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## ON APPEAL

### Court revives lawsuit in death after jail release

The 4th District Court of Appeal reinstated a father's lawsuit Wednesday against Boca Raton for releasing his drunken son from jail, only to have him killed by a train running less than 50 feet from the police station.

Judges W. Matthew Stevenson and Martha Warner reversed dismissal of the wrongful death suit under a state law prohibiting police from prematurely releasing anyone arrested for driving drunk. Judge Jonathan Gerber dissented, warning legislators never intended to impose additional civil duties of care on police.

Peter Milanese sued in 2007 after his 24-year-old son was arrested while driving drunk. He was taken into custody with a blood alcohol level of 0.24 but not charged with drunken driving. Police called a taxi, and Milanese was released, but the taxi driver didn't see him and drove off. The train conductor saw Milanese lying parallel to the tracks and blew the train horn. Milanese didn't react and was killed.

"Boca Raton police were under no duty to take Christopher into custody," said the father's lawyer, James K. Green of West Palm Beach. "Once they did, they had a duty to protect their detainee."

The city's lawyer, Weiss Serota Helfman Pastoriza Cole & Boniske partner Matthew Mandel of Fort Lauderdale, said, "We're still analyzing the opinion, and we we're still deciding what to do."

The court reversed the dismissal by Palm Beach Circuit Judge Robin L. Rosenberg.

— Jose Pagliery