

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)	
)	
Appellant,)	
)	
v.)	CASE NO. 2D01-3981
)	
TERRELL BURDETTE,)	
)	
Appellee.)	
_____)	

Opinion filed October 4, 2002.

Appeal from the County Court for Collier
County; Vince Murphy, County Judge.

Robert A. Butterworth, Attorney General,
Tallahassee, and Helene S. Parnes,
Assistant Attorney General, Tampa,
for Appellant.

Donald P. Day of Berry, Day & McFee, P.A.,
Naples, for Appellee.

FULMER, Judge.

The State appeals from an order granting Burdette's motion to declare the
impoundment provision of section 316.193(6)(a), Florida Statutes (2000),
unconstitutional as applied.¹ We reverse because under our interpretation of section

¹ Because the county court declared a state statute unconstitutional, we have
jurisdiction. See State v. Coyle, 718 So. 2d 218 (Fla. 2d DCA 1998); State v. Freund,
561 So. 2d 305 (Fla. 3d DCA 1990).

316.193(6)(a), the statute did not apply and no impoundment could be ordered in Burdette's case. Therefore, the trial court should not have considered the constitutionality of the statute.

Burdette pleaded no contest to the charge of driving under the influence (DUI). At sentencing, as a condition of probation the trial court ordered a ten-day impoundment of the vehicle driven by Burdette, pursuant to section 316.193(6)(a). Burdette later moved the court to declare the vehicle impoundment provision unconstitutional on the grounds that, as applied, the statute violated Burdette's right to due process and equal protection. The trial court held a hearing on the motion, at which Burdette presented undisputed testimony that the vehicle he had been driving at the time of the DUI offense was owned by Toyota Motor Credit and had been "a company vehicle." The lease on the vehicle had since expired, and Burdette did not own or possess any vehicles. The trial court granted Burdette's motion.

Section 316.193(6)(a), which pertains to the penalties for a first DUI, provides, in part:

The court must also, as a condition of probation, order the impoundment or immobilization of the vehicle that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days.

At a hearing below, it appears that the parties and the trial court assumed this statutory provision required the trial court to order impoundment as a condition of probation even though the lease agreement on the vehicle had expired. The argument of the parties

centered on whether it was constitutional to require a probationer to arrange for the impoundment of a leased vehicle that had been returned to the owner.

Under our reading of the statute, the impoundment provision was not applicable in this case because the vehicle Burdette was driving at the time of the DUI offense had no unexpired term remaining on the lease and Burdette had no vehicles registered in his name. The trial court erred in construing the statute to require impoundment as a condition of probation under these circumstances. And, because the statute does not apply to Burdette, we need not address the merits of the constitutional challenge.

Accordingly, we reverse the trial court's order and remand with directions that the impoundment condition be stricken from Burdette's probation order.

Reversed and remanded with directions.

BLUE, C.J., and CASANUEVA, J., Concur.