ON MOTION FOR REHEARING TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

APPELLATE DIVISION

KEVIN MICHAEL FARRELL

Appellant,

Appeal Case No.: CRC 08- 00033 APANO
UCN No.: 522007CT158594XXXXXX

v.

STATE OF FLORIDA,

Appellee.
_____/

Opinion filed: 10/16/09

Motion for Rehearing on Order and Opinion
entered by the Sixth Judicial Circuit of Appeals

J. Andrew Crawford, Esquire
Attorney for Appellant

Bernie McCabe, Esquire
State Attorney, Sixth Judicial Circuit of Florida
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

Appellant was convicted of DUI and appealed to this Court on the basis that the stop of the Appellant was unlawful. This Court affirmed the denial of the Motion to Suppress as well as the conviction. Subsequently, the Appellant filed a Motion for Rehearing pursuant to Rule 9.330

of the Florida Rules of Appellate Procedure. The Motion asserts three reasons why the Court should grant the Motion for Rehearing: 1)"a hunch or gut feeling is not enough to detain a person and an officer must have well founded suspicion based on articuable facts and circumstances;" 2) there was no odor of alcohol or marijuana, and the officer did not see any before the stop, although the officer witnessed the Appellant slurring his speech, and staggering, and the Appellant's eyes were bloodshot; and finally, 3) "these observations by the officer do not create probable cause that a traffic violation had occurred, or reasonable suspicion of criminal activity."

Florida law is very clear about the standards by which the Court determines whether a Motion for Rehearing should be granted. Specifically, Florida Rule of Appellate Procedure 9.330(a) articulates the proper contents of a Motion for Rehearing: "a motion for rehearing shall state with particularity the points of law or fact that in the opinion of movant the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding."

Florida Courts have historically interpreted this Rule narrowly holding that a Motion for Rehearing should be granted only when a material fact or point of law has been overlooked or misapprehended, and if it had been considered, it would have changed the outcome. *Atlantic v. City of Lakeland*, 115 So. 669 (Fla. 1928). Thus, restatements of law and fact contained in the original briefs cannot be the basis for rehearing. *Taylor v.* Johnson, 581 So.2d 1333, 1338 (Fla. 1st DCA 1990) *citing Whipple*, 431 So.2d at 1011; *Barnes v. State*, 743 So.2d 1105, 1113 (Fla. 4th DCA 1999); *Elliot v. Elliot*, 648 So.2d 135 (Fla. 4th DCA 1994); *Gainesville Coca- Cola v. Young*, 632 So.2d 83, 84 (Fla. 1st DCA 1993); *Parker v. Baker*, 499 So.2d 843 (Fla. 2d DCA 1986) (Counsel must "heed Rule's command that the 'motion shall not reargue the merits of the

Court's order."); *State v. ex rel Jaytex Realty Co. v. Green*, 105 So.2d 817, 818 (Fla. 1st DCA 1958).

In the present case, the Motion for Rehearing fails to point to law or fact that was not presented in the Appellant's original brief. Appellant's Motion is simply a restatement of the argument in the Appellant's Initial Brief. The motion does not allege that the Court misconstrued the record proof in the present case, or made a mistake about the facts, which would afford a basis for rehearing. *U.S. Phosphoric Products Corp. v. Lester*, 156 So. 753, 755-756 (Fla. 1934); *State v. Merrit*, 99 So. 230, 232-233.

ACCORDINGLY, the Appellant's Motion for Rehearing is DENIED.

ORDERED at Pinellas, Florida this 16 day of Oct, 2009.

Original opinion entered by Circuit Judges David A. Demers, Joseph A. Bulone, & Chris Helinger.

Copies: Bernie McCabe, Esquire
State Attorney

J. Andrew Crawford, Esquire
Attorney for the Appellant