FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

January – March 2016

[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.]

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I. Driving Under the Influence (DUI)

***State v. Browne*, __ So. 3d __, 2016 WL 1062793 (Fla. 5th DCA 2016)**

When the defendant was 21 he committed burglary of a dwelling and petit theft and was sentenced to probation. After the defendant committed a second violation of probation (DUI), when he was 23, the trial court made a downward departure in his sentence, based on his lack of prior record, the nature of the crimes, and the defendant's age. The state appealed the downward departure, and the appellate court reversed, stating: "Youthful age, alone, is not sufficient proof of the aforementioned mitigating factor. . . . Although [the defendant] notes that he has only completed the tenth grade, there was no evidence presented to establish that he 'suffered from diminished mental capacity or other mental deficit which prevented him from maturing enough by age 23 to appreciate the consequences of his offenses.'" The appellate court also held that the defendant could "withdraw his no contest plea to the charged second violation of probation and proceed to violation of probation hearing or to be sentenced in conformance with the Criminal Punishment Code, which may include a new downward departure sentence as long as it is supported by a legally sufficient basis."
http://www.5dca.org/Opinions/Opin2016/031416/5D15-1545.op.pdf

***State v. Patino*, __ So. 3d __, 2016 WL 618892 (Fla. 2d DCA 2016)**

The defendant was sentenced to four years in prison, followed by 11 years of probation, for DUI manslaughter, with 540 days' jail credit, and to time served for DUI with property

damage. She served two days in county jail and then spent 538 days in home detention, with a GPS monitor. The state appealed the jail credit award, and the appellate court reversed, holding that the home detention was not the "functional equivalent of a county jail." http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2017,%202016/2D14-2146.pdf

***Villa v. State*, 23 Fla. L. Weekly Supp. 809a (Fla. 11th Cir. Ct. 2015)**

The defendant was convicted of DUI and raised five issues on appeal. The circuit court, in its appellate capacity, reversed, finding merit in the defendant's "arguments that the State shifted the burden and improperly commented on [his] pre-arrest silence."

***State v. Lorenz*, 23 Fla. L. Weekly Supp. 702a (Fla. 17th Cir. Ct. 2015)**

The defendant hit a parked highway patrol vehicle and was charged with DUI with property damage. He filed a motion to dismiss and a motion to suppress evidence, alleging that the arresting officer intentionally destroyed evidence. The trial court granted the motion to dismiss and reserved ruling on the motion to suppress evidence, and the state appealed. The circuit court, in its appellate capacity, reversed and remanded. It stated that the substance the arresting trooper had discarded, which the defendant claimed was lint rather than marijuana as the trooper had initially claimed, was not exculpatory or potentially useful, as the defendant was not charged with possession of cannabis but rather DUI.

***State v. Silva*, 23 Fla. L. Weekly Supp. 700c (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with DUI and DUI with property damage. She filed a motion to suppress, alleging that the officer who performed the DUI investigation "failed to 'switch hats'" and did not advise her of her *Miranda* rights. The trial court granted her motion, but the circuit court, in its appellate capacity, reversed, stating that the officer had advised the defendant "that he was conducting a DUI investigation immediately upon their first contact. Nevertheless, [the defendant] was never 'interrogated' by [the officer], and during their entire encounter and interaction, he at no time asked her any incriminating questions. He only asked her to submit to certain physical exercises and testing, none of which were protected by the Fifth Amendment nor implicated the need for *Miranda*."

***State v. Caruso*, 23 Fla. L. Weekly Supp. 696a (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with DUI and filed a motion to suppress, alleging that, although "at the time of the stop, he put his attorney on the phone with the officer performing the DUI investigation, who informed the officer that he advised [the defendant] not to perform roadside sobriety exercises and to cease further communication with the officer," the officer had the defendant perform the exercises, and therefore the results and subsequent statements should be suppressed. The trial court granted his motion, but the circuit court, in its appellate capacity, reversed, agreeing with the state, and noting that "while [the defendant] did not have the right to consult with an attorney prior to performing the roadside exercises, he did consult with a lawyer friend via cell phone, who gave him advice. [The defendant] *nevertheless* voluntarily agreed to perform the roadside exercises even after such consultation. . . . There was no illegal action or

violation of [the defendant's] constitutional rights, and the motion to suppress should have been denied."

***State v. Moonilal*, 23 Fla. L. Weekly Supp. 694b (Fla. 17th Cir. Ct. 2015)**

A sheriff's office sergeant saw the defendant stopped at a green light with his door open, stopped, and noticed indicia of impairment. The defendant was charged with DUI and "filed a motion to suppress the evidence seized pursuant to the stop and seizure and a motion to suppress the confessions, admissions, and statements made prior to being warned of his privilege against self-incrimination." The trial court denied the motion to suppress the evidence, finding that the officer had a reasonable articulable suspicion for the stop. But it granted a motion in limine, suppressing the statements the defendant made to the officer, because "once the sergeant started asking [the defendant] what he had to drink, the sergeant was fishing for incriminating evidence and should have Mirandized [him] prior to questioning." The circuit court, in its appellate capacity, reversed, stating:

> The fact that the trial court determined that the sergeant had reasonable articulable suspicion to conduct a *Terry* stop means that the sergeant had a right to ask the [the defendant] whether he had been drinking in order to dispel or confirm his belief that [he] had been driving while intoxicated.
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> Under the four-factor test enunciated in *Ramirez v. State*, a reasonable person in the [defendant's] situation could not have considered himself in custody at the time of questioning. . . . First, the manner in which the sergeant initiated questioning was benign and non-threatening. Second, the questioning took place outside, in public, in the presence of the sole officer. The purpose of the questioning was to determine what, if anything, was wrong with the [the defendant], including whether he had been drinking. However, the sergeant never disclosed this fact to the [defendant], and . . . an officer's unarticulated plan has no bearing on whether a suspect is in custody. Third, the sergeant never accused the [defendant] of drinking [or] confronted him with evidence of his guilt. The sergeant did not complete the fourth factor because [the defendant] was, in fact, not free to leave. [He] was being briefly detained, and, thus, was not entitled to leave. A brief detention either under *Terry* or pursuant to a traffic stop does not render one in custody for the purposes of *Miranda*, and therefore, does not entitle the detainee to warnings pursuant to *Miranda.*

***Fletcher v. State*, 23 Fla. L. Weekly Supp. 687a (Fla. 12th Cir. Ct. 2015)**

The defendant was convicted of DUI. She appealed, arguing that the trial court's finding that FDLE's inspection of the Intoxilyzer substantially complied with the applicable administrative rule "illegally enforced an unpromulgated interpretation of the rule"; that the rule required FDLE to inspect Intoxilyzers at local agencies after they have been repaired, rather than performing centralized inspections in Tallahassee. But the circuit court, in its appellate capacity, affirmed, stating that the rule did not require a specific location for FDLE's inspection, and that the evidence showed that FDLE "applies rule 11D-8.004(2) by conducting its Department

inspections in Tallahassee, after the machines are repaired at an authorized repair facility." It also stated that "[u]nder the facts of this case no formal rulemaking was required."

***State v. Ocasio*, 23 Fla. L. Weekly Supp. 677a (Fla. 9th Cir. Ct. 2015)**

The defendant was charged with DUI after a deputy responded to a well-being check and found him slumped over a steering wheel. The trial court granted the defendant's motion to suppress his refusal to submit to a breath test and field sobriety tests, finding that, as to the field sobriety exercises, the deputy had not given the defendant "sufficient warning that if he did not participate in [them] he would be arrested," and as to the breath test, there was not probable cause to arrest the defendant for DUI because "once the refusal to participate in field sobriety exercises was removed from the equation, all the Deputy had left was a zig-zag pattern of driving, bloodshot eyes, and the odor of alcohol." The state appealed, and the circuit court, in its appellate capacity, reversed and remanded, stating that the law does not require such warning about refusal to submit to field sobriety exercises, and therefore that refusal should have been considered in the trial court's determination of whether probable cause existed.

***Tull v. State*, 23 Fla. L. Weekly Supp. 658a (Fla. 2d Cir. Ct. 2015)**

The defendant was charged with DUI and appealed, arguing that the admission into evidence of his breath test results was error. The circuit court, in its appellate capacity, reversed and remanded. Because the agency inspector who performed the monthly maintenance of the Breathalyzer was no longer employed by the Florida Highway Patrol and therefore did not testify, "the State called the current agency inspector who laid a business records foundation for admission of the previous inspector's attestation of the applicable testing dates." The court stated that while an affidavit detailing the results of an alcohol breath test is admissible as a hearsay exception if it complies with statutory requirements, in this case it did not contain "the date of performance of the most recent required maintenance on such instrument." And because the part of the affidavit regarding when the statutorily required maintenance of the instrument was performed was testimonial, "its admissibility is further limited under confrontation clause principles. . . . If a statement is testimonial, it 'may only be admitted if the declarant is unavailable, and the defendant had a prior opportunity to cross-examine.'"

II. Criminal Traffic Offenses

***DeMartin v. State*, __ So. 3d __, 2016 WL 1239759 (Fla. 4th DCA 2016)**

The defendant was a juror in a trial in which a driver was convicted of DUI manslaughter. The trial court found the defendant juror in contempt for conducting a "drinking experiment" during the trial and failing to divulge in voir dire that his ex-wife had been arrested for DUI. He appealed, but the appellate court affirmed, noting that "[s]ignificantly, the state presented evidence that [the defendant juror] had contacted his ex-wife during the trial and specifically asked her about her DUI arrest." The court also stated that the record supported the trial court's findings that the defendant "was willfully dishonest during voir dire when answering questions pertinent to the issue in the case" and that his actions had "dire consequences." http://www.4dca.org/opinions/Mar%202016/03-30-16/4D14-451.op.pdf

***Reynolds v. State*, __ So. 3d __, 2016 WL 916784 (Fla. 5th DCA 2016)**

The defendant was charged with DUI manslaughter, DUI resulting in personal injury, and vehicular homicide. He agreed to plea to the vehicular homicide in exchange for the state dismissing the other charges. The trial court sentenced him to 10 years in prison, followed by five years of probation with drug offender probation and other orally pronounced conditions, but the written order was for "drug offender probation." The defendant filed a motion to correct illegal sentence, which the trial court denied. But the appellate court reversed the order of drug offender probation, stating: "First, the order is inconsistent with the trial court's oral pronouncement of probation with 'drug offender probation conditions.' . . . Second, at the time [of the] crime, placement on drug offender probation was restricted to those crimes enumerated in the drug offender probation statute. . . . Moreover, the imposition of 'standard probation with "drug offender probation conditions"' does not remedy the illegality of the sentence." http://www.5dca.org/Opinions/Opin2016/030716/5D15-4347.op.pdf

***Moorer v. State*, __ So. 3d __, 2016 WL 852307 (Fla. 1st DCA 2016)**

After beating the victim to death, setting him on fire, and stealing his car, the defendant was convicted of first-degree murder and grand theft of an automobile. He appealed, arguing the trial court erred in failing to hold a competency hearing before trial. The appellate court agreed and reversed.
https://edca.1dca.org/DCADocs/2014/5040/145040_DC13_03042016_092442_i.pdf

***Knott v. State*, __ So. 3d __, 2016 WL 801143 (Fla. 2d DCA 2016)**

The defendant was convicted of, among other crimes, burglary of a conveyance with assault, and kidnapping with intent to interfere with a governmental or political function. He appealed, but the appellate court affirmed. The defendant had argued that the applicable statute was "intended to protect elected officials and politicians running for office from kidnapping and acts of terrorism," and in this case the victim, if any, was the driver whose car he jumped into, and whom he ordered to drive. But the court stated: "The statute does not transform a false imprisonment into a kidnapping if the victim is a politician; under the express language of the statute, the transformation occurs upon proof that the defendant intended to interfere with 'the performance of any governmental or political function.'" The defendant also argued that there could be no "intent to interfere with 'any governmental function' when the officer has lawful authority to detain the suspect," but the court stated: "The fact that it was his detention makes no difference. There can be no serious question that a sworn law enforcement officer seeking to lawfully detain a person is involved in a governmental function."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2002,%202016/2D13-4945.pdf

***Clark v. State*, __ So. 3d __, 2016 WL 803500 (Fla. 4th DCA 2016)**

The defendant was convicted of DUI manslaughter. He appealed, raising issues mostly concerning "the use of a police officer as an expert in accident reconstruction, as well as the trial court's failure to grant a challenge for cause to a juror and improper closing argument by the

State." But the appellate court affirmed, stating: "These errors were not properly preserved before the trial court and do not constitute fundamental error, thereby requiring affirmance." http://www.4dca.org/opinions/Mar%202016/03-02-16/4D11-4357.op.pdf

***Taylor v. State*, __ So. 3d __, 2016 WL 746147 (Fla. 1st DCA 2016)**

The defendant appealed his conviction for unarmed carjacking. The appellate court reversed the trial court's striking of certain costs because it did so after its jurisdiction had expired. The appellate court also reversed "as to an error in the separate order of probation." The trial court had imposed a condition of probation requiring the defendant to obtain a high school diploma or GED. The appellate court remanded for the trial court to modify the condition to require the defendant to "make a 'good faith effort' to achieve such skills or diploma." https://edca.1dca.org/DCADocs/2014/3435/143435_DC08_02262016_100336_i.pdf

***Pinkard v. State*, __ So. 3d __, 2016 WL 742583 (Fla. 5th DCA 2016)**

In this road rage case, the defendant was convicted of manslaughter, aggravated assault with a firearm, and shooting into an occupied vehicle, after killing another motorist who had allegedly cut him off. He was sentenced to a 15-year prison sentence for shooting into an occupied vehicle, which was to run consecutively to the other sentences. He appealed, arguing that the sentence for that count should not run consecutively to the other sentences, but the appellate court affirmed, stating that case law prohibiting "the imposition of enhanced consecutive sentences for crimes committed during a single criminal episode" did not apply, as the defendant's sentence for that count was not enhanced.
http://www.5dca.org/Opinions/Opin2016/022216/5D14-2532.op.pdf

***Latham v. State*, __ So. 3d __, 2016 WL 540650 (Fla. 2d DCA 2016)**

The defendant was convicted of leaving the scene of an accident causing death, and challenged the part of her sentence that required her to pay $4,570 in restitution to the Crimes Compensation Trust Fund. The appellate court agreed with her and reversed and remanded for the trial court to strike that part of the sentence. The defendant had argued that "because the restitution was ordered to be paid to the Crimes Compensation Trust Fund rather than the victim, the applicable statutes are sections 960.065(1)(a) and 960.03(14), Florida Statutes," which "require a causal link between the physical injury or death and the crime." Further, section 960.03(3)(b) (2012) provided that "an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death does not constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of the vehicle, boat, or aircraft."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/February/February%2010,%202016/2D14-3121.pdf

***Opsincs v. State*, __ So. 3d __, 2016 WL 514235 (Fla. 4th DCA 2016)**

After speeding through a red light, the defendant hit a car, killing a child and injuring several others. During his criminal trial, he moved in limine to exclude evidence that he said to witnesses at the scene, "shit happens." The trial court denied the motion, finding that the statement was relevant to [his] state of mind and his alleged reckless disregard for others" and

"could be considered a jocular boasting." The trial court also denied his motion for judgment of acquittal, and he was convicted of vehicular homicide, reckless driving causing serious injury, and reckless driving causing injury or damage. The appellate court found the trial court properly denied the defendant's motion for judgment of acquittal. But it reversed for a new trial because "the trial court abused its discretion in admitting irrelevant and unfairly prejudicial evidence." http://www.4dca.org/opinions/Feb%202016/02-10-16/4D13-3147.op.pdf

***Walker v. State*, __ So. 3d __, 2016 WL 231731 (Fla. 1st DCA 2016)**

The defendant was convicted of grand theft of an automobile. He filed a motion for postconviction relief, which the trial court summarily denied. He appealed, based on a claim of newly discovered evidence: that his co-defendant, who was not available at trial, would testify that the defendant did not help with or intend to commit the theft. The appellate court reversed, holding that while the defendant's motion was facially insufficient for his failure "to attach an affidavit from the co-defendant detailing his proposed testimony (or an explanation for why such an affidavit could not be obtained)," the defendant "was entitled to one opportunity to file a facially sufficient motion which included the required affidavit. . . . We cannot tell from the record . . . that the outcome of the trial would not have been affected had the co-defendant testified, especially in light of the fact that the appellant has failed to attach an affidavit detailing what the co-defendant's testimony is, or to specify how the outcome would be affected by that testimony."
https://edca.1dca.org/DCADocs/2015/1243/151243_DC08_01202016_103026_i.pdf

***Gormady v. State*, __ So. 3d __, 2016 WL 231125 (Fla. 2d DCA 2016)**

The defendant was convicted of possession of a firearm by a convicted felon, possession of a controlled substance, and possession of drug paraphernalia. He appealed, and the appellate court reversed because "the trial court erred by permitting the jury to hear a partial read-back of a key witness's testimony which placed undue emphasis on particular statements."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2020,%202016/2D14-1497.pdf

***Harrigan v. State*, 184 So. 3d 657 (Fla. 3d DCA 2016)**

The defendant was convicted of fleeing or attempting to elude a law enforcement officer at high speed with sirens and lights, reckless driving, leaving the scene of an accident involving property damage, knowingly driving with a suspended license, resisting an officer without violence, aggravated assault on a law enforcement officer, grand theft of a motor vehicle, and felony criminal mischief with property damage of $1,000 or greater. He appealed, arguing that the state's failure to disclose a surveillance video favorable to the defense was a *Brady* violation. The appellate court affirmed, stating that "even if the trial court erred, a new trial is not required because the defendant failed to satisfy his burden under *Brady*"; i.e., that the surveillance video was favorable evidence: "The defendant contends that the surveillance video is 'favorable' evidence because it would show that he was not one of the two unknown men who stole the pickup truck" from an auto shop three weeks before the attempted traffic stop. However, he was not charged with stealing the pickup truck but rather with being in possession of a stolen truck that he knew or reasonably should have known was stolen. And "[b]ecause the surveillance

video was only minimally relevant, the defendant also cannot demonstrate it was material because there is no 'reasonable probability' that the jury verdict would have been different' even if the surveillance video was introduced at trial."

The defendant had also argued that the trial court abused its discretion when it allowed into evidence a 2007 crime, asserting it was irrelevant. But he did not preserve the argument for appellate review.
http://www.3dca.flcourts.org/Opinions/3D14-0591.pdf

***Musson v. State*, 184 So. 3d 575 (Fla. 2d DCA 2016)**

The defendant was convicted of aggravated battery, simple battery, kidnapping with intent to inflict bodily harm or terrorize, grand theft of a motor vehicle, and armed robbery. She appealed, arguing that the trial court improperly excluded the exculpatory testimony of one of her witnesses. The appellate court agreed and reversed.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2022,%202016/2D14-1438.pdf

***Wigley v. State*, 183 So. 3d 473 (Fla. 1st DCA 2016)**

The defendant had pled nolo contendere to robbery, attempted carjacking, grand theft auto, and criminal mischief. After serving his prison sentences, he violated his probation and the trial court sentenced him as a habitual felony offender to 10- and 30-year prison sentences on the four offenses. He filed a motion for postconviction relief, which the trial court summarily denied. The appellate court reversed because the trial court had failed to award credit on one of the counts for time previously served in prison.
https://edca.1dca.org/DCADocs/2015/2843/152843_DC08_01202016_103109_i.pdf

***Smith v. State*, 183 So. 3d 466 (Fla. 4th DCA 2016)**

The defendant was convicted of leaving the scene of an accident with vehicular homicide and was sentenced to 25 years in prison, and the appellate court affirmed the conviction and sentence on direct appeal. He filed a motion for post-conviction relief, which the trial court denied. The appellate court affirmed, stating: "Because [the defendant's] petition in the Florida Supreme Court did not seek direct review of this court's decision, his conviction and sentence became final for the purpose of rule 3.850 when the mandate issued. . . . [His] initial rule 3.850 motion was filed more than two years later . . . and did not allege any of the exceptions provided in the rule. . . . The trial court should have dismissed it as untimely filed."
http://www.4dca.org/opinions/Jan.%202016/01-20-16/4D15-1860.op.pdf

***Bradshaw v. McCormick*, 182 So. 3d 845 (Fla. 4th DCA 2016)**

McCormick was arrested for fleeing or attempting to elude a law enforcement officer in violation of section 316.1935, Florida Statutes. The sheriff then filed a forfeiture complaint as to McCormick's truck pursuant to section 316.1935(7), under which the truck was deemed "contraband" and subject to forfeiture. The forfeiture statute, in section 932.701(2)(a)5, defines "contraband article" as "any . . . vehicle of any kind . . . which was used or was attempted to be used as an instrumentality in the commission of . . . any felony." McCormick filed a motion for

summary judgment, arguing that he had pled guilty to a misdemeanor, not a felony violation of section 316.1935. The trial court granted his motion, but the appellate court reversed and remanded, noting that "a plea bargain in a criminal proceeding does not determine the outcome in a related civil forfeiture proceeding. . . . Thus, in this case, even though McCormick pleaded guilty to a misdemeanor, the Sheriff has the chance to prove the existence of felony fleeing or eluding under section 316.1935 in the forfeiture proceeding."
http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-450.op.pdf

***Medina v. State*, 182 So. 3d 843 (Fla. 4th DCA 2016)**

The circuit court revoked the defendant's bond and ordered pretrial detention based only on the pretrial release officer's affidavit that stated that, while on pretrial release, the defendant had been charged with driving while license suspended. The defendant filed a motion for writ of habeas corpus, which the appellate court granted, stating: "Because the affidavit did not state any facts establishing probable cause for the new charge, [it] was insufficient to revoke pretrial release and order pretrial detention. It quashed the circuit court order revoking pretrial release, and it ordered the court to release the defendant "on the previously imposed bond conditions unless the court first was presented with sufficient evidence to establish probable cause for the new charge."
http://www.4dca.org/opinions/Jan.%202016/01-06-16/4D15-4134.op.pdf

***State v. Attipoe*, 23 Fla. L. Weekly Supp. 817b (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with operating without a valid license. At the hearing, he stated that at the time of the citation he was visiting Florida but living in North Carolina, and that his wallet and driver license had been stolen from his car. The trial court granted the defendant's oral motion to dismiss, but the state appealed, arguing it had not had a chance to argue against the motion. The circuit court, in its appellate capacity, agreed and reversed.

***State v. Medrano*, 23 Fla. L. Weekly Supp. 816a (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with no valid driver's license. At the hearing, the trial court said to the defendant's attorney that "your ticket is completely defective. Have you looked at this charging document?" After a recess, the defendant's attorney made an oral motion to dismiss the charge, which the trial court granted. The state appealed, arguing that it had not had an opportunity to argue against the motion to dismiss. The circuit court, in its appellate capacity, agreed and reversed.

***Macedo v. State*, 23 Fla. L. Weekly Supp. 686a (Fla. 11th Cir. Ct. 2015)**

The defendant was originally charged with causing a crash involving damage to vehicle or property, but minutes before jury selection the trial court allowed the state to amend the citation to charge a violation of duty upon damaging unattended vehicle or other property. The defendant was convicted of the latter charge and appealed, based on the amendment of the citation and the trial court's exclusion of his wife as a witness. The state argued that the appeal was moot because the defendant had been deported, but the circuit court, in its appellate capacity, disagreed and vacated the conviction and remanded for a new trial. The amendment of

the citation just before jury selection was permitted because no prejudice was shown. However, harmful error did occur because the jury did not hear the testimony of the defendant's wife, and it could not be concluded "with certainty that excluding her testimony did not impact the verdict. Furthermore, the State did not indicate that another witness's testimony provided evidence cumulative to the wife's testimony."

***Hastings v. State*, 23 Fla. L. Weekly Supp. 512b (Fla. 9th Cir. Ct. 2015)**

The defendant was convicted of speeding, and the trial court suspended his license for 120 days, followed by a six-month restriction limited to a business-purposes-only license. He was also ordered to pay a fine and court costs. He filed a motion for rehearing and arrest of judgment, arguing that the license suspension was an illegal penalty. The trial court denied the motion, but the circuit court, in its appellate capacity, agreed with the defendant and reversed, noting that violations of section 316.189, Florida Statutes, "must be cited as a moving violation, punishable as provided in chapter 318," and that chapter 318 does not include license suspension as a penalty for violating section 316.189(2).

III. Civil Traffic Infractions

***Zoba v. City of Coral Springs*, __ So. 3d __, 2016 WL 889312 (Fla. 4th DCA 2016)**

Zoba received a traffic ticket for speeding in a school zone. His attorney had received a similar ticket, fought the ticket based on the argument that the school zone was illegal because it was established in violation of a county ordinance, and was acquitted. So Zoba filed a proposed class action against the city, the county, the Florida Department of Revenue, and the court clerk, "seeking a refund of traffic fines illegally charged and collected." The clerk moved to dismiss based on judicial immunity, but Zoba argued that the clerk "is not entitled to judicial immunity for collecting, apportioning, distributing, and retaining monies, in conjunction with alleged illegal traffic fines." The trial court granted the clerk's motion dismiss, and Zoba appealed. The appellate court affirmed, stating:

> Here, the parties disagree on which of the clerk's acts is the judicial act to be analyzed. The plaintiff argues the only act alleged in the amended complaint is the clerk's ultimate collection/receipt of 6.1% of the proceeds of the traffic fines. He argues the trial court erred by looking outside of the four corners of the complaint to examine how the clerk's act of receiving fines fits within the larger judicial process of handling traffic violations. The clerk responds that the act of receiving a percentage of the fine cannot be viewed in isolation. We agree with the clerk.
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> Because the clerk's collection, apportionment, and distribution of the fines are both statutorily and judicially ordered, they fall within the protection afforded by judicial immunity.

The appellate court did not decide "whether funds retained by the clerk and deposited into the fine and forfeiture trust fund above the 0.5% for administrative costs are susceptible to a refund should the plaintiff prevail, as that issue has not yet been fully litigated in the trial court." It stated: "What has yet to be litigated is whether [Zoba] can recoup monies paid to the clerk should he succeed in obtaining a favorable final judgment." Zoba would have to prove the school zone was created illegally and defend the "voluntary payment waiver defense." Another issue would be "whether the clerk must refund monies beyond the administrative fees authorized by statute. Wisely, the trial court foresaw the issue, but the case was not yet in the procedural posture for the trial court to rule on it."
http://www.4dca.org/opinions/Mar%202016/03-09-16/4D14-1182.op.WR.Dissent.pdf

***Pezzo v. DHSMV*, 23 Fla. L. Weekly Supp. 693a (Fla. 15th Cir. Ct. 2015)**

The defendant received a traffic citation for, and was convicted of, speeding. She sought review, arguing that the hearing officer erred in finding her guilty of speeding on a county road, because she was on a state road. But the circuit court, in its appellate capacity, affirmed, stating that the defendant did supply "an adequate record on appeal from which to determine whether she is correct. There is no transcript of the lower court proceedings, and the only evidence that [she] points to is the traffic citation which states, '7400 block 441,' but does not indicate whether [that] is a county road or a state road."

***Tackett v. DHSMV*, 23 Fla. L. Weekly Supp. 511a (Fla. 7th Cir. Ct. 2015)**

The defendant received a Uniform Traffic Citation for careless driving in violation of section 316.1925(1), Florida Statutes, which provides:

> (1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such a manner shall constitute careless driving and a violation of this section.

She moved to quash the UTC, alleging that "it was so vague and indefinite that it failed to apprise her of the act of conduct for which she was charged." The hearing officer rejected the defendant's argument and adjudicated her guilty. She appealed, but the circuit court, in its appellate capacity, affirmed. It stated that the defendant relied on *Robinson v. State*, 152 So. 717 (Fla. 1934), but

> *Robinson* was decided over 80 years ago, long before the present UTC notification procedure came into being. . . . Since *Robinson* was decided, the Florida Supreme Court addressed the issue of what is sufficient wording to inform a defendant of the charge of reckless driving. In *McCreary v. State*, 371 So.2d 1024, 1028 (Fla. 1979), the Court held that an information charging the defendant with operating his vehicle "in a reckless manner likely to cause death or great bodily harm to another" was legally sufficient to inform the defendant of the nature of the accusation against him. The Court explained that while there were no specific allegations in the information about how the defendant was reckless in

his driving, the information did not mislead or embarrass him in the preparation of his defense.

Although the decision in *McCreary* addressed reckless driving, its reasoning applies equally to careless driving. Both statutes are similar and part of the Florida Uniform Traffic Control Law. . . .

Moreover, there is nothing in the record to indicate that [the defendant] was actually confused about the conduct that gave rise to the traffic stop and citation. To the contrary. . . .

IV. Arrest, Search and Seizure

***Villanueva v. State*, __ So. 3d __, 2016 WL 1243469 (Fla. 2d DCA 2016)**

After stopping the defendant for failure to come to a complete stop at a stop sign, the police officer ran a license check and found that the defendant was on probation. The officer asked the defendant why he was on probation and whether he had any guns, knives, drugs, or anything illegal in his van. The defendant said he did not, and the officer asked for consent for a search. The defendant stated, "Go ahead. I have no choice because I'm on probation," and the officer did not correct the defendant's misunderstanding. (The officer had not yet issued the citation and could not recall whether he had returned the defendant's license yet, but it was his "standard practice to return a driver's license only after he had asked for consent to search.") The officer found drugs on the defendant, and the defendant was arrested and convicted of possession of methamphetamine and possession of paraphernalia. He filed a motion to suppress, "arguing that he was detained in excess of the legal duration of the search and that his consent was involuntary." The trial court denied the motion, but the appellate court reversed, noting that "the State did not argue that [the defendant] lacked the right to refuse consent to the search or that the probation exception to the warrant requirement justified the search," and finding that, under the totality of the circumstances, consent was involuntary:

> The trial court denied the motion reasoning that the stop only lasted eleven minutes and that the delays were attributable to the officer's warrant checks and search. It further reasoned that [the defendant's] consent was not the result of any show of authority. However, the trial court's order fails to address the officer's retention of the license, [the defendant's] lack of awareness that he could refuse consent, and whether [he] was informed he was free to leave. Although the stop only lasted for eleven minutes, at the time of the request for consent to search, per the officer's uncontroverted testimony, the only thing [he] had left to do was issue the citation. Yet the citation was not written up until after [the defendant] was taken into custody, after legal duration of the stop was exceeded.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/March/March%2030,%202016/2D15-1422rh.pdf

***Knight v. State*, __ So. 3d __, 2016 WL 916219 (Fla. 2016)**

A deputy conducted a traffic stop of a vehicle driven by the defendant, but owned by the front-seat passenger, and gave him a citation for a noise violation. While the vehicle was pulled over in a parking lot, another deputy arrived and "'made an "impromptu" decision to run his dog' around the car." The dog alerted to the passenger door and the deputy found a bag of marijuana in a suitcase in the backseat, which suitcase had a tag identifying the defendant as the owner. The defendant was charged and filed a motion for a judgment of acquittal. The trial court denied the motion, and the defendant was "convicted under a theory of constructive possession." The district court of appeals affirmed, declining to apply the circumstantial evidence standard of review for constructive possession cases, stating the standard "only applies in 'wholly circumstantial' cases," and in this case there was "direct evidence of dominion and control." But it certified conflict. The supreme court approved the district court's decision and stated: "We decline to abandon use of the standard but reject its use in [this] case because [it] is not a wholly circumstantial case. We instead uphold [the defendant's] conviction as supported by competent, substantial evidence."
http://www.floridasupremecourt.org/decisions/2016/sc13-564.pdf

***Session v. State*, __ So. 3d __, 2016 WL 1062762 (Fla. 5th DCA 2016)**

An officer saw the defendant in the driver's seat of a vehicle that was not his, rolling a joint. He also saw baggies that contained crack cocaine and morphine in the car's center console. The defendant was arrested for possession of the drugs, and he filed a motion for judgment of acquittal, arguing that the state failed to prove he "had the ability to exercise dominion or control over" the drugs. The trial court denied his motion, and he appealed. The appellate court reversed "[b]ecause the State's only evidence of constructive possession by [the defendant] was his proximity to the controlled substances."
http://www.5dca.org/Opinions/Opin2016/031416/5D15-2321.op.pdf

***State v. Benjamin*, __ So. 3d __, 2016 WL 1039146 (Fla. 4th DCA 2016)**

The defendant was a passenger in a vehicle that was stopped for speeding and seat belt violations. One officer saw an empty holster on the driver's lap, the driver admitted there was a gun in the trunk, and the driver gave the officers permission to search the car. A gun was found under the passenger seat, and the defendant was arrested and charged with carrying a concealed firearm. He filed a motion to dismiss, arguing the state did not make a prima facie case that the gun was concealed, which the trial court granted. But the appellate court reversed, stating:

> The main evidence that [the defendant] attempted to conceal the firearm is (1) the location of the firearm under the passenger seat with just a half-inch tip of the firearm exposed, (2) the fact that neither officer saw the tip of the firearm while both the driver and [the defendant] were inside the vehicle, and (3) First Officer did not see the tip of the firearm during his search of the vehicle until he approached the open door of the passenger's side. The fact that First Officer recognized immediately that the half-inch tip of an object was, in fact, a gun does not mean the State could not make a prima facie showing that the firearm was concealed.

http://www.4dca.org/opinions/Mar%202016/03-16-16/4D14-2110.op.pdf

***Jones v. State*, __ So. 3d __, 2016 WL 902706 (Fla. 4th DCA 2016)**

A police officer stopped the defendant for not wearing a seatbelt and asked him for permission to search the vehicle, which the defendant did not grant. The officer told the defendant to get out of the vehicle, and the officer's dog alerted to what turned out to be about 20 oxycodone tablets. The defendant was arrested and charged with trafficking oxycodone, and he filed a motion to suppress. The trial court denied the motion, holding that "although the officer lacked 'articulable suspicion of criminal activity' prior to the search, the stop was not prolonged by the sniff, as it occurred within the time it would have taken to write a citation." The appellate court reversed, stating: "We agree with the trial court that, prior to the canine search at issue, the officer had no 'articulable suspicion of criminal activity.' . . . Thus, the officer had no legal authority to detain [the defendant] outside the limited purpose provided by the traffic violation. Once the officer abandoned this line of inquiry, the justification for the stop had expired and [the defendant] was free to leave. The dog sniff, therefore, prolonged the stop in violation of [the defendant's] Fourth Amendment rights."
http://www.4dca.org/opinions/Mar%202016/03-09-16/4D15-639.op.pdf

***Chandler v. State*, __ So. 3d __, 2016 WL 742500 (Fla. 5th DCA 2016)**

A deputy pulled over the vehicle in which the defendant was a passenger, for driving erratically. The deputy smelled marijuana, and he and another officer found a bag of methamphetamine on the passenger-side floor and a rolled-up dollar bill in the defendant's wallet. The defendant was convicted for possession of drug paraphernalia, and he appealed. The appellate court reversed, noting that the officers had not testified that the dollar bill contained residue, nor did they have it tested. Their "testimony that drug users commonly use rolled-up bills to inhale narcotics does not suffice to support a conviction for possession of drug paraphernalia under these circumstances. Although the officers did find methamphetamine in proximity to the alleged paraphernalia, the jury acquitted [the defendant] of the possession charge, and the State offered no further evidence to prove [he] intended to use the dollar bill for an illicit purpose."
http://www.5dca.org/Opinions/Opin2016/022216/5D15-696.op.pdf

***Tyler v. State*, __ So. 3d __, 2016 WL 514244 (Fla. 4th DCA 2016)**

The defendant, a minor, was a passenger in a car that was stopped by a police officer. The driver of the car was driving with a suspended license, so the officer arrested him and found marijuana in his pocket. The officer was unable to contact the vehicle's owner, so the officer had arranged to have the vehicle towed, and while doing an inventory found a suitcase with the defendant's name on it in the trunk. In an open pocket of the suitcase the officer found a sock containing 17 "live ammunitions" and arrested the defendant, who admitted that the contents of the suitcase were his. The defendant filed a motion to suppress, which the trial court denied, and he pled guilty to being a delinquent in possession of ammunition, reserving the right to appeal the ruling. On appeal, the appellate court agreed with the defendant "that the state did not meet its burden in establishing an exception to the warrant requirement for searches," and it reversed. It noted that "the impoundment and inventory of a vehicle and its contents must be performed in accordance with the governmental entity's standardized operating procedures," but "the state provided no evidence of the [police] department's inventory policy, other than the officer's

testimony that one existed and that the contents of the impounded vehicle were required to be inventoried and logged for liability purposes. This sort of testimony has been found to be insufficient."

The state also argued that "the search was legal because the officer developed probable cause after a search of the driver incident to arrest turned up marijuana." But the appellate court found "the record was not sufficiently developed for us to undertake a totality of the circumstances analysis."
http://www.4dca.org/opinions/Feb%202016/02-10-16/4D14-449.op.pdf

***Lucier v. State*, __ So. 3d __, 2016 WL 313963 (Fla. 4th DCA 2016)**

The defendant was convicted of fleeing or eluding, resisting an officer without violence, possession of cocaine, and attempted tampering with evidence. He appealed, arguing that "the trial court erred by permitting the state to: (1) introduce evidence that [he] engaged in a hand-to-hand transaction at a fence outside a house known for drug activity; and (2) present evidence and argument on [his] failure to produce a witness." The appellate court agreed and reversed, stating: "It is well settled that it is error to allow references to the character of the location of a suspect's arrest." As to the defendant's second argument, the court state: "'[T]he state cannot comment on a defendant's failure to produce evidence to refute an element of the crime, because doing so could erroneously lead the jury to believe that the defendant carried the burden of introducing evidence.' . . . The exception . . . occurs 'when the defendant voluntarily assumes some burden of proof by asserting the defense of alibi, self-defense, and defense of others, relying on facts that could be elicited only from a witness who is not equally available to the state,'" which was not the case here. The defendant "did not assert an affirmative defense; he was not required to provide exculpatory evidence. When [he] took the stand, he testified that he was in the parking lot to meet a friend. This testimony was to rebut the state's theory that [he] was in the parking lot to buy drugs. [The defendant] did not create an issue for which he carried the burden of proof; he simply asserted a defense to the state's theory of the case. . . . Here, the prosecutor engaged in improper burden shifting."
http://www.4dca.org/opinions/Jan.%202016/01-27-16/4D14-1834.op.pdf

***Williams v. State*, 184 So. 3d 623 (Fla. 3d DCA 2016)**

The defendant was a passenger in a vehicle that was stopped by an officer who had seen someone pass an item into the vehicle and believed the individuals were involved in a drug transaction. A search of the vehicle revealed cocaine, and the defendant and the driver were arrested. The driver negotiated a plea and agreed to testify against the defendant in exchange for a 364-day jail sentence rather than the minimum mandatory of three years up to the maximum of 30 years in prison. At trial the defendant argued that the driver's testimony was not credible but rather was motivated by "the favorable plea bargain he struck with the State," and that it conflicted with the officer's testimony. The defendant was convicted of possession of cocaine and appealed, arguing that "the trial court gave a misleading, incomplete and reversibly erroneous instruction in response to a jury question during deliberations." The appellate court agreed and reversed, stating: "Rather than responding to this question about whether proof of knowledge of the ***presence*** of the substance found in [the] car was necessary for a conviction for simple possession, the court prepared its own response, focusing on the question of whether [the

defendant] knew of the illicit nature of the substance found. . . . This was reversible error." The defendant's defense was that he was unaware of the presence, not the illicit nature, of the substance found in the search. The instruction also described the defendant's defense as an affirmative defense, "thereby creating the impression that [he] bore some burden of producing evidence in support of it, when the defense he actually raised (lack of knowledge of the presence of the substance) was not an affirmative defense but rather an element to be proved . . . by the State."
http://www.3dca.flcourts.org/Opinions/3D14-3016.pdf

***Croissy v. State*, 184 So. 3d 570 (Fla. 4th DCA 2016)**

An officer who was responding to a BOLO with a "vague description of two black males" leaving a vehicle saw the vehicle and saw a black male standing in the center of the road, about a block from the vehicle. The officer noticed the defendant was sweating profusely and was out of breath, and found him "very suspicious because he was standing in the middle of the road trying to talk to a resident." The officer asked for back-up and handcuffed the defendant "for his safety and that of the defendant so he could check for weapons. He told the defendant he was not under arrest, but that he was placing him in handcuffs to detain him until back-up arrived." The officer saw the defendant stomping on a bag containing what turned out to be methamphetamine, and the back-up officers found more drugs in the vehicle. The defendant was convicted of drug charges and tampering with evidence. He appealed, arguing that the trial court erred in denying his motion to suppress. The appellate court agreed and reversed, stating that while "the officer's initial approach and conversation with the defendant was . . . a consensual encounter, . . . the level of encounter changed when the officer returned from speaking with the resident, handcuffed the defendant, and began a pat-down leading to a search of his person. The question then becomes whether the officer had reasonable suspicion to detain the defendant, and to conduct not only a pat-down, but a search. The answer is no." The description given to the officer of the two people in the car was too vague.

The appellate court also noted that no violation of section 316.130, Florida Statutes, to give the officer cause to stop and detain the defendant, applied, and that even if it did, it would have allowed the officer to stop the defendant only to write him a citation. Further, "there was neither an indication that the defendant was attempting to flee nor that he was armed or dangerous. The officer simply had no reasonable suspicion to detain the defendant."
http://www.4dca.org/opinions/Jan.%202016/01-20-16/4D14-4092.op.pdf

***A.P. v. State*, 182 So. 3d 915 (Fla. 5th DCA 2016)**

While investigating an anonymous tip about a man possibly fitting the defendant's description dealing drugs in front of a residence, an officer saw the defendant in the front passenger seat of a Taurus in the driveway of the residence. After calling for narcotics backup, parking his marked car, and walking to where he could see the Taurus, the officer saw the Taurus leaving the driveway. He stopped it and asked the occupants for identification, and stepped away to investigate a burglar alarm, telling the occupants of the Taurus to "stay put." Meanwhile the narcotics officers arrived, and the K9 alerted to the trunk. The first officer returned to the car and asked the defendant if he could search him, and the defendant pulled a small bag with a green leafy material out of his pocket, admitting it was cannabis. The officer gave the defendant a civil

juvenile citation for possession of less than 20 grams. The defendant filed a motion to suppress, which the trial court denied. The appellate court reversed, stating that there was no reasonable basis for the stop. "A truly anonymous tip with no identification of the tipster and few details of the suspected criminal activity, falls on the very low end of the reliability scale in terms of providing justification for a stop." And even though the trial judge found there was a "voluntary turnover rather than a search," the appellate court, quoting case law, stated: "When the initial police activity is illegal, the State must establish by 'clear and convincing evidence' that there has been an unequivocal break in the chain of illegality sufficient to dissipate the taint of the prior illegal police action and thus render the consent freely and voluntarily given," which was not the case.
http://www.5dca.org/Opinions/Opin2016/011116/5D14-4537op.pdf

***Altman v. State*, 23 Fla. L. Weekly Supp. 718a (Fla. 20th Cir. Ct. 2015)**

The defendant was charged with DUI second offense and filed a motion to suppress, arguing that when the trooper grabbed her arm as she exited her vehicle and approached her husband's vehicle, it was a non-consensual encounter, but the officer did not have a well-founded articulable suspicion that she had committed, was committing, or was about to commit a crime. The trial court denied the motion, but the circuit court, in its appellate capacity, agreed with the defendant and reversed in part and remanded.

***State v. Victor*, 23 Fla. L. Weekly Supp. 697a (Fla. 17th Cir. Ct. 2015)**

A deputy responding to a 911 hang-up call went to the location where the call was traced to and went to the only car in the parking lot "to be sure there was no one hiding in the vehicle, possibly with a firearm." He smelled marijuana, searched the vehicle, found marijuana, and issued the defendant a citation. The defendant was charged with possession of marijuana and filed a motion to dismiss. The trial court granted the motion, stating that the deputies "went after the defendant when he *pulled into* a parking space," stopped the defendant "for reasons unknown," and "were not clear about whether they were smelling burnt marijuana or raw marijuana." But the circuit court, in its appellate capacity, reversed, finding "a clear showing of error" as to these factual findings. It further found the initial encounter between the first deputy and the defendant "was purely consensual and therefore did not give rise to any Fourth Amendment concerns." When the deputy smelled "fresh burnt marijuana," he had probable cause to detain the defendant and search the car.

V. Torts/Accident Cases

***ATC Logistics Corp v. Southeast Toyota Distributors, LLC*, __ So. 3d __, 2016 WL 1252393 (Fla. 2016)**

Jackson sued Southeast Toyota (SET) and ATC, its vehicle transporting carrier, for injuries she sustained while working as a security guard in a parking lot leased by SET. SET filed a third-party complaint against ATC asserting contractual and common law indemnity, and SET and ATC filed cross-motions for summary judgment on the issue of indemnification." The trial court denied ATC's motion and granted SET's, "concluding as a matter of law that certain

language contained in the parties' contract was sufficiently unequivocal to require ATC to indemnify SET for SET's own acts of negligence." The appellate court disagreed and reversed.

***Paton v. GEICO General Inc. Co.*, __ So. 3d __, 2016 WL 1163372 (Fla. 2016)**

Paton was injured in an automobile accident by an underinsured driver. GEICO did not pay the total amount claimed by Paton under the UM policy, so she sued GEICO. The jury awarded her a verdict, which the trial court reduced to the $100,000 UM policy limit. She later amended her complaint to add a bad faith claim, and the jury awarded her the amount of the excess verdict in the UM trial. Paton moved for attorney's fees and costs and sought records related to GEICO's attorneys' bills. GEICO objected to certain discovery requests, arguing that the information sought was privileged and irrelevant, but the trial court overruled the objections. GEICO sought review, which the district court of appeal granted, quashing the objected-to orders and citing case law that held that "the records of opposing counsel are, at best, only marginally relevant to the determination of reasonable attorney's fees" and that a party must "establish that the billing records of opposing counsel are actually relevant and necessary, and their substantial equivalent could not be obtained elsewhere," which Paton failed to do. Paton sought review, and the supreme court quashed the district court's decision and remanded, resolving a conflict among districts and stating that a party must

> establish that the billing records of opposing counsel are relevant to the issue of reasonableness of time expended in a claim for attorney's fees, and their discovery falls within the discretion of the trial court when the fees are contested. . . .
>
> Moreover, the entirety of the billing records are not privileged, and where the trial court specifically states that any privileged information may be redacted, the plaintiff should not be required to make an additional special showing to obtain the remaining relevant, non-privileged information. Additionally, even if the amount of time spent defending a claim was privileged, this information would be available only from the defendant insurance company. . . . Thus, we conclude that by granting the petition for certiorari, the Fourth District improperly infringed on the sound discretion of the trial court and required Paton to meet an unnecessarily high standard.
>
> Moreover, the district court improperly employed its certiorari jurisdiction when it granted the petition on an issue that did not depart from the essential requirements of the law and would not cause irreparable harm to GEICO. . . . Simple disagreement with the decision of the trial court is an insufficient basis for certiorari jurisdiction.

http://www.floridasupremecourt.org/decisions/2016/sc14-282.pdf

***Negron v. Hessing*, __ So. 3d __, 2016 WL 1128483 (Fla. 4th DCA 2016)**

After an automobile accident, the Hessings sued the Negrons for personal injuries. During the trial the Hessings orally moved for a mistrial, which the court denied, and then for a new trial, which the court also denied. After a jury verdict in favor of the Negrons, the Hessings

filed a written motion for new trial, but the court did not address that motion and instead entered a final judgment in the Negrons' favor. The Hessings did not appeal but two years later (after the presiding judge had left the civil division) they set their motion for new trial before a successor judge, who granted it, while acknowledging "that the motion had been orally denied by his predecessor." The Negrons moved to vacate the order for new trial, but the successor judge denied the motion and the Negrons appealed. The appellate court reversed, holding that the successor judge did not have jurisdiction to rule on the Hessings' motion for new trial. It stated that "when [the Hessings] orally moved for new trial, they elected to forgo the option of filing a written motion. . . . The trial judge, in turn, orally denied the ore tenus motion. This ruling properly disposed of the motion for new trial." It stated further that "in any event, once the final judgment was entered, the written motion was deemed denied. . . . [The Hessings'] remedy at that point was to appeal the final judgment."
http://www.4dca.org/opinions/Mar%202016/03-23-16/4D13-4700.op.pdf

***De La Torre v. Flanigan's Enterprises, Inc.*, __ So. 3d __, 2016 WL 889334 (Fla. 4th DCA 2016)**

The plaintiffs were injured when their vehicle was struck by a drunk driver who had been drinking at the defendant's restaurant. The plaintiffs sued Flanigan's, arguing that because of its internal policy to prevent drunk customers from driving away from the restaurant, it had undertaken a voluntary duty, which it was negligent in performing. But the trial court disagreed, and the appellate court affirmed, stating that the defendant's "actions in this case are insufficient for the undertaker's doctrine to apply. [Its] actions in 'cutting off' Driver and giving her water did not increase the risk of harm stemming from Driver's intoxication, nor did [it] undertake to perform a duty owed by the Driver to third parties. Further, it is unreasonable to assume, as [the plaintiffs] do, that Driver would not have driven but for [the defendant's] actions." The court also noted that to hold otherwise "would encourage restaurants and bars to avoid liability by intentionally not having a policy or practice to deter drunk driving and to continue serving alcohol to intoxicated patrons. Moreover, this seeming 'no good deed goes unpunished' theory would presumably extend to other parties, such as friends or family members, that voluntarily encouraged intoxicated individuals to stop drinking or attempted to 'sober them up.'"
http://www.4dca.org/opinions/Mar%202016/03-09-16/4D15-195.op.pdf

***Emmons v. Akers*, __ So. 3d __, 2016 WL 869937 (Fla. 1st DCA 2016)**

After a car accident, the Akers sued Emmons. The jury returned a verdict in favor of Mr. Akers for medical expenses and pain and suffering, and in favor of Ms. Akers for loss of consortium. The Akers moved for additur, which the trial court granted, alternatively ordering a new trial if the additur was rejected. Emmons rejected the additur and appealed. The appellate court affirmed, noting that by statute "[i]f the party adversely affected by an additur does not agree to the additur, the court must order a new trial in the cause on the issue of damages only," and that the trial court's conclusions were not unreasonable.
https://edca.1dca.org/DCADocs/2014/4625/144625_DC05_03082016_083228_i.pdf

***Progressive American Ins. Co. v. Emergency Physicians of Cent. Florida*, __ So. 3d __, 2016 WL 830247 (Fla. 5th DCA 2016)**

After a car accident, the insured (Karani) sought treatment from Emergency Physicians of Central Florida (EPCF), which submitted its bill to the insurer (Progressive). Progressive applied the bill to Karani's deductible and therefore did not pay EPCF. EPCF, as Karani's assignee, sued Progressive for breach of the insurance policy. The county court found in favor of EPCF, stating it "was a member of a legislatively created and protected class of priority providers and therefore entitled to have its bill paid in full despite the existence of Karani's deductible." The circuit court affirmed, and Progressive sought review. The appellate court granted review and quashed the circuit court's order, noting that "all claims, including EPCF's priority claim, are properly applied to a personal injury protection deductible in the order that they are received," and that "EPCF is not entitled to payment from Progressive, as Progressive properly applied its claim to the deductible."
http://www.5dca.org/Opinions/Opin2016/022916/5D15-3314.op.pdf

***School Bd. of Broward County v. City of Coral Springs*, __ So. 3d __, 2016 WL 805300 (Fla. 4th DCA 2016)**

A police officer was injured by a school bus. The city of Coral Springs paid him workers' compensation benefits, and he assigned his claims to the city, in exchange for which the city and the workers' compensation carrier agreed to sue the school board and the individual defendant on his behalf. The city sued the school board, which filed a motion for summary judgment, claiming the city failed to comply with presuit notice requirements for waiver of sovereign immunity. The trial court denied the motion, and the appellate court affirmed, stating: "While notice is statutorily required, its form and content are not specified in the statute. . . . The trial court did not err in concluding that the City provided sufficient information to the School Board and the Florida Department of Financial Services to put them on notice of the accident, its time, location, the injuries suffered and that a claim was being made."
http://www.4dca.org/opinions/Mar%202016/03-02-16/4D15-2213.op.pdf

***Travelers Commercial Ins. Co. v. Harrington*, __ So. 3d __, 2016 WL 745781 (Fla. 2016)**

In this case with a long history, involving consolidated appeals, Travelers filed a motion to vacate judgments awarding "prevailing party" appellate attorney's fees to Harrington. The trial court denied the motion, but the appellate court reversed the order of denial and remanded with directions for the trial court to vacate the judgments awarding Harrington appellate attorney's fees. It stated that "once this Court vacated its award of prevailing party attorneys' fees to [Harrington] upon remand from the supreme court's decision in *Travelers II*, there was no legal basis for the trial court to deny [Travelers'] second motion to vacate, since appellee was no longer the prevailing party and no longer entitled to prevailing party attorneys' fees under section 627.428. Our decision in appellate court case number 1D15–3480, therefore necessarily renders moot any consideration of the trial court's order appealed in appellate court case number 1D15–1121."
https://edca.1dca.org/DCADocs/2015/1121/151121_DC13_02262016_101055_i.pdf,
https://edca.1dca.org/DCADocs/2015/4839/154839_DC13_02262016_101744_i.pdf

***Fridman v. Safeco Ins. Co. of Illinois*, __ So. 3d __, 2016 WL 743258 (Fla. 2016)**

Fridman was injured in an accident with an underinsured motorist and filed a claim with his insurer (Safeco) for his UM limits ($50,000). Safeco initially refused to pay the UM limits but eventually offered $50,000. Safeco filed a motion for confession of judgment, which the trial judge denied. At the motion hearing, Fridman's attorney said Fridman was going to file a bad faith action but believed case law required that it be brought in a separate complaint from the UM action. The trial jury found the underinsured driver 100% at fault for Fridman's damages, which it set at $1 million. Safeco filed a motion for a new trial and for remittitur, but the trial court entered a final judgment that ordered Safeco to pay Fridman $50,000, and reserved jurisdiction "to determine Fridan's right to Amend his Complaint to seek and litigate bad faith damages from the Defendant as a result of such jury verdict in excess of policy limits. If the Plaintiff should ultimately prevail in his action for bad faith damages against Defendant, then the Plaintiff will be entitled to a judgment . . . for his damages in the amount of $980,072.91 plus interest, fees and costs." The appellate court vacated the jury's verdict "and directed the trial court to enter an amended final judgment deleting any reference to the jury verdict and declining to reserve jurisdiction to consider a request to amend the complaint to add a claim seeking relief for bad faith under section 624.155." Agreeing with the dissent in that decision, the supreme court quashed the decision of the Fifth District and held that "an insured is entitled to a determination of liability and the full extent of his or her damages by first bringing an uninsured/underinsured motorist (UM) action *before* litigating a first-party bad faith cause of action under section 624.155, Florida Statutes (2007)," and "the amount of damages in the UM case does not become moot by virtue of an insurer's 'confession of judgment' and tendering of the policy limits."

The supreme court also stated: "The related issues we address are whether that determination of damages is then binding, as an element of damages, in a subsequent first-party bad faith cause of action against the same insurer, and whether the trial court in this case erred in retaining jurisdiction to allow the insured to file a bad faith cause of action." http://www.floridasupremecourt.org/decisions/2016/sc13-1607.pdf

***Rojas v. Rodriguez,* __ So. 3d __, 2016 WL 626148 (Fla. 3d DCA 2016)**

Rojas was injured while riding in a vehicle that was struck by Rodriguez's vehicle. He sued, and during trial Rodriguez objected to the testimony of the plaintiff's witness, a neurosurgeon who was not an accident reconstructionist or a biomedical expert. The trial court overruled the defendant's objection, and the defendant moved for mistrial. The trial court denied that motion. After the jury verdict awarding the plaintiff damages, the defendant renewed his motion for new trial, "but again raised no *Daubert* objection. The trial court asked the defense to file a written motion," and he filed a "'motion for mistrial/new trial and remittitur,' asserting that the neurosurgeon's testimony was outside his area of expertise and trial by ambush, and for the first time, raising *Daubert*." The trial court granted the defendant's motion. But the appellate court reversed, holding that the defendant's post-trial *Daubert* objection was not timely. And the failure to timely raise the objection was "fatal to the defendant's case, particularly in light of the fact that the defendant was on notice . . . over ten months before the . . . start of trial. Despite this disclosure, the defendant took no steps to discover the basis of the neurosurgeon's opinion." http://www.3dca.flcourts.org/Opinions/3D15-0277.pdf

***Lesnik v. Duval Ford, LLC,* __ So. 3d __, 2016 WL 339777 (Fla. 1st DCA 2016)**

The defendant Duval Ford had sold a truck to a non-party (Sweat), and its subcontractor installed a lift kit for Sweat. About two years later, Sweat sold the truck to the plaintiff (Lesnik), through defendant Burkins Chevrolet, and about two months later the steering and suspension failed, the truck flipped, and the plaintiff was severely injured. He sued Duval Ford for vicarious liability, negligence for selling the vehicle as modified and failing to warn, and strict liability for selling the vehicle as modified and failing to warn. The trial court entered a final summary judgment against the plaintiff, and the plaintiff appealed, arguing as grounds for reversal the existence of genuine issues of material fact and the trial court's striking of his expert witness Moore's affidavit, which was filed after the motions for summary judgment were filed and which conflicted with Moore's previous testimony. The appellate court affirmed, stating:

> There was no evidence in the record that the lift kit was defective or improperly installed by Duval Ford's subcontractor or that it was inherently dangerous, eliminating any claim for vicarious liability against Duval Ford. The record contains no evidence of a design defect in the lifted truck when it was originally purchased from Duval Ford, eliminating any claim for negligence or strict liability against Duval Ford. Finally, Duval Ford had no duty to warn about the truck since there was no evidence that there was anything inherently dangerous about the truck when it was sold by Duval Ford.

As to the claim against Burkins Chevrolet for failing to inspect the truck and to warn of the risk of lifted vehicles, the appellate court stated that "the record lacks any evidence that Burkins Chevrolet had a duty to inspect the vehicle for latent defects or that the lifted truck actually included any design defects." Further, the undisputed evidence showed that the plaintiff knew the truck was lifted, "and in fact this modification was a factor in his decision to purchase the truck," and that Burkins Chevrolet was unaware of any latent defects." Further, with the striking of Moore's affidavit, there was "no evidence that Burkins Chevrolet had a duty to warn [the plaintiff] of any defect."
https://edca.1dca.org/DCADocs/2014/5029/145029_DC05_01282016_082431_i.pdf

***State Farm Mut. Auto. Ins. Co. v. Premier Diagnostic Centers, LLC,* __ So. 3d __, 2016 WL 314129 (Fla. 3d DCA 2016)**

State Farm petitioned for a writ to quash three trial court orders requiring it, "in three first-party non-bad-faith cases, to produce portions of its adjusters' claims files to a medical care provider." The appellate court granted the writ, stating: "Because this and other courts have repeatedly held that an insurer's claim file is not discoverable in cases such as this, we find not only that the wrong law was applied below but also that an irreparable departure from the essential requirements of the law resulting in manifest injustice has occurred as well."
http://www.3dca.flcourts.org/Opinions/3D15-1871.pdf

***State Farm Mut. Auto. Ins. Co. v. Gold,* __ So. 3d __, 2016 WL 313993 (Fla. 4th DCA 2016)**

Gold was in a car accident and sued State Farm under his uninsured motorist policy. State Farm denied his claim and he sued. The trial court overruled State Farm's objections to a jury instruction and to comments and a PowerPoint slide made by Gold's attorney, but the appellate court reversed, stating: "The cumulative effect of Gold's statements and the trial court's jury

instruction that focused the jury's attention on State Farm's liability and culpability rather than on the issue of damages compels our holding. We are not convinced that the court's instruction would necessarily have been improper on its own . . . , but in conjunction with Gold's statements the instruction painted a clear picture in the jury's minds of a company breaking an obligation rather than a company simply attempting to determine actual damages *attributable* to the accident."
http://www.4dca.org/opinions/Jan.%202016/01-27-16/4D14-2362.op.pdf

***Restrepo v. Carrera,* __ So. 3d __, 2016 WL 231955 (Fla. 3d DCA 2016)**

Restrepo sought review of a trial court order that directed her to "provide cell phone numbers and/or names of providers used during the six (6) hour period before the time of the crash and the six (6) hour period after the crash, same to be provided within thirty (30) days from the date of this Order." Carrera conceded, and the appellate court found, that the order violated Restrepo's Fifth Amendment rights and was a "departure from the essential requirements of law from which petitioner has no adequate remedy on appeal." Therefore, the appellate court granted review and quashed the order.
http://www.3dca.flcourts.org/Opinions/3D15-1964.pdf

***First Liberty Ins. Corp. v. O'Neill,* __ So. 3d __, 2016 WL 145824 (Fla. 4th DCA 2016)**

The circuit court issued a partial final judgment for O'Neill on her uninsured motorist claim after the insurer, First Liberty, tendered the policy limits. The court also granted the insured's motion to amend the complaint to add a first-party bad-faith claim. First Liberty appealed. The appellate court treated the appeal as a petition for a writ of certiorari and denied the petition, stating:

> At the time of the circuit court's decisions, we had not addressed the issue of whether an insured, after obtaining a favorable result on its benefits claim, may amend the complaint to add a first-party bad faith claim instead of filing a new action on the bad faith claim. Instead, the circuit court was faced with a split of authority from our sister courts on that issue. . . .
>
> Given the lack of binding authority from this court on the underlying issue, and given the split of authority between our sister courts on the underlying issue, we cannot say that the circuit court's apparent decision to follow the First District's authority was a departure from the essential requirements of the law at the time of its decision. Thus, because of that procedural posture, we are compelled to deny the petition for writ of certiorari and not decide the underlying issue until a final appealable judgment is entered.

http://www.4dca.org/opinions/Jan.%202016/01-13-16/4D14-2895op.pdf

***Manfre v. Shinkle*, 184 So. 3d 641 (Fla. 5th DCA 2016)**

While driving on a rural road, Shinkle hit a dead horse that was lying on the road. Her car flipped and she sustained serious injuries. She sued Manfre in his capacity as sheriff, the jury found in her favor, and the trial court granted her motion for additur. Manfre appealed, arguing

that he did not owe Shinkle a duty of care, and if he did, the action was barred by sovereign immunity. The appellate court reversed, noting that the Warren Act ("a statewide scheme for keeping livestock off the roads") made the owners of livestock responsible for damages caused by their animals on public roads. The injured party's remedy is a tort action against the animal's owner. And if the sheriff had a duty regarding livestock that pose a threat to public safety, it was owed to the public, not an individual, and no exception to the public-duty doctrine applied. Nor did the "undertaker's doctrine" apply, even though the sheriff's office had responded earlier to a call about two horses on the side of the road, and cleared the call without contacting the owner of the pasture the horses went back to. Because no duty was owed by the sheriff to Shinkle, the court did not discuss sovereign immunity.
http://www.5dca.org/Opinions/Opin2016/020116/5D14-3368.op.pdf

***GEICO Indem. Co. v. Chmielewski*, 181 So. 3d 577 (Fla. 2d DCA 2016)**

GEICO, a nonparty to an automobile negligence action, sought certiorari review of an order compelling production of its claim file. The plaintiff conceded that the order "departs from the essential requirements of law because GEICO was not properly served with a lawful subpoena in the manner prescribed by Florida Rule of Civil Procedure 1.351." Therefore, the appellate court quashed the order compelling production and remanded for further proceedings.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2006,%202016/2D15-3034.pdf

VI. Drivers' Licenses

***DHSMV v. Lopez*, __ So. 3d __, 2016 WL 1239879 (Fla. 3d DCA 2016)**

DHSMV suspended the defendant's license. He filed a petition for writ of certiorari 36 days later, and DHSMV filed a motion to dismiss because the deadline for filing the petition was 30 days. The circuit court denied the motion to dismiss, and DHSMV filed a petition for writ of prohibition to prevent the circuit court from exercising jurisdiction to review the defendant's petition for writ of certiorari. The appellate court granted the petition, withholding issuance of the writ "upon the understanding that the circuit court appellate division will dismiss [the defendant's] petition for writ of certiorari."
http://www.3dca.flcourts.org/Opinions/3D15-2858.pdf

***DHSMV v. Guerrieri*, __ So. 3d __, 2016 WL 878811 (Fla. 1st DCA 2016)**

A hearing officer upheld the suspension of the defendant's license. The circuit court quashed the suspension order, and DHSMV appealed. The appellate court quashed the circuit court order, stating that "the circuit court applied the incorrect law when it improperly reweighed the evidence concerning whether [the defendant] was in actual physical control of a motor vehicle." It remanded "with direction that the circuit court follow the correct law."
https://edca.1dca.org/DCADocs/2014/4625/144625_DC05_03082016_083228_i.pdf

***DHSMV v. Peacock*, __ So. 3d __, 2016 WL 455625 (Fla. 1st DCA 2016)**

After DUI offenses, the defendant's license was permanently revoked. He enrolled in a special supervision services program, through which he received a hardship license. Years later, DHSMV dismissed him from the program and cancelled his hardship license, based on his admission to having a few sips of wine and his medical records that showed he had "occasionally" drank alcohol. The trial court stayed the dismissal and license cancellation and ordered the defendant not to consume any alcohol and to wear a monitoring device. DHSMV sought review, arguing that the trial court lacked statutory authority for the stay. The appellate court denied review, stating that the case and statute relied on in the DHSMV's argument were not applicable to a stay of cancellation of a hardship license or dismissal from a DUI program. https://edca.1dca.org/DCADocs/2015/3961/153961_DC02_02052016_094636_i.pdf

***State v. Lanier*, 23 Fla. L. Weekly Supp. 817a (Fla. 17th Cir. Ct. 2015)**

The defendant's license was suspended for one year after he pled no contest to a charge of possession of cannabis. The state appealed, arguing that the suspension should have been for two years, since the statutory amendment changing the suspension period from two years to one year became effective after the incident. The defendant conceded that the applicable time period for suspension of his license was two years but argued that "because the trial court and counsel affirmatively advised him that his license would only be suspended for one year, upon remand, he should have the option of withdrawing his plea if he so chooses." The circuit court, in its appellate capacity, agreed and reversed the one-year suspension order, but stated that the defendant "has the option of withdrawing his no contest plea and proceeding with the matter in normal course."

***State v. Brown*, 23 Fla. L. Weekly Supp. 816b (Fla. 17th Cir. Ct. 2015)**

The defendant's license was suspended for one year after he pled no contest to a charge of possession of cannabis. The state appealed, arguing that the suspension should have been for two years, since the statutory amendment changing the suspension period from two years to one year became effective after the incident. The defendant conceded that the applicable time period for suspension of his license was two years but argued that "because the trial court and counsel affirmatively advised him that his license would only be suspended for one year, upon remand, he should have the option of withdrawing his plea if he so chooses." The circuit court, in its appellate capacity, agreed and reversed the one-year suspension order, but stated that the defendant "has the option of withdrawing his no contest plea and proceeding with the matter in normal course."

***Papper v. DHSMV*, 23 Fla. L. Weekly Supp. 813a (Fla. 15th Cir. Ct. 2016)**

The defendant's license was suspended for refusal to submit to a breath test. She sought review, which the circuit court, in its appellate capacity, granted. It found that, because of date and time inconsistencies in the affidavits, DHSMV lacked competent substantial evidence that the defendant refused to take a breath test.

***Waldman v. DHSMV*, 23 Fla. L. Weekly Supp. 803a (Fla. 9th Cir. Ct. 2015)**

The defendant was arrested for DUI. At her hearing her attorney questioned her psychiatrist about the defendant's ADD and her use of Adderall, but the hearing officer asked her

psychiatrist "questions beyond those matters" and suspended her license for refusal to submit to a breath test. The defendant sought review, which the circuit court, in its appellate capacity, granted, finding that the hearing officer "abandoned her role as a neutral and detached factfinder" and "violated [the defendant's] due process rights by obtaining new information and then relying on it to affirm the license suspension."

***Anderson v. DHSMV*, 23 Fla. L. Weekly Supp. 700a (Fla. 17th Cir. Ct. 2015)**

The defendant's license had been permanently revoked for four or more DUIs. He was denied reinstatement because he did not show that he had not driven a motor vehicle for at least five years before a reinstatement hearing. He sought review, but the circuit court, in its appellate capacity, denied review, stating that the DHSMV order denying reinstatement referred to the defendant's admission of having driven in that five-year period and was "supported by substantial competent evidence."

***Simmons v. DHSMV*, 23 Fla. L. Weekly Supp. 692a (Fla. 13th Cir. Ct. 2015)**

The defendant's license was suspended for failure to submit to a breath test. She sought review, arguing that the hearing officer violated her due process rights by refusing to invalidate the suspension when the arresting deputy, although properly subpoenaed, failed to appear at the hearing. The circuit court, in its appellate capacity, granted review, noting that "no justification for the nonappearance was offered." Even at the second (rescheduled) hearing, the hearing officer did not require the deputy to answer questions about the deputy's failure to appear at the first hearing. The court stated: "Although the statute is silent as to the need for an absent witness to show just cause for the absence, the administrative rules governing suspension hearings are not, and they do not support [the hearing officer's] view that no showing of just cause for the arresting officer's nonappearance is required. A showing of just cause *is* required."

***Smith v. DHSMV*, 23 Fla. L. Weekly Supp. 691b (Fla. 13th Cir. Ct. 2015)**

The defendant's license was suspended for failure to submit to a breath test. He sought review, arguing among other things that the hearing officer should not have considered evidence of the HGN test. The circuit court, in its appellate capacity, denied review, stating that "such error is harmless and does not rise to the level of a departure from the essential requirements of the law in light of the other indicators of impairment found in the Hearing Officer's Final Order, which are supported by competent, substantial evidence in the record." The court noted further: "The odor of alcohol, *coupled with* what could be characterized as a serious single car crash against an electrical pole, provide more than sufficient reasonable suspicion to warrant conducting a DUI investigation. And once that DUI investigation was conducted, the record supports the Hearing Officer's finding that [the arresting officer] had probable cause . . . based on the indicators of impairment observed during the field sobriety exercises."

***Sanchez v. DHSMV*, 23 Fla. L. Weekly Supp. 691a (Fla. 13th Cir. Ct. 2015)**

The defendant's license was suspended for failure to submit to a breath test. He sought review, arguing that he was denied due process when the hearing officer did not issue a subpoena to the FDLE breath test machine inspector. The circuit court, in its appellate capacity, denied review, stating: "Section 322.2615(6)(b), Florida Statutes (2014), provides that subpoenas shall

be issued for personnel identified in documents that must be furnished under §322.2615(2)(a). . . . [The] FDLE inspector . . . was not identified in any of those documents. Accordingly, the Hearing Officer acted within the law when she did not issue the subpoena. . . . Moreover, documents presented at the hearing show the machine to have been working properly at the time [the] breath test was administered."

***Wright v. DHSMV,* 23 Fla. L. Weekly Supp. 690a (Fla. 13th Cir. Ct. 2015**)

The defendant's license was suspended for failure to submit to a breath test. He sought review, arguing that he was denied a meaningful hearing and the ability to make a record for appellate review after the hearing officer (1) refused to allow questions relating to tests of the machine used to test the defendant's breath, which occurred five months before his test, and (2) did not require the witness of the sheriff's office "to answer certain questions specifically relating to FDLE tests of the machine, which would have shown that the machine was in violation of Rule 11D-8.004, Florida Administrative Code." The circuit court, in its appellate capacity, denied review, finding no due process violation and noting that it had many times previously decided the issues raised.

***Strickland v. DHSMV,* 23 Fla. L. Weekly Supp. 689b (Fla. 13th Cir. Ct. 2015**)

The defendant's license was suspended for failure to submit to a breath test. He sought review, based on the arresting officer's failure to appear for the formal review hearing. The circuit court, in its appellate capacity, denied review, noting that "the proof of service of the subpoena did not comply with the technical requirement of Rule 1.410(d), Fla. R. Civ. P. (the required "affidavit" by the attorney serving the subpoena consisted of "a hand-written note saying that [the attorney] swears or affirms that the subpoena was delivered at the stated date and time, but it is not witnessed or even signed by [the] attorney"). Therefore, "the arresting officer's nonappearance did not amount to a failure to appear under the law," and "invalidation of the suspension was not required."

***Tran v. DHSMV,* 23 Fla. L. Weekly Supp. 689a (Fla. 12th Cir. Ct. 2015)**

The defendant had sought review of his license suspension, but he filed an incomplete pro se document without an appendix. He did not comply with the court's order to file a complete appendix, and therefore the court denied review. The defendant had taken "issue with the fact that the hearing officer upheld the suspension of his driving privilege without taking live testimony from the arresting officer, subject to cross examination, and instead decided the case based solely on a review of documents prepared by law enforcement." But the record, which was limited to a transcript of the proceedings, showed that he had an opportunity to present evidence on his behalf and had not sought subpoenas for the arresting officer or any other witness. The court found that the defendant did not show "a denial of due process, a departure from the essential requirements of law, or a lack of competent substantial evidence to support the suspension . . . as a result of the hearing officer deciding the case solely on the exhibits submitted by law enforcement."

***Duran v. State,* 23 Fla. L. Weekly Supp. 685a (Fla. 11th Cir. Ct. 2015)**

The defendant's license was revoked for DUI. He sought review, and the circuit court, in its appellate capacity, quashed the suspension, stating that the police officer's testimony "did not completely support the hearing officer's factual finding." The police officer had testified that he saw the defendant's vehicle "drifting from side to side within his lane," but the hearing officer's finding was that the police officer saw the defendant "*failing to maintain his vehicle within a single lane* and making corrective jerking movements on several occasions."

***Olmstead v. DHSMV*, 23 Fla. L. Weekly Supp. 668a (Fla. 6th Cir. Ct. 2015)**

After his fourth DUI, the defendant's license was revoked. He sought review, arguing that "competent substantial evidence of the prior DUI convictions does not exist" and that "due process requires an opportunity to contest the revocation and prior convictions." The circuit court, in its appellate capacity, denied review, finding that "as a matter of due process, the citations were properly relied on by the DHSMV to support its order," and that "[a]lthough the submitted citations are difficult to read, it is clear that all three are issued in [the defendant's] name, with the same birthdate and driver's license number. The first two citations have the guilty box checked under verdict. This third citation has the box checked for estreated or forfeited bond. Under the driver's license laws, a bond forfeiture 'shall be equivalent to a conviction.' . . . Accordingly, competent substantial evidence supports the DHSMV's determination that [the defendant] had three previous DUI convictions."

***Ventre v. DHSMV*, 23 Fla. L. Weekly Supp. 667a (Fla. 6th Cir. Ct. 2015)**

After his third DUI, the defendant's license was revoked. He obtained a hardship license, but four years later his nurse practitioner noted on a medical form that he used alcohol socially. The DUI program revoked his hardship license, and he petitioned for review, asserting that he had told the nurse he "*did* drink alcohol socially," referring to the past. The circuit court, in its appellate capacity, granted review, stating that the evidence to support the revocation "is not substantial because it does not indicate when [the defendant] consumed alcohol, and it is less competent than the evidence in *Truxton*[*v. State of Florida, Dep't of Highway Safety & Motor Vehicles*, No. 10-CA-005908-WS (Fla. 6th Cir. App. Ct. Jan. 28, 2011)] because here, the information was entered by the nurse and not [the defendant] himself."

***Zordani v. DHSMV*, 23 Fla. L. Weekly Supp. 665a (Fla. 6th Cir. Ct. 2015)**

After being stopped for drifting and failure to maintain a single lane, the defendant refused to submit to a breath-alcohol test, and his license was suspended. He sought review, arguing that "the record lacks competent, substantial evidence of a lawful stop because the documentary evidence consists solely of conclusory statements." But the circuit court, in its appellate capacity, denied review, noting that the deputy had a founded suspicion to make an investigatory stop. The defendant had also argued that "the record lack[ed] competent and substantial evidence as to the time and date of the . . . stop, arrest, and refusal to provide a breath sample due to irreconcilable inconsistencies in the documentary evidence." But the court stated: "The evidence in the record is such that 'a reasonable mind would accept [it] as adequate' to support the suspension."

***Smith v. DHSMV*, 23 Fla. L. Weekly Supp. 663a (Fla. 4th Cir. Ct. 2016)**

After an accident, the defendant was arrested for DUI and his license was suspended. He petitioned for review, arguing that "his detention was unlawful because there is no evidence that he was driving or in actual physical control of a motor vehicle prior to his detainment." He argued that although an exception to the crash report privilege allows for the report to be considered in administrative license suspension hearings, it was not entered into evidence, so his pre-*Miranda* statements must be excluded. He also argued that his post-*Miranda* statements could not be considered "because they were made while he was detained without reasonable suspicion of driving or being in actual physical control of a motor vehicle." But the circuit court, in its appellate capacity, denied review, noting that it "has held that the crash report privilege no longer applies to administrative license suspension hearings," and that the deputies' observations evinced reasonable suspicion to believe that the defendant "was driving or in actual physical control of a motor vehicle while under the influence of alcohol." Further," because there was evidence consistent with a traffic accident, [the defendant] was not free to leave until he reported his name, address, and vehicle registration number" pursuant to statutes.

***State v. Givens*, 23 Fla. L. Weekly Supp. 660a (Fla. 4th Cir. Ct. 2016)**

The defendant's license was revoked for refusal to submit to a breath test. She sought review, and the circuit court, in its appellate capacity, quashed the suspension because the officer was outside his jurisdiction when he stopped the defendant. He did not "reasonably believe that a person being pursued has committed a felony, a misdemeanor, or a violation of s. 316," and he did not immediately notify the officer in charge of the jurisdiction that he made the arrest.

***Fleisher v. DHSMV*, 23 Fla. L. Weekly Supp. 659a (Fla. 4th Cir. Ct. 2015)**

After the defendant was stopped for speeding, his license was suspended for having an unlawful breath or blood alcohol level. He sought review, arguing the trooper had not had probable cause to stop him because there was no evidence of the reliability of the radar device. But the circuit court, in its appellate capacity, denied review, noting that the trooper stopped him based initially on his visual estimation of the defendant's speed. It noted further that "[t]he actual speed of [the defendant's] vehicle was not at issue; therefore, evidence relating to the radar unit's reliability and its operator's qualifications was not relevant, and [he] was not deprived of procedural due process by the absence of such evidence."

***Walsh v. DHSMV*, 23 Fla. L. Weekly Supp. 657a (Fla. 2d Cir. Ct. 2016)**

The defendant's license was revoked after his conviction for DUI manslaughter. After his release from prison he petitioned for a hardship license, but admitted at the hearing that he had consumed alcohol during the preceding five years. DHSMV denied his request for a hardship license and he petitioned for review, arguing that the statute cited for the denial requires the applicant to be drug-free for the five years preceding the request but does not mention alcohol. The circuit court, in its appellate capacity, granted review and ordered DHSMV to issue the hardship license if the defendant was otherwise eligible. It stated that while DHSMV has the authority to interpret the phrase "drug-free" to include alcohol, and that such interpretation was "both reasonable and supported by legislative history and the purpose of the statute," the interpretation "goes beyond the plain meaning of the statute's terms and imposes additional substantive requirements on hardship applicants that are not apparent from a literal reading of the

statute alone. Therefore, to be valid, that interpretation must be effected through the formal rulemaking provisions of Chapter 120, the Administrative Procedures Act."

The defendant also argued that "the five-year waiting period to reapply for a hardship license begins to run on the date of the alcohol consumption rather than the date of the hearing, as the alcohol consumption is the disqualifying conduct," and the court agreed.

***Sherlock v. DHSMV*, 23 Fla. L. Weekly Supp. 529a (Fla. 20th Cir. Ct. 2016)**

The defendant's license was suspended for DUI. She petitioned for review, arguing that the deputy did not have probable cause to stop her, because her failure to maintain a single lane on a road that did not have clearly marked lanes did not constitute a traffic infraction, and that her refusal was not incidental to a lawful arrest. The circuit court, in its appellate capacity, denied review, stating that "even absent a traffic infraction, 'there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its unusual operation,'" and the defendant had been driving slowly and erratically. And once they stopped the defendant, the deputies noticed indicia of impairment.

***Weigel v. DHSMV*, 23 Fla. L. Weekly Supp. 528a (Fla. 20th Cir. Ct. 2015)**

The defendant's license was suspended for DUI. He petitioned for review, arguing that there was no competent substantial evidence that he was in actual physical control of the vehicle because his key was not in the ignition and "he was not in an upright seated position" in the vehicle. But the appellate court, in its appellate capacity, denied review, noting that the defendant "still had the ability to take his keys, fix his seat and start the vehicle and drive away. . . . [He] admitted to just driving his vehicle home from a local bar after having drank four or five alcoholic drinks. Although it could be argued that [he] was no longer a danger since he was safely home, it should be noted that he was driving with an unlawful blood alcohol level and that there was nothing to stop him from starting his car up again, fixing his seat and going back out on the roadway."

The defendant also argued that the detention was unlawful, but the court disagreed, noting that there was competent substantial evidence that when the defendant "was discovered, he smelled of alcohol, had bloodshot and watery eyes, slurred speech, and demonstrated other signs of impairment that allowed the officer to detain him pending further investigation." Further, when the police officer "found the car door open at 1 a.m. in the morning and was aware that there had been car burglaries in the area he had reasonable suspicion that a crime had been committed or was being committed to conduct an investigation or at least to act as a community caretaker to investigate."

***Harkins v. DHSMV*, 23 Fla. L. Weekly Supp. 514a (Fla. 2d Cir. Ct. 2015)**

The defendant was arrested for DUI and requested a blood test instead of a breath test. The officer told her she had to first submit to a breath test, which she did, yet there was no evidence that law enforcement assisted her in obtaining a blood test. Her license was suspended for DUI, and she "moved to invalidate the suspension based on law enforcement not complying with the independent blood test statute." The hearing officer denied her motion, but the court granted review and quashed the suspension. Although the state argued that granting review

would "constitute an unlawful reweighing of the evidence," the court noted the "difference between the weight of the evidence and the sufficiency of the evidence."

***Ford v. DHSMV*, 23 Fla. L. Weekly Supp. 506a (Fla. 6th Cir. Ct. 2015**)

The defendant's license was suspended after he was convicted of leaving the scene on public or private property without rendering aid (involving death/injury). The DHSMV hearing officer denied the defendant's request for early license reinstatement (hardship license), basing his decision "in part on the crime of fleeing the scene of a fatal crash, which showed that [the defendant] had a willful disregard of the law and the safety of others." The defendant petitioned for review, arguing that the hearing officer's "denial of his request for a hardship license was only based on the traffic violation that itself resulted in the license suspension, which he contends was not competent substantial evidence of [his] willful disregard for the law and safety. He also contends that being denied a hardship license by virtue of the crime that resulted in his license suspension renders [his] ability to obtain a hardship license as illusory." But the circuit court, in its appellate capacity, denied the writ, stating that the hearing officer "had broad discretion to determine [the defendant's] qualification, fitness, and need to drive [and] is not precluded from considering the character of the traffic violation that itself resulted in Petitioner's loss of license." The court also noted that the hearing officer "based his decision to deny the request only *in part* on the violation. In the Order denying [the defendant's] request, the Hearing Officer specifically stated that he based his denial in part upon his consideration of [the defendant's driving record, testimony during the hearing, qualification, fitness, and need to drive, and in part upon the traffic violation that itself resulted in [the] suspended license."

***Morrell v. DHSMV*, 23 Fla. L. Weekly Supp. 503a (Fla. 1st Cir. Ct. 2015)**

The defendant's application for early reinstatement of his license was denied because he consumed alcohol less than five years before his final hardship hearing. He sought review, arguing that "section 322.271(5), Florida Statutes, which requires an applicant to remain 'drug-free' for five years before hearing does not require the applicant to remain 'alcohol-free.'" The circuit court, in its appellate capacity, denied review and, quoting previous case law, stated: "A person whose license has been permanently revoked for several DUI convictions should expect 'drug-free' in this context to include alcohol."

VII. Red-light Camera Cases

***City of Fort Lauderdale v. Dhar*, __ So. 3d __, 2016 WL 743287 (Fla. 2016)**

While driving a rented car, Dhar was videotaped running a red light. The city sent a notice of violation to the rental company with a $158 fine, and then sent Dhar a uniform traffic citation with a $263 penalty. In addition to the higher fine, while a notice of violation would not appear on a driver's record, a traffic citation would. The lower court granted Dhar's motion to dismiss the citation as violative of her equal protection and due process rights. The district court of appeal affirmed, holding the statute (which has since been amended) invalid. The supreme court affirmed, noting that "the unequal statutory treatment of short-term automobile renters bears no rational relationship to a legitimate state purpose. No rational basis justifies treating short-term renters differently than registered owners and lessees where the gravamen of the

violation—running a red light and being captured on camera doing so—is the same in each case."
http://www.floridasupremecourt.org/decisions/2016/sc15-359.pdf

***State v. Schubert*, 23 Fla. L. Weekly Supp. 782a (Broward Cty. Ct. 2015)**

The defendant fell asleep in his truck while waiting for help fixing a flat tire. A deputy arrived, and the defendant was arrested for DUI. He filed a motion to suppress, which the court granted, stating:

> Even though it was obvious that [the defendant] was not ill or injured in any manner, the deputy has admitted that, without invitation from the driver, he opened the door and entered into it. The deputy admitted that there was no evidence of blood, vomit, injury, illness, drug use, or that a crime of violence had been perpetrated against the vehicle's occupant. In fact, the deputy never was concerned enough about the situation that he called for the assistance of Fire Rescue. It was only when, after the deputy *purposely and unlawfully* entered into [the defendant's] car, that he *allegedly* first noticed signs of possible impairment. Based upon the smell of this odor, the deputy determined that he had a basis to believe that alcohol was involved and he directed [the defendant] to exit his vehicle. It was then that he was compelled to perform a series of physical sobriety exercises, culminating in his arrest for [DUI]. . . .
>
> The officer exceeded the scope of his authority when he *purposely and without permission*, entered the vehicle. While the officer could have asked permission to enter the truck, he did not do so. While he could have knocked on the window of the truck and asked the defendant to exit the vehicle at that juncture, he did not do that either.

***City of Fort Lauderdale v. Fobbs*, 23 Fla. L. Weekly Supp. 699a (Fla. 17th Cir. Ct. 2015)**

The defendant was issued a uniform traffic citation for a red-light camera infraction. She filed a motion to dismiss, "asserting that the City *could not prove* that it timely mailed a notification of violation by first class mail as required by the statute." The traffic magistrate granted the motion to dismiss, but the circuit court, in its appellate capacity, reversed, stating that the defendant had not alleged a violation of the notification, and that the record showed actual notice had been received.

***Cascio v. City of Boynton Beach*, 23 Fla. L. Weekly Supp. 692b (Fla. 15th Cir. Ct. 2016)**

The defendant received a notice of violation for a red-light camera infraction. He appealed, based on *Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015). The circuit court, in its appellate capacity, reversed the suspension order, finding that the red-light traffic program used by the city "impermissibly delegates its municipal authority to a third-party vendor. *Arem* holds that a citation issued under this scheme is 'void at its inception,' and the appropriate remedy is dismissal of the citation."

***Blake v. City of Gulfport*, 23 Fla. L. Weekly Supp. 669a (Fla. 6th Cir. Ct. 2015)**

The defendant received a notice of violation for a red-light camera infraction. She appealed, based on *Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015). The circuit court, in its appellate capacity, reversed the suspension order, stating that the city's contract with the private for-profit vendor gave the vendor "unfettered discretion to decide which images are sent to the [traffic infraction enforcement officer], and which ones are not."

VIII. County Court Orders

State v. McKinzie, 23 Fla. L. Weekly Supp. 851a (Alachua Cty. Ct. 2016)

After a vehicle collided with a motorcyclist, the defendant was charged with a traffic infraction. But the court found her not guilty, stating that "the State is required to prove Defendant's identity even in circumstances when a defendant does not appear and is solely represented by an attorney at a traffic hearing," and that in this case the state failed to do so: "The responding officer cited an individual. The two eyewitnesses stated that they did not observe the driver's face at the point of impact and the driver did not exit the vehicle once it collided with the motorcyclist."

State v. Reynolds, 23 Fla. L. Weekly Supp. 793a (Indian River Cty. Ct. 2015)

The defendant was arrested for DUI and filed a motion to suppress, which the court granted, stating: "A reasonable interpretation of the facts that were presented pursuant to the 911 call, which was the only evidence presented concerning the defendant's actions prior to the stop, would be that the defendant lost his phone and was trying to locate it. Any other possible interpretation would be mere speculation. The officer did not have a reasonable suspicion that a crime had been committed."

State v. Tattersall, 23 Fla. L. Weekly Supp. 791a (Seminole Cty. Ct. 2015)

The defendant was arrested for DUI and filed a motion to suppress her refusal to take field sobriety exercises. The court granted her motion, stating: "Generally, a Defendant's refusal to perform a specific activity requested by law enforcement that he or she is not required to perform is not relevant and therefore inadmissible at trial. An exception. . . is if the Defendant is told or advised of some adverse consequence of the refusal to perform the activity and still refuses to perform the activity. The Defendant's refusal thereafter can be seen as probative of consciousness of guilt and therefore admissible." And in this case, the officer had

> clearly indicated that the exercises were voluntary and solely up to the Defendant as to whether she wanted to perform them. His responses to her questions about what happens if she does not perform them are clearly ambiguous at best and at worst confusing to the Defendant because the officer never indicates what decision (to arrest the Defendant) he is talking about. Thus any adverse consequences stemming from the refusal are never clearly relayed. . . . Compounding the problem . . . is the Defendant's statements that she does not want to perform the exercises because of her bad knee. . . . [B]ecause the Defendant's behavior is susceptible of another prima facie explanation besides consciousness of guilt, the behavior is not circumstantial evidence probative of

> consciousness of guilt. Whatever consciousness of guilt could be gleaned by her reluctance to perform the exercises is clearly overshadowed by the fact that she agrees to perform the exercises when it is made clear that being arrested is the adverse consequence of her refusing to perform the exercises.

***State v. Meadows*, 23 Fla. L. Weekly Supp. 755b (Volusia Cty. Ct. 2015)**

The defendant struck a truck from behind at a red light. She was arrested for DUI, and the truck driver and his passenger testified that she had been under the influence, based on her "carefree and flippant" attitude and blank stare, although they had not been within yards of her at any time and some of their testimony was contradictory. The defendant filed a motion to suppress, which the court granted, stating that the testimony of the truck driver and his passenger was "not supported by specific observations or credible evidence." Further, other testimony of the truck driver and his passenger and the two officers was contradictory as well, and none of the four had smelled alcohol.

***State v. Pearthree*, 23 Fla. L. Weekly Supp. 752a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a motion to suppress, "challenging the admissibility of the breath test results based upon a failure to abide by the implied consent law and rules promulgated pursuant to the law." The state filed a motion to strike, "claiming the motions to suppress fail to allege sufficient grounds for suppression, claiming 1) the 'motions are not properly treated as "suppression" motions; and 2) that 'even if this Court were to agree that the allegations in the defense's motions were well-founded, suppression of the breath test results would not be the result.'" But the court denied the state's motion to strike, holding that "Florida courts have long held that suppression is the appropriate mechanism and remedy when a challenge is made under implied consent . . . and the State has the burden in a motion to suppress challenging substantial compliance, even if regarded as a motion in limine."

***State v. Gibson*, 23 Fla. L. Weekly Supp. 751a (Leon Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a motion to suppress, which the court granted, noting that upon responding to a noise complaint the officer did not see the defendant in actual physical control of his car.

***State v. Swindle*, 23 Fla. L. Weekly Supp. 613a (Manatee Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a motion to suppress the breath test and breath test results, alleging that FDLE "improperly approved a particular lot of alcohol reference solution, which solution was subsequently used to perform a series of monthly agency inspections of the Intoxilyzer 8000 that produced the breath results." The court granted the motion to suppress, stating that Rule 11D-8.0035(2)(a), Florida Administrative Code, "is unambiguous and requires that all analysis results fall within the acceptable range. Because one result was outside the acceptable range on the first [d]ay of testing, [the lot used to test the defendant's blood] could not be lawfully approved for use during agency inspections." The court also stated that

> the retesting performed [the next day] is not authorized by the Rule. Although the Rule specifies that a minimum of ten bottles may be tested from each lot, and does not specify a maximum, it also specifies that ". . .Duplicate analyses will be performed on each sample bottle of alcohol reference solution. . . (emphasis added)". Thus, given the use of the word "duplicate," it would appear . . . that a maximum of two analyses is permitted for each bottle. Even assuming . . . that additional analyses of each bottle were permitted . . . , the additional results obtained on [the second day] would simply add to the total results obtained the day before, and would constitute one continuous analysis of [the lot] conducted over two days, and would not constitute a "retest" that would allow FDLE to disregard the unacceptable result from [the first day].

***State v. Devine*, 23 Fla. L. Weekly Supp. 593a (Polk Cty. Ct. 2015)**

The defendant was issued a citation for failure to stop at a red light, which was detected by a red-light camera. He filed a motion to dismiss the citation, arguing that (1) the city "impermissibly delegated its police power to its vendor . . . by allowing the pre-screening of red light camera data before sending it to the City for review"; (2) the city delegated to its vendor "the task of transmitting the UTC to the Clerk in violation of §316.650(3)(c)"; and (3) the court was bound by *Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015), to dismiss the citation because the procedures used by the city "are analogous to those found to be an improper delegation of police powers." The city argued its vendor contract was distinguishable from the contract in *Arem*. But the court granted the motion to dismiss and certified the following questions to the Second DCA:

> 1. Does the review of red light camera images authorized by Florida Statute §316.0083(1)(a) allow a municipality's vendor, as its agent, to review and then select which images to forward to the law enforcement officer, where the municipality has provided the vendor with specific written guidelines for determining which images to forward or not forward?
>
> 2. If the vendor is permitted to review and then forward images in accordance with a municipality's written guidelines, is it an illegal delegation of police power for the vendor to print and mail the UTC, through a totally automated process without human involvement, after the law enforcement officer has affirmatively made a probable cause determination and authorizes the prosecution of the violation by selecting the "accept" button?
>
> 3. Does the fact that the UTC data is electronically transmitted to the Clerk of the Court from the vendor's server via a totally automated process without human involvement violate Florida Statute §316.650(3)(c) when it is the law enforcement officer who affirmatively authorizes the transmission process by selecting the "accept" button?
>
> If any of the above questions is answered in the negative is dismissal of a notice of violation or uniform traffic citation the appropriate remedy?

***State v. Gentle*, 23 Fla. L. Weekly Supp. 580a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. She filed motions to suppress the breath test results. The state filed a motion to strike, arguing that the motions should not be treated as suppression motions, and that "even if this Court were to agree that the allegations in the defense's motions were well-founded, suppression of the breath test results would not be the result." The court denied the state's motion to strike, stating: "Florida courts have long held that suppression is the appropriate mechanism and remedy when a challenge is made under implied consent. Furthermore, the courts have held that the State has the burden in a motion to suppress challenging substantial compliance, even if regarded as a motion in limine."

***State v. Chupp*, 23 Fla. L. Weekly Supp. 579b (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. He filed motions to suppress the breath test results. The state filed a motion to strike and schedule a hearing on the defendant's motions, arguing that the motions "do not challenge an unlawful search and seizure but, instead, seek to prevent the introduction of improper evidence. As such, [they] should be treated as motions in limine." The state also argued that the court "should shift the initial burden of production to the Defendant if [the motions] are treated as Motions to Suppress." The court denied the state's motion to strike, holding there was no authority to support the state's arguments, and it scheduled an evidentiary hearing on the defendant's motions to suppress.

***State v. Currey*, 23 Fla. L. Weekly Supp. 579a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. He filed motions to suppress the breath test results. The state filed a motion to strike and schedule a hearing on the defendant's motions, arguing that the motions "do not challenge an unlawful search and seizure but, instead, seek to prevent the introduction of improper evidence. As such, [they] should be treated as motions in limine." The state also argued that the court "should shift the initial burden of production to the Defendant if [the motions] are treated as Motions to Suppress." The court denied the state's motion to strike, holding there was no authority to support the state's arguments, and it scheduled an evidentiary hearing on the defendant's motions to suppress.

***State v. Addington*, 23 Fla. L. Weekly Supp. 578a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. He filed motions to suppress the breath test results. The state filed a motion to strike and schedule a hearing on the defendant's motions, arguing that the motions "do not challenge an unlawful search and seizure but, instead, seek to prevent the introduction of improper evidence. As such, [they] should be treated as motions in limine." The state also argued that the court "should shift the initial burden of production to the Defendant if [the motions] are treated as Motions to Suppress." The court denied the state's motion to strike, holding there was no authority to support the state's arguments, and it scheduled an evidentiary hearing on the defendant's motions to suppress.

***State v. Ball*, 23 Fla. L. Weekly Supp. 577b (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. She filed motions to suppress the breath test results. The state filed a motion to strike and schedule a hearing on the defendant's motions, arguing that

the motions "do not challenge an unlawful search and seizure but, instead, seek to prevent the introduction of improper evidence. As such, [they] should be treated as motions in limine." The state also argued that the court "should shift the initial burden of production to the Defendant if [the motions] are treated as Motions to Suppress." The court denied the state's motion to strike, holding there was no authority to support the state's arguments, and it scheduled an evidentiary hearing on the defendant's motions to suppress.

***State v. Pradella*, 23 Fla. L. Weekly Supp. 577a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI. He filed motions to suppress the breath test results. The state filed a motion to strike and schedule a hearing on the defendant's motions, arguing that the motions "do not challenge an unlawful search and seizure but, instead, seek to prevent the introduction of improper evidence. As such, [they] should be treated as motions in limine." The state also argued that the court "should shift the initial burden of production to the Defendant if [the motions] are treated as Motions to Suppress." The court denied the state's motion to strike, holding there was no authority to support the state's arguments, and it scheduled an evidentiary hearing on the defendant's motions to suppress.

***State v. Jimenez*, 23 Fla. L. Weekly Supp. 571c (Miami-Dade Cty. Ct. 2015)**

The defendant was issued a citation for a red-light camera infraction. He filed a motion to dismiss the citation, citing *Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015), but the court denied the motion to dismiss, holding that Arem was clearly distinguishable because the instant case was "replete with examples of [the city's] control of all decision making functions." It certified the following questions to the Third District Court of Appeal:

> 1. Does the review of red light camera images authorized by Florida Statute §316.0083(1)(a) allow a municipality's vendor, as its agent, to review and then select which images to forward to the law enforcement officer, where the municipality has provided the vendor with specific written guidelines for determining which images to forward or not forward?
>
> 2. If the vendor is permitted to review and then forward images in accordance with a municipality's written guidelines, is it an illegal delegation of police power for the vendor to print and mail the UTC, through a totally automated process without human involvement, after the law enforcement officer has affirmatively made a probable cause determination and authorizes the prosecution of the violation by selecting the "accept" button.?
>
> 3. Does the fact that the UTC data is electronically transmitted to the Clerk of the Court from the vendor's server via a totally automated process without human involvement violate Florida Statute §316.650(3)(c) when it is the law enforcement officer who affirmatively authorizes the transmission process by selecting the "accept" button?
>
> If any of the above questions is answered in the negative is dismissal of a notice of violation or uniform traffic citation the appropriate remedy?

***State v. Trinh*, 23 Fla. L. Weekly Supp. 553b (Pinellas Cty. Ct. 2015)**

The defendant was issued a citation for a red-light camera infraction. She filed a motion to dismiss the citation, arguing that under *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), the city unlawfully delegated its police power to its vendor by allowing it "to prescreen traffic infraction data before sending it to a Traffic Infraction Enforcement Officer ('TIEO') for a probable cause determination." The city argued its vendor contract was distinguishable from the contract in *Arem*. But the court granted the motion to dismiss and certified the following questions:

> DOES SECTION 316.0083(1)(a) AUTHORIZE A MUNICIPALITY TO CONTRACT WITH A THIRD PARTY VENDOR TO SORT IMAGES FROM A TRAFFIC INFRACTION DETECTOR SYSTEM INTO QUEUES BASED ON WRITTEN DIRECTIVES FROM THE MUNICIPALITY?
>
> DO SECTIONS 316.640(5)(a) AND 316.0083, FLORIDA STATUTES, PROHIBIT A MUNICIPALITY FROM CONTRACTING WITH A THIRD PARTY VENDOR TO ELECTRONICALLY GENERATE AND MAIL A NOTICE OF VIOLATION AND UNIFORM TRAFFIC CITATION AFTER THE CITY'S TRAFFIC INFRACTION HEARING OFFICER FINDS PROBABLE CAUSE TO ISSUE A NOTICE OF VIOLATION AND AUTHORIZES THE VENDOR TO ELECTRONICALLY GENERATE AND MAIL THE NOTICE BY CLICKING "ACCEPT" IN THE SOFTWARE PROGRAM USED BY THE CITY AND VENDOR?