making "avertive" movements toward pockets of his baggy shorts, according to one of the deputies, who asked the defendant to step out of the car and provide identification. The deputy admitted that, at this point, the defendant was no longer a suspect in the robbery. The deputy patted down the defendant for weapons, found none, and then removed what was found to be contraband from the defendant's pocket.

The district court assumed that the deputy did have probable cause to conduct a warrantless pat-down search to determine whether the defendant was armed. However, the court held, because the pat-down revealed nothing that the deputy believed was a weapon or contraband, the deputy's authority to search stopped there. Frazier v. State, 789 So. 2d 486, 488 (Fla. 2d DCA 2001). Although the deputy asked for consent for the search, the defendant did not reply. Thus, the exception for an unequivocal consent did not apply. The court also held that the elements for probable cause to believe that the defendant constructively possessed the drugs had not been proven.

State v. Gentry, __ So. 3d __, 2009 WL 1815422, 34 Fla. L. Weekly D1276, Fla.App. 2 Dist., June 24, 2009 (NO. 2D08-5477).

The district court reversed the trial court's order suppressing evidence of cocaine. The court agreed with the state, which argued that the trial court improperly considered the defendant's individual mental state when determining whether his encounter with the police constituted a seizure without reasonable suspicion.

At the hearing on the motion, evidence showed that the defendant was working as an informant for the police in February and March 2008 and had not been told whether his work for the police was complete. In April 2008, a police officer saw the defendant leave a bar known for drug activity and then radioed a fellow officer to ask him to talk to the defendant. Both officers admitted that they had neither reasonable suspicion for a stop nor probable cause for a search of the defendant. The defendant testified that he did not consent to a search and that he did not feel free to leave.

The district court held that the trial court did not apply the objective reasonable person standard required by the Fourth Amendment to the U.S. Constitution in reaching its conclusion that the encounter between the police officer and the defendant was an unlawful seizure. Rather, the court stated, the trial court's ruling was based on the defendant's alleged subjective fears concerning his obligation to continue cooperating with the police as an informant. The district court noted that the defendant never testified to any such fears and, even if he had, such fears would have had no place in applying the "reasonable person" standard. The district court reversed the order granting the motion to suppress, stating that the trial court applied the incorrect legal standard, and remanded for further proceedings consistent with the opinion.

State v. Arango, 9 So. 3d 1251 (Fla. 3d DCA 2009).

The district court reversed the trial court's orders granting the defendant's motion to dismiss the case and motion to suppress evidence of marijuana possession.

A police detective arrived at a residence after receiving an anonymous tip that marijuana was being cultivated there. He detected the odor of marijuana and returned to his car to prepare a search warrant. As he was writing the warrant, the defendant drove into his driveway and the garage door opened. The defendant noticed the detective, returned to his vehicle, and drove away. The detective testified that he noticed filled black garbage bags and paraphernalia while the garage door was open. The detective followed the defendant, stopped him, and arrested him after seeing paraphernalia in the vehicle. The detective later obtained a search warrant and seized 88.4 pounds of marijuana.

The state argued that the evidence should not have been suppressed because evidence showed that the detective met the requirement of encountering the defendant under circumstances that "reasonably indicate that such person has committed, is committing, or is about to commit a violation of . . . criminal laws," under section 901.151(2), Florida Statutes, and that the traffic stop was proper because police had "reasonable articulable suspicion that illegal activity was afoot at the time they sought to stop" the defendant. State v. Herrera, 991 So. 2d 390, 392 (Fla. 3d DCA 2008)(citing Terry v. Ohio, 398 U.S. 1 (1968)).

The district court held that the trial court erred in suppressing evidence and then in dismissing the case with prejudice based in large part on the court's suppression of evidence. The court reversed and remanded.

D.A. v. State, 10 So. 3d 674 (Fla. 3d DCA 2009).

The defendant appealed a juvenile court order finding him guilty of possession of cannabis after a traffic stop predicated on an expired tag. On appeal, the defendant argued that the officer was required to release him upon deciding not to issue him a citation for the expired tag and that it was improper to question him about matters unrelated to the reason for the stop. The district court affirmed the adjudication of guilt.

After an officer pulled over the defendant for an expired tag, he decided not to issue a citation since the tag had expired just ten days prior. He then asked the defendant whether there was anything "on you or in this vehicle" that the officer "needed to know about." The defendant responded that there was a bag of marijuana in the center console. The detective seized the bag and arrested the defendant.

The district court stated that asking a question of a person not in custody is neither a search nor a seizure. Therefore, asking a question of a person who is in lawful custody, acting with probable cause of a traffic violation, is not illegal. Because probable

cause supported the stop, the defendant did not have the right to be immediately released and the extra time the officer took to complete his investigation, including the time to ask the question as to other illegal activity, was not enough to make the length of seizure unreasonable. Thus, the district court affirmed.

Petion v. State, 4 So. 3d 83 (Fla. 4th DCA 2009).

During a traffic stop for speeding, the defendant handed a police officer a driver's license that identified another person. The officer arrested him for giving false information and found cocaine in his pocket plus twelve bags of marijuana in the vehicle. The trial court denied the defendant's motion for a judgment of acquittal in which he argued that the state failed to prove that he possessed the marijuana found inside the jointly-occupied vehicle.

The district court reversed one count of the defendant's conviction and sentence as to possession of cannabis with intent to sell but affirmed the count of possession of cocaine plus one count of giving false information to a police officer. The district court held that the trial court erred in failing to grant the motion for judgment of acquittal as to the marijuana in the car because the evidence presented by the state was insufficient to prove constructive possession.

State v. Hebert, 8 So. 3d 393 (Fla. 4th DCA 2009).

Defendant was charged with driving while his license was permanently revoked. The trial court granted the defendant's motion to suppress his identity in which he argued that the officer who stopped his vehicle lacked probable cause to make the stop. The district court reversed, holding that the trial court applied the wrong legal standard in determining whether the stop was constitutionally valid.

The district court stated that the correct test is whether the officer had an objectively reasonable basis for making the stop and that probable cause exists when a totality of facts known to the officer at the time would cause a reasonable person to believe that an offense has been committed. State v. Walker, 991 So. 2d 928, 931 (Fla. 2d DCA 2008). In the present case, the officer stopped the car after it made a left turn cutting in front of southbound vehicles and nearly causing a collision. The defendant testified that he had a green arrow; the officer testified that he had no way of knowing whether the light was green. The trial court erred in that it never determined whether the officer had probable cause to stop the vehicle. The district court reversed and remanded.

Brickley v. State, 12 So. 3d 311 (Fla. 4th DCA 2009)

The district court reversed the defendant's conviction for armed trafficking, holding that the trial court erred in declining to give his requested special jury instruction on constructive possession because the standard jury instruction was misleading under the facts of the case.

The defendant was arrested after an attempted controlled buy between a confidential informant and the passenger in a vehicle being driven by the defendant. After the police called off the drug buy, they stopped the vehicle and ordered driver and passenger out of the vehicle. One of the officers testified that he saw contraband drugs in the center console of the vehicle which was partially open. Other testimony conflicted. Defense counsel requested a special jury instruction on constructive possession when the contraband is found in jointly occupied premises. The trial court denied the request.

The district court agreed with the defendant that the special jury instruction was supported by the evidence and disagreed with the state that it would have been misleading or confusing to read it in conjunction with the standard jury instruction. The district court reversed and remanded for a new trial.

Wallace v. State, 8 So. 3d 492 (Fla. 5th DCA 2009).

The district court affirmed an order denying a motion to suppress in a cocaine possession case in which the trial court concluded that a police officer's observations of a hand-to-hand exchange in a high crime area, along with other suspicious behavior, gave rise to a "reasonable suspicion" of criminal activity, thereby justifying the detention of the defendant outside a convenience store for further investigation.

Following an extensive analysis, the district court concluded that the trial court correctly gave "due weight to the factual inferences drawn by the law enforcement officer and the [trial] judge," citing U.S. v. Arvizu, 534 U.S. 266, 274 (2002).

Torts/Accident Cases

Seminole Casualty Insurance Co. v. Mastrominas et al., 6 So. 3d 1256 (Fla. 2d DCA 2009).

The petitioner sought certiorari review of a discovery order requiring it to produce certain items in its claims file. The district court granted the petition and quashed the trial court's order.

The respondents sued the petitioner after the petitioner denied coverage for an accident, claiming that the policy was not in effect on the date of the accident because of a material misrepresentation on the insurance application. The petitioner refused to produce the claims file during discovery, objecting that the requested items were privileged. The trial court found that not all of the material was privileged and entered an order requiring production. The district court held that, since there was no bad faith claim, the requested file could be withheld by the petitioner.

Cooke v. Nationwide Mutual Fire Insurance Co. et al., __ So. 3d __, 2009 WL 1741370, 34 Fla. L. Weekly D1261, Fla.App. 1 Dist., June 22, 2009 (NO. 1D08-3602).

The district court reversed a summary judgment dismissing a lawsuit arising from the death of plaintiff's spouse in an accident involving multiple vehicles. The district court held that the negligence, if any, of the decedent was not an intervening and superseding cause acting to break the chain of causation, which the plaintiff claimed was initiated by negligence of one or more of the defendants. The court held that the dispositive issue was an issue of fact to be decided by a finder of fact.

In its detailed analysis, the district court explained that an intervening cause stands as a barrier between the original negligence and the ultimate injury only if it is fully independent and unforeseeable. The court held that the controlling case is Gibson v. Avis Rent-A-Car Sys., Inc., 386 So. 2d 520 (Fla. 1980), in which the Florida Supreme Court held that "one who is negligent is not absolved of liability when his conduct 'sets in motion' a chain of events resulting in injury to the plaintiff" and the question as to whether the intervening cause is foreseeable is for the trier of fact. The district court held that the question of foresee ability was for the finder of fact and should not be decided as a matter of law resulting in a summary judgment.

Hirst v. Segrest Farms, Inc. et al., 12 So. 3d 1257 (Fla. 2d DCA 2009).

The district court reversed the trial court's directed verdict in favor of the defendants on liability. The plaintiff was riding a bicycle on a sidewalk beside a major highway when he ran into the side of a box truck exiting a service station and received severe injuries when the truck's rear wheels ran over him. He sued the truck owner and the driver alleging negligence, based partly on evidence that the driver had an elevated blood alcohol level and was under the influence of cocaine and marijuana at the time of the incident.

The district court held that, because of differences in the witnesses' testimonies, the jury should have been allowed to decide who was at fault, as well as the percentage of fault, if any, attributable to the two defendants.

Laurore v. Miami Automotive Retail, Inc. et al., __ So. 3d __, 2009 WL 1606419, 34 Fla. L. Weekly D1160, Fla.App. 3 Dist., June 10, 2009 (NO. 3D08-1124).

The plaintiff alleged negligence to recover damages he allegedly sustained in a rear-end automobile collision. The trial court dismissed the case as a sanction for fraud in plaintiff's untrue statements in response to interrogatories. The district court reversed and remanded for reinstatement of the action and determination which, if any, of the damage claims should be stricken.

The plaintiff's car was struck from behind by a driver employed by the defendant. Because the vehicles were drivable and the parties appeared uninjured, the parties agreed not to involve the police or their insurance carriers. The driver purportedly agreed that

either he or his employer would pay for car repair for the plaintiff. The plaintiff sought medical attention four months after the accident, when he was found to be injured. He sued the defendants for damages. In response to interrogatories, plaintiff claimed he had suffered from no disabilities prior to the accident and he received no payments from anyone for any disability. Subsequently, the statements were found to be untrue, which the plaintiff confirmed.

The district court agreed that plaintiff's untrue responses precluded some damage claims. However, the court stated that the responses did not touch on the issue of liability or all of his damage claims so as to justify dismissal of the entire action with prejudice. One judge of the three-judge panel dissented, saying that the trial court did not abuse its discretion in dismissing the case for fraud.

Erickson, etc., v. Irving et al., __ So. 3d __, 2009 WL 1675501, 34 Fla. L. Weekly D1207, Fla.App. 3 Dist., June 17, 2009 (NO. 3D07-1790, 3D07-604, 3D07-1963).

The plaintiff, as personal representative of the decedent's estate, appealed from multiple final judgments entered in a wrongful death case involving an automobile accident in which the driver pled guilty to DUI manslaughter for the death of the passenger. The district court reversed and remanded for a new trial, concluding that the trial court erred in allowing the defense of joint enterprise to be submitted to the jury.

The decedent was a passenger in a car driven by the plaintiff on the way home after a night of drinking in bars. The car collided with a dump truck and the passenger died. The plaintiff filed suit alleging negligence of several defendants. The defendants pled various affirmative defenses, including comparative negligence and joint enterprise defense based on an allegation that the driver and passenger had joint control of the car. The jury found the defendants negligent and awarded damages based on assignment of percentages of negligence. The jury found the driver and the passenger equally at fault. The plaintiff moved for a new trial arguing inadequacy of damage awards for future pain and suffering as well as legal insufficiency of the joint enterprise defense. The trial court denied the motion and entered final judgment apportioning the damages.

The district court analyzed cases regarding the joint enterprise defense and concluded that the evidence failed to establish a joint enterprise between the driver and passenger. Further, the court noted that such a defense would not apply to absolve a driver of all civil liability for the death of his passenger when he later pleads guilty to a DUI manslaughter for that death. Thus, the district court held that it was reversible error for the trial court to allow the joint enterprise defense to be submitted to the jury. The case was remanded for a new trial.

Petit-Dos v. School Board of Broward County, 2 So. 3d 1022 (Fla. 4th DCA 2009).

The plaintiff sued alleging negligence arising from injuries that the plaintiff sustained when a pick-up truck hit her upon exiting the school bus as she began to cross the street. At the time of the accident, plaintiff was an 18-year-old deaf student. She

appealed the final judgment finding the defendant twenty percent negligent. The district court affirmed, concluding that the trial court properly listed the defendant on the verdict form and that an erroneous evidentiary ruling excluding certain testimony at trial was harmless error.

Hulick et al. v. Beers, 7 So. 3d 1153 (Fla. 4th DCA 2009).

The district court affirmed the final damages entered upon jury verdicts for the plaintiff, who represented the estate of decedent who died in an automobile accident. The court discussed its analysis of the jury's hearing a witness mention a "criminal traffic trial." The court concluded that the trial court did not err in declining to declare a mistrial in light of the fact that the defendant admitted to careless driving and was not prosecuted in a criminal trial in connection with the accident.

Driver's Licenses

Lee v. Department of Highway Safety and Motor Vehicles, 4 So. 3d 754 (Fla. 1st DCA 2009).

The petitioner appealed from a trial court's order denying certiorari review of the administrative suspension of his driver's license as a result of his DUI arrest. The district court granted certiorari review and quashed the trial court's order denying certiorari review.

The circuit court had ruled that the administrative hearing officer's failure to issue subpoenas for the individuals who had inspected the breath test instrument used for petitioner's breath test did not constitute a denial of due process.

The district court agreed with the petitioner's interpretation of section 322.2615, Florida Statutes (2007), that petitioner was entitled to a full administrative review of his license suspension including the right to present relevant evidence and to rebut evidence presented against the driver. The court stated that the circuit court had misread section 322.2615(2), Florida Statutes, which provides that certain evidence is to be regarded by courts as self-authenticating. The district court agreed with the petitioner that he was entitled, under the statute, to cross-examine the individuals who prepared the breath test reports that were introduced in evidence against him. The district court further concluded that section 322.2615(6)(b) unambiguously contemplates that a hearing officer is authorized to issue subpoenas for police officers and other witnesses who are identified in the documents submitted in evidence.

The district court noted that the Second District Court of Appeal recently reached the same conclusion through a somewhat different analysis. See Yankey v. Department of Highway Safety and Motor Vehicles, 6 So. 3d 633 (Fla. 2d DCA 2009).

Department of Highway Safety and Motor Vehicles v. Crane, 10 So. 3d 182 (Fla. 1st DCA 2009).

The defendant pled no contest to a DUI charge. The defendant later filed in circuit court a motion to clarify his sentence. The judge entered an order correcting the sentence, stating that a prior Georgia DUI conviction shall not be used for enhancement of sentence. The Department of Highway Safety and Motor Vehicles (the "department") filed a motion to intervene and vacate the court's order. The department noted that the defendant's driver's license was permanently revoked based on his fourth DUI conviction, including the Georgia conviction. The court denied department's motion.

The department appealed, and the district court affirmed the order, stating that language in the modification order did not bind the department to a determination that the Georgia infraction could not be considered for purposes of administrative action. The district court cited numerous cases holding that administrative license revocation is not part of a criminal sentence for a DUI offense and, thus, a statutorily required license revocation will stand, regardless of plea negotiations in a criminal case before a judge.

Department of Highway Safety and Motor Vehicles v. Maffett, 1 So. 3d 1286 (Fla. 2d DCA 2009).

The district court denied the department's petition for certiorari review of a circuit court order granted the respondent's petition for certiorari and quashing an order suspending his license for driving with an unlawful breath-alcohol level.

The circuit court granted certiorari because, during formal administrative review, the department refused to issue a subpoena to the agency inspector responsible for maintaining the breath testing equipment used to test the respondent's breath-alcohol level. The district court concluded that the circuit court had applied the correct law in granting the respondent's writ of certiorari and quashing the order suspending his license.

Department of Highway Safety and Motor Vehicles v. Nader, McIndoe, 4 So. 3d 705 (Fla. 2d DCA 2009).

In two consolidated cases, the district court granted the department's petition for writ of certiorari and quashed the circuit court opinions. In each case, the circuit court granted a driver's petition for writ of certiorari and quashed the department's order suspending the driver's license for refusing to submit to a breath-alcohol test.

The district court held that the department may validly suspend a driver's license for a driver's refusal to submit to a breath-alcohol test when a law enforcement officer offers the driver the option of taking a breath test, a blood test, or a urine test. The Second District further held that it had the authority to grant common law certiorari relief from a circuit court opinion that applied or obeyed existing precedent from another district court if the Second District concluded that the other district court's opinion misinterpreted clearly established statutory law.

In each of the consolidated cases, the investigating officer explained the implied consent law to each defendant, who was stopped on suspicion of drunk driving, and asked whether she would submit to a "breath, blood, or urine" test. Because each woman refused, the department sought to suspend each woman's driver's license for one year. Both defendants sought administrative hearings, arguing that the implied consent warnings were improper since the only test lawfully required by the implied consent law was a breath test.

In two separate circuit court opinions written by the same judge, the circuit court granted each defendant's petition but expressed reluctance in so doing. The circuit court concluded it was bound by the Fourth District's opinion in Department of Highway Safety and Motor Vehicles v. Clark, 974 So. 2d 416 (Fla. 4th DCA 2007). In the instant case, the Second District disagreed with Clark, to the extent that it suggested that the request to submit to a "breath, blood, or urine" test was insufficient to comply with section 322.2615, Florida Statutes. The Second District stated that it was "prudent, if not essential," for the circuit court to follow the Fourth District's opinion in Clark, but that Clark was incorrectly decided by the Fourth District. Therefore, the Second District exercised certiorari jurisdiction to quash the circuit court's reluctant opinions and require the circuit court to apply the plain language of the relevant statutes on remand.

The Second District went on to explain a "second-tier" certiorari proceeding. The Second District, noting a likely direct conflict with Clark conferring Florida Supreme Court jurisdiction, nevertheless certified two questions of great public importance to the supreme court regarding the implied consent provisions of section 316.1932, Florida Statutes, and the district courts' certiorari jurisdiction.

Yankey v. Department of Highway Safety and Motor Vehicles, 6 So. 3d 633 (Fla. 2d DCA 2009).

The petitioner filed for a writ of certiorari seeking to quash a circuit court order denying her certiorari relief from an order by the department suspending her driver's license for driving with an unlawful breath-alcohol level. The Second District granted her petition and quashed the circuit court's order.

The petitioner was arrested for DUI and agreed to submit to a breath-alcohol test. Based upon the results, her driver's license was suspended, and she requested a formal administrative review of the suspension. The department refused to issue a subpoena for a law enforcement agency employee who inspected and tested the breath test machine used to test her breath-alcohol level. The hearing was held without this witness, and the hearing officer sustained the license suspension. Upon review, the circuit court agreed that section 322.2615(13) did not authorize the issuance of the subpoena to the agency inspector.

In a "second-tier proceeding," the Second District concluded that the circuit court departed from the essential requirements of the law and quashed the circuit court order.

Department of Highway Safety and Motor Vehicles v. Escobio, 6 So. 3d 638 (Fla. 2d DCA 2009).

The department sought certiorari review of a circuit court opinion quashing an administrative order suspending the respondent's driver's license for driving with an unlawful blood-alcohol level. The Second District denied the department's petition in part but also granted the petition in part and quashed that portion of the circuit court's order granting the respondent's petition for writ of certiorari on the issue of the legality of the stop of the respondent's vehicle.

The Second District held that the circuit court departed from essential requirements of law in holding that the hearing officer was required to consider the legality of the respondent's arrest when reviewing the suspension of his license. The district court held that the circuit court was compelled to comply with section 322.2625(7)(a), as amended effective Oct. 1, 2006.

Department of Highway Safety and Motor Vehicles v. Hofer, 5 So. 3d 766 (Fla. 2d DCA 2009).

The department petitioned the district court for a writ of certiorari to review circuit court orders granting the respondent's petition for a writ of certiorari and reinstating his driver's license. The district court granted the department's petition and quashed the circuit court's orders.

The respondent was stopped for failure to dim his headlights, and police noticed signs he was under the influence of alcohol. Based on his performance on field sobriety tests, he was arrested for DUI. After he refused to submit to a breath-alcohol test, his driver's license was suspended.

At his formal administrative review hearing, the respondent attempted to challenge the legality of the initial stop. The hearing officer advised him that the legality of the stop was not within the scope of review authorized by section 322.2615, Florida Statutes, unless the circumstances surrounding the stop indicated the driver's impairment. The respondent's subsequent petition before the circuit court argued that the administrative proceeding had not afforded him procedural due process because a license suspension based on a refusal to take a breath, blood, or urine test or on an alcohol level above the legal limit must be incident to a lawful arrest. The district contended that the legislature's 2006 amendment to section 322.2615(7)(b), Florida Statutes, removed consideration of the lawfulness of arrest from the scope of review.

The circuit court agreed with the reasoning in Failla v. Department of Highway Safety and Motor Vehicles, 14 Fla. L. Weekly Supp. 812a (Fla. 7th Cir. Ct. June 20, 2007), cert. denied, No. 5D07-2738 (Fla. 5th DCA May 23, 2008), stating that if a hearing officer is to uphold a license suspension, due process requires finding that refusal to submit to a breath test was incidental to a lawful arrest. In granting second-tier

certiorari review, the district court held that the circuit court departed from essential requirements of law when it applied the incorrect law in analyzing the respondent's due process claim. The court quashed the circuit court's order and remanded with instructions to reconsider the petition consistent with the instant opinion and with McLaughlin v. Department of Highway Safety and Motor Vehicles, 2 So. 3d 988 (Fla. 2d DCA 2008), as to statutory construction of the relevant statutes.

Scott v. State, 8 So. 3d 1178 (Fla. 2d DCA 2009).

The defendant appealed an order revoking his community control for driving with a suspended or revoked license. The district court reversed the order, agreeing that the trial court erred in revoking his community control when the only evidence of violation was hearsay.

At the revocation hearing, the only evidence the state presented to substantiate the violation was the hearsay testimony of the defendant's community control officer that a coworker had seen the defendant driving. The district court reversed the revocation order and remanded for reinstatement of the defendant to community control.

State v. S.S., 8 So. 3d 425 (Fla. 2d DCA 2009).

The state argued on appeal that the trial court erred in failing to impose a mandatory six-month driver's license suspension on the defendant, a juvenile. The district court reversed and remanded with instructions to impose the mandatory license suspension.

The defendant pleaded no contest in several cases, including one involving marijuana possession. The trial court withheld adjudication and placed the defendant on probation. The state asked the court to impose the mandatory license suspension required under section 322.056(1), Florida Statutes. The trial court refused, implying that the sanction was not required if adjudication was withheld.

The district court disagreed with the defendant's procedural argument and exercised its discretion to allow a premature notice of appeal to vest jurisdiction in the appellate court and to permit the rendering of the judgment.

Nordelus v. State, 8 So. 3d 473 (Fla. 4th DCA 2009).

Appellant challenged trial court order summarily denying his motion for postconviction relief under rule 3.850. Based on Bolware v. State, 995 So. 2d 268 (Fla. 2008), the district court affirmed. In that case, the supreme court held that revocation of a driver's license did not constitute punishment and thus was a collateral, not direct, consequence of a plea.

As to appellant's second claim, the district court reversed, finding that the state did not conclusively refute appellant's claim that his plea was involuntary because his

counsel misadvised him that the trial court could place him on probation following his plea. The district court reversed and remanded for attachment of portions of the record that conclusively refute the claim, or for an evidentiary hearing.

Folden v. State, __ So. 3d __, 2009 WL 1423415, 34 Fla. L. Weekly D1032, Fla. App. 5 Dist., May 22, 2009 (NO. 5D08-2967).

The district court reversed a conviction of a misdemeanor charge of refusal to submit to a breath alcohol test. On appeal, the state conceded that the notation "BAL unknown" on the defendant's certified driving record (CDR) did not establish beyond a reasonable doubt that the defendant had previously refused to submit to a breath test. Refusal to submit to a breath test is a misdemeanor only if a defendant's driving privilege has been suspended previously for refusing to submit to a lawful test of the defendant's breath, urine or blood. Section 316.1939, Fla. Stat. (2008).

The district court reversed and remanded with instruction to the trial court to forward a copy of the district court's opinion to the Department of Highway Safety and Motor Vehicles so suspend the defendant's license if it deems such action appropriate.

Luttrell v. Florida Department of Highway Safety and Motor Vehicles, 12 So. 3d 198 (Fla. 2009).

The supreme court discharged its jurisdiction and dismissed a review previously granted based on express and direct conflict between Department of Highway Safety and Motor Vehicles v. Luttrell, 983 So. 2d 1215 (Fla. 5th DCA), review granted, 1 So. 3d 172 (Fla. 2008) (table), and Brannen v. State, 114 So. 429 (Fla. 1927).

Vehicle Forfeiture

In re Forfeiture of 2006 Chrysler 4-Door, Identification No. 2C3K53GX6H258059, 9 So. 3d 709 (Fla. 2d DCA 2009).

The sheriff appealed the trial court's order granting final summary judgment in favor of the defendant, which dismissed a forfeiture action and directed that a vehicle be returned to the defendant. Citing numerous cases, the district court reversed and remanded, concluding that the forfeiture of the vehicle was not grossly disproportionate to the defendant's repeated DUI and related offenses.