# FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

***July – September 2015***

***[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.]***



## I. Driving Under the Influence (DUI)

***Gillis v. State*, 23 Fla. L. Weekly Supp. 97a (Fla. 17th Cir. Ct. 2015**)

The defendant was charged with DUI. He filed a motion for acquittal, which the trial court denied. The circuit court, in its appellate capacity, affirmed, stating: "When a defendant moves for judgment of acquittal, he admits all facts adduced in evidence and every conclusion favorable to the state that a jury might reasonably and fairly infer from the evidence. The trial court should not grant a motion for judgment of acquittal unless there is no view of the evidence which the jury might take favorable to the state that can be sustained under the law." The court noted further that the evidence was more than sufficient to prove DUI.

***Hoffman v. State*, 23 Fla. L. Weekly Supp. 92a (Fla. 17th Cir. Ct. 2015**)

The defendant was charged with DUI. She entered a no-contest plea and later filed a petition for post-conviction relief to vacate the plea, alleging that the blood sample she gave "was involuntary and was mere acquiescence to the authority of the police." She also alleged that her trial attorney was ineffective "as he never advised her that the blood draw and results could be subject to suppression or that she could have refused the draw." She alleged that "had she been advised that the results of the blood draw could be subject to suppression because the sample was given involuntarily, she would have insisted on the filing of such a motion and would not have entered a plea in the matter," and that "if the motion were denied, she would have either proceeded to trial, preserving the issue for appeal, or entered a plea reserving her

right to appeal the issue." The state argued that the defendant's counsel was not ineffective, "since no legal grounds to move to suppress the blood results existed[;] that the law allows for a defendant to voluntarily give a blood sample if the officer has reasonable cause to believe the defendant was operating a vehicle under the influence." The state argued alternatively that "even if the defendant's motion had some cognizable basis of how counsel's performance fell below the standard norms, the motion still failed because [the defendant] failed to show prejudice or how the result would be different." The trial court agreed with the state and denied the defendant's motion to vacate her plea, and the circuit court, in its appellate capacity, affirmed.

***Mersan v. State*, 23 Fla. L. Weekly Supp. 91a (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with DUI. He filed a motion to suppress, which the trial court denied. He appealed, arguing that the stopping officer "lacked reasonable suspicion to conduct the traffic stop because his swerving or weaving was more of a 'slight drift' within a single lane, and the swerving or weaving (or drifting) did not endanger anyone else" because there were no other vehicles on the road. He also argued that the investigating officer "lacked reasonable suspicion to initiate the DUI investigation because [the defendant's] driving pattern, physical appearance, odor of alcohol, and concession of having consumed three glasses of wine, did not provide the requisite suspicion of impairment." The circuit court, in its appellate capacity, affirmed, stating that the stopping officer "had reasonable suspicion to conduct the traffic stop . . . irrespective of whether the weaving or swerving was confined to [the defendant's] lane and irrespective of whether any other vehicle was endangered," and that the investigating officer, "based on her knowledge and experience, observed multiple, objective signs of impairment that provided reasonable suspicion to initiate the DUI investigation."

***Sacacian v. State*, 23 Fla. L. Weekly Supp. 89b (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with DUI. He filed a motion to suppress his statement that he had been drinking rum, arguing that the statement "was the product of custodial interrogation and he had not been given *Miranda* warnings. The trial court denied the motion, essentially reasoning that *Miranda* warnings were not required when an officer is performing a roadside DUI investigation." After his conviction, the defendant appealed the trial court's denial of his motion to suppress. But the circuit court, in its appellate capacity, affirmed, stating that "at the time [the officer] asked the defendant if he had been drinking, the defendant had not had his freedom curtailed to a degree associated with formal arrest." The court stated further that "even if it was error for the trial court to admit the statement . . . , the error was harmless in light of the other evidence presented that conclusively indicated the defendant had been drinking alcohol, including multiple witnesses testifying about the defendant's extremely erratic behavior and the odor of an alcoholic beverage coming from his person, as well as the evidence that he vomited at the breath alcohol testing facility."

***State v. Williams*, 23 Fla. L. Weekly Supp. 74a (Fla. 9th Cir. Ct. 2015)**

The defendant was charged with DUI and filed a motion to suppress breath test results. The trial court granted the motion, holding that the 20-minute pre-breathalyzer observation period was not properly conducted: the breath test operator walked behind the defendant when walking him to the test room and therefore could not see his face, and she did not look at the

defendant's face while she was filling out a form related to the arrest. The state appealed, and the circuit court, in its appellate capacity, reversed, stating: "The administrative rule requires only that the observer reasonably ensure that regurgitation has not occurred, not absolutely guarantee it. Only substantial conformity with the rule is necessary and, most importantly, 'continuous face to face observation for twenty minutes is not required to achieve substantial compliance.'" The court also stated: "Whether the breath test operator was able to make certain [the defendant] did not ingest any substance or regurgitate 'is an issue going to the weight of the evidence presented. As such, this is a question to be determined by the jury, rather than a matter of law to be decided by the court.'"

***State v. Chopra*, 23 Fla. L. Weekly Supp. 73a (Fla. 9th Cir. Ct. 2015)**

The defendant was charged with DUI. The trial court granted his motion to suppress, and the state appealed, arguing that "the trial court erred in disallowing hearsay testimony at the suppression hearing regarding what the deputy learned from dispatch." The circuit court, in its appellate capacity, reversed and remanded, stating: "Hearsay is not, per se, inadmissible at a suppression hearing. *State v. Bowers*, 87 So.3d 704 (Fla. 2012), . . . requires only that the officer who actually made the traffic stop and ensuing investigation testify as to his or her basis for those actions. It does not stand for the proposition that the officer cannot testify regarding what information was relied on in making a determination of reasonable suspicion or probable cause." The court stated further: "Law enforcement may conduct an investigatory stop based on a tip providing reasonable suspicion where that tip has been deemed sufficiently reliable," which it was in this case. The court also noted: "As for probable cause to arrest, the trial court's factual findings are not supported by the record. While it found that the deputy did not testify about slurred speech or the odor of alcohol, it is clear that he did, although it is understandable how these statements might have been missed, given the frequent interjections by counsel on both sides concerning hearsay and other issues. The fact that the deputy did not specifically testify the vomit was fresh or indicate just how the stumbles occurred, both of which the trial court found wanting, did not negate the overall picture of a driver who was likely impaired."

***State v. Raidman*, 23 Fla. L. Weekly Supp. 6a (Fla. 19th Cir. Ct. 2014)**

The defendant was charged with DUI with one prior conviction. The trial court granted his motion to suppress based on the investigating deputy's lack of reasonable suspicion, but the circuit court, in its appellate capacity, reversed. It stated: "The trial court was obviously concerned that the deputy did not give opinion testimony that the [defendant] was impaired by alcohol, and it is apparent that the trial court viewed the lack of such evidence as fatal to the State's attempt to justify the . . . detention. Further, the trial court apparently believed the other evidence of impairment elicited by the State was insufficient to justify a brief detention to determine whether or not the [defendant] was truly impaired." But "it is not necessary for the officer to develop facts that a person was committing a particular crime, as is required for probable cause. While reasonable suspicion does not arise from an officer's mere hunch, 'the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.'" Based on specific facts and the totality of the circumstances, the deputy clearly had a reasonable basis to suspect that the defendant was impaired by alcohol while in actual physical control of a vehicle:

> The time of night, the manner the [defendant's] car was parked, the [defendant] being "passed out" behind the wheel, the smell of alcohol, the red and watery eyes, and the [defendant's] admission as to drinking created far more than a "mere hunch" in a reasonable officer's mind that [he] may be impaired. While the officer could have given his opinion as to the . . . level of impairment, there is no precedent in the law that requires it, and the fact that he was not asked to do so by either side does not change this conclusion. The trial court's preoccupation with opinion testimony was misplaced, as the legal standard requires the court to focus on facts. Thus, even if the deputy had expressed his opinion, it would have no validity unless accompanied by a factual basis, such that the court could reach the same opinion. Moreover, requiring opinion testimony that the [defendant] was impaired, before the deputy even had a chance to fully investigate . . . , places the cart before the horse. The fact that the [defendant] was briefly detained for a DUI investigation makes it obvious that the deputy in this case had some suspicion that [he] was DUI.

***Busshaus v. State*, 22 Fla. L. Weekly Supp. 1148a (Fla. 18th Cir. Ct. 2015)**

The defendant was charged with misdemeanor DUI. A jury was empaneled and sworn, and during trial one juror fell asleep and both parties recommended excusing her. Another juror had told the jury clerk that "he did not like breathalyzers or 'cops' that he did not know [and] expressed surprise at being chosen, based upon his employment as an engineer." The trial court excused the juror against the defendant's wishes and offered to proceed with a five-member jury. The defendant did not agree, and the trial court declared a mistrial. The defendant filed a motion to dismiss based on double jeopardy. The trial court denied the motion, "finding that the mistrial was based upon manifest necessity." But the circuit court, in its appellate capacity, reversed, stating: "Because the trial court did not consider the reasonable alternative of conducting further inquiry of the juror prior to excusing him and causing a mistrial, the declaration thereof was not based upon manifest necessity. 'If a jury is discharged before reaching a verdict for legally insufficient reasons and without the defendant's consent, such discharge is equivalent to an acquittal and precludes a subsequent trial for the same offense.'"

***Kobel v. State*, 22 Fla. L. Weekly Supp. 1141a (Fla. 6th Cir. Ct. 2015)**

After a call from security guards that the defendant was "passed out asleep in his running vehicle," an officer found him unresponsive, opened the door, and smelled alcohol. The defendant was arrested for DUI and refused to take a breath test. His license was suspended, and he sought review, arguing that "by opening the door and turning off the engine to the vehicle, [the officer] escalated the citizen encounter into an investigatory stop and detention. There must be a reasonable suspicion of criminal activity to initiate a detention." But the court denied review, noting that the officer had an objectively reasonable basis for the initial "stop" and the defendant "initially had no response to the officers' attempts to bring him to consciousness. Only after numerous unsuccessful attempts had been made, before and after the door to the vehicle was opened, was [he] awakened." The officer testified that he opened the vehicle door, turned off the engine, and removed the keys because he thought the defendant needed medical attention, which was "permissible as part of the officer's community caretaking responsibilities."

***Busby v. State*, 22 Fla. L. Weekly Supp. 1129a (Fla. 17th Cir. Ct. 2015)**

The defendant was convicted of DUI and appealed, arguing that "the trial court erred in permitting the State to allude to [her] silence on three separate occasions." But the circuit court, in its appellate capacity, affirmed. Because the defendant failed to preserve the matter for appeal, it was reviewed for fundamental error. The court held that no fundamental error had occurred because, in light of all the evidence, a guilty verdict could have been "obtained without the assistance of the alleged error." Further, one of the comments on the defendant's silence "was not only insignificant but invited" by her attorney when questioning the arresting officer.

***Wieneke v. State*, 22 Fla. L. Weekly Supp. 1122b (Fla. 15th Cir. Ct. 2015)**

The defendant was convicted of DUI and appealed, claiming that the trial court abused its discretion by (1) precluding him from testifying that was having, or believed he was having, a heart attack, (2) allowing the state to comment on his silence, and (3) allowing the arresting officer to testify regarding horizontal gaze nystagmus. The circuit court, in its appellate capacity, affirmed, holding that although the trial court erred on the first claim, the error was harmless because there was no reasonable probability that it affected the verdict in light of all the evidence. As to the other two arguments, the court held that "the State's comments on silence were in context with the Defendant's trial testimony which the State properly used [and] the deputy sheriff had all of the credentials necessary to testify as an expert in connection with horizontal gaze nystagmus."

***Allison v. State*, 22 Fla. L. Weekly Supp. 1122a (Fla. 14th Cir. Ct. 2015)**

At the defendant's DUI trial, the trial court instructed the jury, over objection by the defense and the state, that: "Proof that the defendant refused to submit a breath alcohol test gives rise to an inference that the defendant knew his/her normal faculties were impaired, but you may find this inference is rebutted by other evidence in this case. Refusal or failure to provide the required number of breath samples constitutes a refusal to submit to the breath test." On appeal the defendant argued, and the state conceded, "that (1) the instruction was [a]n impermissible comment on the evidence, and (2) the instruction was harmful error." Therefore, the circuit court, in its appellate capacity, reversed and remanded for a new trial.

## II. Criminal Traffic Offenses

***Winbush v. State*, ___ So. 3d ___, 2015 WL 5438524 (Fla. 1st DCA 2015)**

The defendant entered into negotiated pleas to carjacking with a deadly weapon. He later appealed, alleging that his attorney had erroneously told him that "the BB gun constituted a deadly weapon merely because it was used during the crimes." The appellate court reversed, stating: "If the appellant's allegations are true, that advice is erroneous. A BB gun *can* constitute a deadly weapon, but that is a factual determination for the jury. . . . In order to prove a BB gun is a deadly weapon, the State must prove that the BB gun was 'used or threatened to be used in a way likely to produce death or great bodily harm.'" It remanded "for the trial court to attach portions of the record refuting the appellant's allegations or to hold an evidentiary hearing." https://edca.1dca.org/DCADocs/2015/2282/152282_DC13_09162015_093303_i.pdf

***Ramroop v. State*, ___ So. 3d ___, 2015 WL 5165545 (Fla. 5th DCA 2015)**

Police officers tried to pull over the defendant for a traffic violation, but he fled, running several red lights and allegedly shooting at one of the officers. The defendant eventually struck another vehicle, killing its driver, who was ejected from the vehicle. The defendant ultimately was convicted of first-degree murder, attempted second-degree murder, and knowingly discharging a firearm from a vehicle within 1000 feet of a person. He appealed, arguing that the state's closing argument was improper, that the trial court erred by admitting into evidence an inflammatory photograph, and that the jury instruction pertaining to a special finding that "the victim was a law enforcement officer engaged in the performance of his duties at the time of the offense" failed to also require the jury to find that the defendant knew of the victim's status. The appellate court agreed that error was committed on all three grounds, but found that only the third error was reversible, and only as it affected the sentence for attempted second-degree murder. It reversed and remanded for resentencing for that conviction.
http://www.5dca.org/Opinions/Opin2015/083115/5D14-1359.op.pdf

***State v. Yeomans*, ___ So. 3d ___, 2015 WL 5164909 (Fla. 1st DCA 2015)**

The defendant pled guilty to two counts of DUI manslaughter and was sentenced to 20.2 years in prison. He filed a post-conviction motion to withdraw his plea, claiming that it was involuntary "because his attorney told him he could get a non-state prison downward departure sentence, but never explained that with no departure the minimum sentence reflected by the sentencing scoresheet was 20 years," and that "the plea colloquy the trial court conducted was insufficient because the court failed to determine whether he knew of the four-year mandatory minimum for DUI manslaughter, and that had he been made aware, he would not have agreed to enter the open guilty plea." The circuit court allowed him to withdraw his plea, and the appellate court affirmed.
https://edca.1dca.org/DCADocs/2014/0732/140732_DC05_09032015_104129_i.pdf

***State v. Redden*, ___ So. 3d ___, 2015 WL 5051137 (Fla. 1st DCA 2015)**

The defendant was convicted of driving with license suspended, and the trial court gave him a downward departure sentence. The state appealed, arguing that the evidence did not support the finding of the three necessary elements: that the offense was committed in an unsophisticated manner, that the offense was an isolated incident, and that the defendant showed remorse. The appellate court reversed, finding that the defendant's "criminal history clearly demonstrates that the instant offense was not an isolated incident"; the defendant had three prior misdemeanor convictions for DWLS, 15 other prior misdemeanor convictions, and 14 prior felony convictions.

The defendant argued that that "the State failed to preserve the issue for appeal by not making a specific objection after the imposition of the downward departure sentence and not filing a motion under Florida Rule of Criminal Procedure 3.800(b) to correct the sentence." But the appellate court noted that rule 3.800(b) allows the state to file a motion "only if the correction or the sentencing error would benefit the defendant or to correct a scrivener's error," and that while generally the state's "failure to object after a trial court imposes a sentence or to articulate specific objections results in a failure to preserve the issue for appeal," when a sentence hearing

"is conducted in such a rushed atmosphere, and in such a cursory fashion, that it appears the trial judge had predetermined to depart downwards," a general objection is sufficient.
http://www.5dca.org/Opinions/Opin2015/082415/5D14-2894.op.pdf

***State v. Kleiber*, ___ So. 3d ___, 2015 WL 4945015 (Fla. 5th DCA 2015)**

The defendant was charged with DUI manslaughter, DUI with serious bodily injury, and two counts of DUI causing property damage. The trial court granted his motion to exclude the results of his blood alcohol test because the paramedic who drew the blood used a dry gauze rather than an antiseptic, in noncompliance with rule 11D–8.012, Florida Administrative Code, which directs that "the skin puncture area is to be cleansed with an antiseptic that does not contain alcohol." But the appellate court reversed, stating that "the trial court erroneously applied a strict compliance test by concluding that the mere fact that dry gauze, rather than an antiseptic, was used . . . mandated suppression of the blood test results. The trial court failed to consider whether the blood test would still be reliable notwithstanding the use of dry gauze. . . . On remand, the trial court should conduct an evidentiary hearing to determine whether there was substantial compliance with the promulgated rule in question." In a footnote, the appellate court stated that even if suppression is required, "the State may seek introduction of blood alcohol test results based upon the traditional rules of evidence for the admission of scientific results."
http://www.5dca.org/Opinions/Opin2015/081715/5D14-2921.op.pdf

***State v. Burt*, ___ So. 3d ___, 2015 WL 4366504 (Fla. 5th DCA 2015)**

After causing a head-on collision, the defendant entered open no-contest pleas to DUI causing serious bodily injury and careless operation of a motor vehicle without a license causing serious bodily injury. Although the minimum permissible sentence was 39 months in prison, he was sentenced to two years of drug offender probation followed by three years of probation with special conditions. The court departed downward "because the offenses were committed in an unsophisticated manner and were isolated incidents for which [the defendant] had shown remorse." The appellate court reversed and remanded for resentencing, stating that one of the three elements required by section 921.0026(2)(j), Florida Statutes, for downward departure — isolated incident — was missing: the defendant had two prior alcohol-related driving convictions and was also convicted of driving without a valid driver license.
http://www.5dca.org/Opinions/Opin2015/071315/5D14-3623.op.pdf

***State v. Gomez*, ___ So. 3d ___, 2015 WL 4268774 (Fla. 4th DCA 2015)**

The defendant had been convicted of throwing a deadly missile into a vehicle and criminal mischief and was placed on five years' probation. Subsequently the stated filed a violation of probation based on the defendant driving while license suspended three times, having an expired license for more than six months, possession of cannabis, and submitting an untruthful report, all of which the defendant admitted. The trial court reinstated the defendant's probation, and the state appealed, arguing that the trial court erred by failing to hold a danger hearing and making written findings, which were required because the defendant was a Violent Felony Offender of Special Concern. The defendant argued that the state had failed to prove he was a VFOSC, and that a danger hearing and written findings weren't required when a probationer admits a violation of probation. But the appellate court agreed with the state and

reversed. It noted that the defendant's own attorney referred to him as a VFOSC, and that the statutes require a danger hearing for all VFOSCs regardless of whether they admit the violation. http://www.4dca.org/opinions/July%202015/07-15-15/4D13-3160.op.pdf

***State v. Morris*, 170 So. 3d 134 (Fla. 2d DCA 2015)**

The defendant pled guilty to leaving the scene of an accident with injury and reckless driving causing serious bodily injury. The trial court made downward departures in the sentences based on "lack of prior record," and the state appealed. The appellate court reversed, noting that "[d]ownward departure sentences are improper when based solely on factors that are already accounted for in the sentencing guidelines. . . . That is the case here." http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/July/July%2008,%202015/2D14-267.pdf

***Johnson v. State*, 168 So. 3d 349 (Fla. 1st DCA 2015)**

The defendant pled guilty to two charges of possession of a controlled substance and two counts of driving while license suspended or revoked (habitual offender revocation), in exchange for concurrent 18-month prison sentences for each count. He filed a motion for postconviction relief, "alleging that he could not have been convicted of the driving while license suspended or revoked charges because he never had a valid license" and that "he would not have entered his plea had counsel advised him that he could not be convicted of those charges." The state conceded that the convictions for driving while license suspended or revoked were improper, and the trial court granted the defendant's motion and reduced his convictions to those for driving without a valid driver license (misdemeanor). But it did not address his claim that "he would not have entered the plea had he been advised that he could not be convicted of two felony driving offenses," so the appellate reversed and remanded for the trial court to address that claim. https://edca.1dca.org/DCADocs/2015/0431/150431_DC13_07152015_101259_i.pdf

***Wilson v. State*, 168 So. 3d 345 (Fla. 1st DCA 2015)**

After a jury trial in which the defendant had represented himself, he was convicted of "driving while his license was canceled, suspended, or revoked with two or more previous convictions for the same offense . . . and was sentenced to four years in prison." He appealed, arguing that "the trial court did not conduct an adequate inquiry into whether his waiver of the right to counsel was knowing and intelligent." The appellate court agreed and reversed and remanded for a new trial.
https://edca.1dca.org/DCADocs/2013/6131/136131_DC13_07142015_085257_i.pdf

***State v. Montes*, 23 Fla. L. Weekly Supp. 100a (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with careless driving involving a fatality. The trial court dismissed the charge sua sponte, and the state appealed. The circuit court, in its appellate capacity, reversed because "the State was not afforded adequate opportunity to controvert the motion to dismiss."

***Quiroga v. State*, 23 Fla. L. Weekly Supp. 95a (Fla. 17th Cir. Ct. 2015)**

The defendant was charged with leaving the scene of an accident, driving while license suspended with knowledge, driving with an expired tag, and driving with no proof of insurance. She pled no contest to leaving the scene of an accident and to a reduced charge of driving with a suspended license without knowledge. Under the negotiated plea, adjudication for those two charges would be withheld, the remaining two charges would be dismissed, the defendant would pay court costs, and the defendant would pay restitution to the victim in an amount to be determined later by the trial court. The defendant did not appear at the restitution hearing (it was unclear whether she had notice), but her attorney was present. The trial court set another restitution hearing so the defendant could testify, and at that hearing the defendant argued that "it would be error for the trial court to impose restitution against her because of the underlying charges. She argued that the damages to the victim's vehicle were not directly or indirectly caused by her leaving the scene or driving while her license was suspended." The state asserted that restitution was proper "because it was part of the negotiated plea agreement." The defendant disputed that restitution was part of the plea agreement, so the trial court offered to order the record of the plea hearing, but the defendant declined the offer. Ultimately the trial court agreed with the state and imposed restitution of $635. The circuit court, in its appellate capacity, affirmed, holding that the defendant had consented to restitution in the amount set by the trial court, and "she waived any objections to the amount of restitution ordered."

***Hankins v. State*, 22 Fla. L. Weekly Supp. 1130a (Fla. 17th Cir. Ct. 2015)**

The defendant appealed his conviction, arguing "that the trial court erred in overruling [his] objection to the introduction of his incriminating statements made, as they were protected by Florida's accident report privilege." The state conceded that the trial court erred, and the circuit court, in its appellate capacity, reversed and remanded.

## III. Civil Traffic Infractions

## IV. Arrest, Search and Seizure

***Hanifan v. State*, ___ So. 3d ___, 2015 WL 5472892 (Fla. 2d DCA 2015)**

A Massachusetts trooper reported that the defendant had transmitted child pornography to a criminal defendant in Massachusetts. Police in Florida had a description of the defendant and his car, and were told by Massachusetts authorities that his smartphone was directly implicated in his alleged criminal activities. The Florida officers went to the defendant's house, and when he drove up and saw them, he sped away. While they followed him, the officers saw him fail to make complete stops at two stop signs. Their supervisor ordered them to stop the car and seize the defendant's smartphone, which they did. The defendant was convicted of child pornography and related charges, and he appealed, arguing that his motion to suppress evidence obtained from his smartphone should have been granted because the phone was "wrongfully seized without a warrant and in violation of the 'police-created exigency' doctrine." The appellate court affirmed the convictions, holding that "there was reasonable justification for the seizure of the iPhone. The detectives' concerns that [the defendant] could destroy or conceal the iPhone or delete the electronic data and digital images stored on it were reasonable and authorized them to temporarily retain custody of the phone while they obtained a warrant."

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2018,%202015/2D13-4480.pdf

***Vaughn v. State*, ___ So. 3d ___, 2015 WL 5306180 (Fla. 1st DCA 2015)**

The defendant was stopped for a window tint violation. The officer noticed a television illegally mounted to the dashboard and asked the defendant for his license and registration. The addresses on both, as well as the one the defendant provided verbally, were all different. When asked whether he had weapons or contraband, the defendant stated he had a knife on him. The officer asked him to get out of his vehicle for safety purposes and another officer took the knife out of the defendant's pocket and gave it to the first officer, who noticed cocaine on the knife. The officers then searched the defendant and found narcotics and the defendant was charged. He filed a motion to suppress, arguing that "the traffic stop progressed into an investigative detention without reasonable suspicion." The trial court denied the motion and the appellate court affirmed, stating that the stop was valid because the window tint looked, and was, too dark and there was an illegally mounted dash television, and the three different addresses given provided sufficient grounds for the officer to detain the defendant "to investigate whether he had committed a criminal offense by failing to maintain an up-to-date registration." The appellate court also held that the officer had "a valid safety concern due to the knife."
https://edca.1dca.org/DCADocs/2014/2241/142241_DC05_09112015_101023_i.pdf

***State v. Laina*, ___ So. 3d ___, 2015 WL 5279018 (Fla. 1st DCA 2015)**

An officer ran a license plate check on a vehicle the defendant was driving and discovered the registered owner had a suspended license. He stopped the defendant, who was charged with driving with a suspended license as a habitual traffic offender. The defendant filed a motion to suppress, which the trial court granted. The state appealed, arguing that "the officer had sufficient reasonable suspicion with which to conduct a traffic stop [since he] knew that the registered owner of the car had a suspended license, and conducted a traffic stop to investigate." The appellate court agreed and reversed.
http://www.5dca.org/Opinions/Opin2015/090715/5D14-4469.op.pdf

***Mendoza v. State*, ___ So. 3d ___, 2015 WL 5139457 (Fla. 4th DCA 2015)**

The appellate court affirmed the defendant's convictions, stating: "The arresting officer had probable cause to stop [defendant] pursuant to section 316.0875, Florida Statutes [no-passing zone]. . . . The later search of the defendant falls under the inevitable discovery doctrine. Having made a valid stop, the officer would have asked [the defendant] for his driver's license, which would have led to the discovery that it was revoked and to his arrest and the subsequent search."
http://www.4dca.org/opinions/Sept.%202015/9-02-15/4D14-1227.op.pdf

***Peeples v. State*, ___ So. 3d ___, 2015 WL 5139404 (Fla. 2d DCA 2015)**

Deputies stopped the defendant for failure to maintain a single lane. The defendant was convicted of six drug offenses, and he appealed, arguing that the trial court erred in denying his motion to suppress. The appellate court reversed, holding that the deputies "did not have a reasonable safety concern" based on the defendant's single failure to maintain a single lane, which "did not endanger the deputies or anyone else."

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2002,%202015/2D14-1009.pdf

***Baden v. State*, ___ So. 3d ___, 2015 WL 4931387 (Fla. 4th DCA 2015)**

A deputy received a BOLO call from another officer and saw the defendant riding a scooter and hitting a curb, next to a pedestrian. The deputy stopped the defendant, and another officer noticed alcohol and that the defendant's eyes were glassy and bloodshot and her speech was slurred. A third officer was called to conduct a DUI investigation, and the defendant was arrested and charged with felony DUI and refusal to submit to a chemical or physical test. She filed a motion to suppress, which the court denied. The appellate court affirmed, stating that the officer had a reasonable suspicion that the defendant was under the influence, and that in any case she could have stopped her for careless driving.
http://www.4dca.org/opinions/Aug%202015/8-19-15/4D14-1893.op.pdf

***Tucker v. State*, ___ So. 3d ___, 2015 WL 4930601 (Fla. 4th DCA 2015)**

An intruder entered a home, encountered the victim, and fled in a getaway vehicle parked across the street. The same day, the victim described the car and a BOLO was issued. Forty days later, the detective assigned to the case stopped the defendant driving a car that matched the description, and the defendant was charged with burglary and driving while license suspended or revoked. He filed a motion to suppress, "arguing that the information the detective relied on was stale and that the detective did not have reasonable suspicion to stop the vehicle." The trial court denied the motion. The defendant pled no contest and then appealed. The appellate court affirmed, holding that "the detective had a reasonable suspicion to stop appellant's vehicle based on the license plate together with the distinctive color and older age of the vehicle. Although the vehicle description was forty days old, it was not stale. 'The mere lapse of substantial amounts of time is not controlling of a question of staleness. Staleness is to be evaluated in light of the particular facts of the case and the nature of the criminal activity and property sought.' . . . As the present case involves a non-consumable item, staleness concerns were not present."

The defendant also challenged the denial of his rule 3.800(b)(2), Florida Rules of Criminal Procedure, motion to correct a sentencing error. He argued that because driving while license suspended or revoked is a second-degree misdemeanor, he could be sentenced on that count only to six months of probation or less. But the appellate court agreed with the trial court that "this issue is not cognizable in a rule 3.800(b) motion, because the sentence was a result of a negotiated plea. Thus, the real objection is to the plea agreement itself. The remedy for an illegal sentence based upon a negotiated plea is to seek to withdraw the plea."
http://www.4dca.org/opinions/Aug%202015/8-19-15/4D13-4508.op.pdf

***G.M. v. State*, ___ So. 3d ___, 2015 WL 4747407 (Fla. 4th DCA 2015)**

After a call about a stolen vehicle, officers found the vehicle in a parking lot. The defendant, a minor, was a passenger, and because he was in a stolen vehicle the officers handcuffed him and patted him down for a weapon. The officer found a bag of marijuana and arrested the defendant for possession. The trial court denied his motion to suppress, and he was convicted. The appellate court reversed, stating that the motion should have been granted

because while "a limited pat-down for weapons was not unreasonable, . . . [t]here was no testimony that by plain feel the officer was able to develop anything more than an inkling that the bag he felt in appellant's pocket, which did not create a bulge in the clothing, would contain contraband." http://www.4dca.org/opinions/Aug%202015/8-12-15/4D14-969.op.pdf

***State v. Jemison*, ___ So. 3d ___, 2015 WL 4747198 (Fla. 4th DCA 2015)**

A BOLO was issued for a pick-up truck regarding a burglary in a residential development. A responding officer waited at the development's exit, and about six minutes after the BOLO he saw a truck matching the description. He followed the truck for about 10 minutes and saw the driver turn right without stopping at a red light. The defendant was ultimately stopped and charged with "aggravated fleeing or eluding (high speed), aggravated assault on a law enforcement officer, burglary of a conveyance, felony petit theft, resisting an officer without violence, and possession of cannabis." He filed a motion to suppress, arguing that "the attempted stop [was] unlawful." The trial court granted the motion, but the appellate court reversed, stating that "under the totality of the circumstances, the police had reasonable suspicion to stop" him. http://www.4dca.org/opinions/Aug%202015/8-12-15/4D14-2497.op.pdf

***State v. Diaz-Ortiz*, ___ So. 3d ___, 2015 WL 4486471 (Fla. 5th DCA 2015)**

The defendant pointed a gun at another motorist in an apartment complex parking lot and then drove off. The other motorist told a deputy working as a courtesy officer for the complex, and within five or ten minutes the deputy saw the defendant's vehicle. Through the window the deputy saw a driver license and "a clear plastic bag containing a white substance" and called for backup. He had the vehicle towed to the sheriff's department, and after getting a search warrant law enforcement searched the vehicle and took the defendant's driver license. Using the driver license photo, law enforcement prepared a photo lineup, and the motorist positively identified the defendant. The defendant was arrested and charged with aggravated assault with a firearm. He filed a motion to suppress, which the trial court granted, holding that the search warrant was the product of an illegal seizure. But the appellate court reversed, stating there was probable cause to seize the vehicle:

> The seizure of the vehicle was based on [the other motorist's] statements to law enforcement, made almost immediately after the incident, that she was a victim of an aggravated assault and that the individual who committed the aggravated assault with the firearm returned to the Jeep with the firearm. When located nearby, the vehicle was in open view in the parking lot, and [the defendant] had no reasonable expectation of privacy in the area from which it was seized. . . . After determining he had probable cause to seize the vehicle, [the deputy] had the vehicle towed, but law enforcement did not search the vehicle until a search warrant was obtained from a neutral magistrate.
>
> While a warrant is generally required under the Fourth Amendment prior to a search or seizure, [there is an] "automobile exception" [pursuant to which] law enforcement officers may lawfully conduct a warrantless search of an automobile, provided they believe that the vehicle contains contraband or evidence of a crime. . . . This exception permits a warrantless search supported by

> probable cause because of the mobility of vehicles and the reduced expectation of privacy in a vehicle. . . . Based on the automobile exception, [the deputy] had probable cause to search the vehicle without a warrant [and therefore] probable cause to seize the vehicle.

http://www.5dca.org/Opinions/Opin2015/072015/5D15-211.op.pdf

***State v. Toussaint*, 168 So. 3d 308 (Fla. 5th DCA 2015)**

A deputy stopped the defendant in a high crime area after seeing him make a right turn at a red light without stopping. After running the car's license plate, the deputy found out the vehicle owner was a career offender, and he saw the defendant "make three movements in the car" that he believed indicated the defendant might be reaching for a weapon. The deputy ordered the defendant out of the car and found no weapons on the defendant but found drugs in the vehicle. The trial court granted the defendant's motion to suppress, finding that the consent to search was not unequivocal, and that "protective cursory search" of the vehicle was not warranted. But the appellate court reversed, finding that while the consent was not unequivocal, "the trial court erred when it concluded that the totality of the circumstances did not provide [the deputy] with reasonable suspicion to justify a protective search of the defendant's vehicle." http://www.5dca.org/Opinions/Opin2015/062915/5D14-1945.op.pdf

***State v. Taveras-Alvarado*, 23 Fla. L. Weekly Supp. 94a (Fla. 17th Cir. Ct. 2015)**

A Road Ranger saw the defendant's vehicle on the shoulder of a highway and contacted EMS services and the highway patrol. After EMS determined the defendant did not need medical attention, a trooper arrived and saw several empty beer bottles in the vehicle. He noticed indicia of impairment and arrested the defendant for DUI. The defendant filed a motion to suppress, arguing that the stop and detention were illegal; that his vehicle was "disabled" and the trooper blocked his vehicle, thus triggering "an investigatory detention without reasonable suspicion or probable cause." The trial court agreed and granted the motion to suppress. But the circuit court, in its appellate capacity, reversed, holding that the trooper "was clearly acting reasonable in conducting further investigation to confirm or dispel any concerns that the [defendant] was under the influence of alcohol. If the trooper had allowed [him] to continue driving without any additional investigation, the trooper would not have been doing his job and would have jeopardized the safety of the [defendant] as well as the motoring public."

***Hasse v. DHSMV*, 22 Fla. L. Weekly Supp. 1147b (Fla. 17th Cir. Ct. 2015)**

After seeing the defendant speed and make a right turn so wide that he went over the curb of the opposite side of the road, a deputy stopped the defendant and the defendant was arrested for DUI. He filed a motion to suppress, arguing that the traffic stop was illegal since he had not committed a traffic infraction — "that the deputy did not have probable cause to stop him for making a wide right turn, where the turn did not affect any traffic." The trial court denied the motion to suppress, and the circuit court, in its appellate capacity, affirmed, stating that, based on the unrefuted testimony, the deputy "observed the commission of a traffic infraction and acted wholly proper when performing the stop."

## V. Torts/Accident Cases

***GEICO General Ins. Co. v. Lepine*, ___ So. 3d ___, 2015 WL 5559814 (Fla. 2d DCA 2015)**

The plaintiff sued GEICO's insured based on an automobile accident in which the plaintiff's husband was killed. GEICO moved to dismiss count III, in which the plaintiff alleged a breach of contract for GEICO's refusal to pay the policy limits to settle the lawsuit, contending that the nonjoinder statute barred the plaintiff's direct action against GEICO. The trial court denied the motion to dismiss, but the appellate court reversed, noting that in a previous case it had held that the nonjoinder statute does bar a third-party direct action against an insurer "on an obligation that is independent of the insurance contract." It had also held that a

> presuit undertaking or agreement between an injured third party and an insurer about the adjustment of a claim does not satisfy the alternative condition precedent of settlement described in [the] nonjoinder statute because it does not occur within the course of pending litigation in which the insured is already a party. . . . To allow [the plaintiff] to join GEICO now, before a jury verdict against or settlement with [the insured], invites the very situation that the nonjoinder statute seeks to avoid: the jury's knowledge that insurance proceeds are available could taint the jury's verdict.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/September/September%2009,%202015/2D14-5903.pdf

***Vazquez v. Martinez*, ___ So. 3d ___, 2015 WL 5456871 (Fla. 5th DCA 2015)**

Martinez sued Vazquez after being rear-ended at a red light. After trial, Vazquez appealed, raising several issues, of which the appellate court addressed two. The first issue was Vazquez's claim that it was improper for the trial court to permit Martinez to present evidence that Vazquez's expert witnesses had been paid nearly $700,000. Vazquez argued that "this evidence was irrelevant because she did not have any direct financial relationship with any of the experts, and instructing the jury on payments made by 'representatives of the defendant' or 'defendant or its agents' improperly implied the existence of insurance." But the appellate court affirmed on this issue, stating:

> A party may attack the credibility of a witness by exposing a potential bias. . . . Whether the party has a direct relationship with any of the experts does not determine whether discovery of the doctor/law firm relationship or doctor/insurer relationship is allowed. The purpose of the rule is to expose any potential bias between a party and an expert. . . . Evidence of bias may be found in the financial ties between all of the litigant's agents, including the litigant's law firm or insurer and the expert. . . . Moreover, the trial judge adeptly permitted evidence of possible bias without disclosing the existence of insurance.

But the appellate court reversed the jury award for future medical damages, holding that it was not supported by the evidence.
http://www.5dca.org/Opinions/Opin2015/091415/5D13-1465.op.pdf

***Arnold v. Security Nat. Ins. Co.*, ___ So. 3d ___, 2015 WL 5438516 (Fla. 4th DCA 2015)**

The Arnolds were injured in a car accident and sued their uninsured motorist carrier. A jury awarded them $1,487,413. (Although the coverage limit of $100,000 may have rendered the case moot, the court noted: "A generally recognized exception precluding dismissal of an otherwise moot case occurs in situations wherein collateral legal consequences affecting the rights of a party may flow from the issues to be decided.") The insurer sought remittitur, arguing that "the expert testimony supported an award of only $30,000 for future medical expenses." The trial court granted remittitur of $996,000, reducing the judgment to $491,413. The Arnolds appealed, and the appellate court reversed and remanded "for entry of an order which contains the necessary findings and conclusions to support the remittitur."
http://www.4dca.org/opinions/Sept.%202015/9-16-15/4D13-0061.op.pdf

***Wallen v. Tyson*, ___ So. 3d ___, 2015 WL 5165528 (Fla. 5th DCA 2015)**

After an automobile accident, the plaintiff Tyson brought a personal injury action against Wallen, the personal representative of the other driver's estate. The defendant made a proposal of settlement for $12,000. Tyson did not respond to the proposal, and the jury awarded him $13,000. Wallen moved for setoff, and the trial court reduced the award to $3,766.85 based on payments Tyson received from his insurer, "thus rendering Tyson liable for Wallen's attorney's fees and costs under the terms of the Proposal and section 768.79, Florida Statutes." Tyson moved to strike the proposal, arguing that "(1) the language, 'Defendant is willing to consider any suggested changes,' rendered the non-monetary terms of the Proposal unenforceable because Wallen could simply reject any 'suggested' changes; (2) the offer to settle 'all claims' was vague and ambiguous because no claims were specified; (3) the reference to 'taxable costs, and liens, if any' was vague and ambiguous; and (4) the offer to settle for $12,000, 'inclusive of attorney's fees and costs, as well as any liens,' was vague and ambiguous." The trial court eventually entered an order striking the proposal. The appellate court reversed, stating that "the only reason for striking the Proposal provided in the trial court's order was that Wallen offered to consider any changes Tyson suggested for the release. None of the cases cited . . . on appeal suggest that the terms of the instant Proposal or Release were so overly broad, vague, or ambiguous as to render the Proposal unenforceable. We find no precedent sufficient to discourage a proposing party from offering to negotiate the terms of a proposed settlement or release."
http://www.5dca.org/Opinions/Opin2015/083115/5D14-1564.op.pdf

***Moradiellos v. Gerelco Traffic Control, Inc.*, ___ So. 3d ___, 2015 WL 5158490 (Fla. 3d DCA 2015)**

The plaintiff's decedent was working on road construction when he was killed by a dump truck, owned by his employer (the general contractor), that had been sent to the site. The plaintiff sued multiple parties, including the defendant Gerelco, a subcontractor that "was responsible for the repair and maintenance of the existing highway lighting during construction," based on its "failure to keep the high mast light near the accident in working order." Inspectors had told Gerelco at least four times that the light, and other lights on the project, were not working and needed to be repaired. The trial court granted summary judgment in favor of Gerelco, and the plaintiff appealed, arguing that Gerelco could be liable for simple negligence because its actions fell within the "unrelated works exception" to workers' compensation immunity. The appellate

court affirmed, stating that the exception did not apply to a claim by an employee of the general contractor against a subcontractor who secured workers' compensation insurance for its employees. Further, the appellate court agreed with the trial court that while a jury could have found Gerelco's conduct negligent, the facts "would not support a jury finding that [it] acted with the conscious disregard of imminent danger to others that constitutes gross negligence." It stated that "the lower lighting conditions created a possibility of harm, which is required to prove simple negligence. But they did not create a condition in which an accident would probably and most likely occur, which is required to prove gross negligence."
http://www.3dca.flcourts.org/Opinions/3D14-0566.pdf

***Miley v. Nash*, 171 So. 3d 145 (Fla. 2d DCA 2015)**

After a car accident, the plaintiff Nash sued the driver and the owner of the other vehicle, Kyle Miley and Glenn Miley. Kyle Miley made a proposal for settlement for $58,590 to resolve all claims against her if Nash would dismiss both Kyle and Glenn Miley, and all parties would pay their own attorney's fees and costs. Nash rejected the proposal, and the jury awarded her $17,955. The trial court denied Kyle Miley's motion for attorney's fees, stating that the proposal for settlement was deficient. But the appellate reversed, holding that "[t]he proposal sufficiently identified the claims to be resolved." Although it could have been clearer, it "did not contain a level of ambiguity that would render . . . Nash unable to 'make an informed decision without needing clarification.'" Further, although the proposal did not address the separate loss of consortium claim brought by Nash's husband, that failure "did not render the proposal defective." The court also stated: "In finding that the proposal failed to state the amount and terms attributable to each party because it required dismissal of both defendants, the trial court erred in characterizing the proposal as a joint proposal."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/July/July%2010,%202015/2D14-930rh.pdf

***Bodiford v. Rollins*, ___ So. 3d ___, 2015 WL 4660499 (Fla. 5th DCA 2015)**

Bodiford rear-ended Rollins, causing significant injuries. A jury awarded Rollins over $1 million but found him 30% at fault, and Rollins filed a motion for judgment NOV, which the trial court denied. Bodiford appealed, but the appellate court found no merit in his appeal. Rollins cross appealed, arguing there was no basis for the jury finding him 30% at fault, and the appellate court reversed the denial of his motion for judgment NOV and remanded with directions for the trial court to enter an amended judgment, as there was no evidence that he "breached any legal duty or failed to use reasonable care," and thus no evidence to support the jury's finding comparative fault on his part.
http://www.5dca.org/Opinions/Opin2015/080315/5D14-1116.op.pdf

***Privilege Underwriters Reciprocal Exchange v. Clark*, ___ So. 3d ___, 2015 WL 4577340 (Fla. 5th DCA 2015)**

After a trial in a fatal automobile accident case, at which the jury considered "limited factual issues," the trial court entered a final judgment in favor of the Clarks, who were the insured. Privilege Underwriters Reciprocal Exchange (PURE) filed an action for declaratory judgment seeking a determination that an excess liability policy issued to the Clarks did not

cover their son Brigham and "sought rescission of the excess policy, alleging that there was a material misrepresentation made on insureds' behalf during the application process when the Clarks failed to reveal that Brigham was a licensed operator living in the Clarks' household." The appellate court reversed and remanded, "as the undisputed evidence showed that the Clarks never disclosed the fact that Brigham was living in the family home."

When Mr. Clark obtained replacement insurance policies, the copy of the existing policies did not list Brigham as an insured. The declarations page of the replacement excess liability insurance policy named only Mr. Clark as the insured, but the policy listed him and his wife as "operators." Under the policy, an "insured" included the named insured or a family member, which was defined as "a person that lives in your household and is related to you by blood, marriage, registered domestic partnership under Florida law, or adoption." Brigham had lived away from the family home for the five years before the accident and had previous accidents and drug abuse problems.

The appellate court noted that the policy required the insured to disclose "every family member who is licensed," and the grace period was not applicable. The policy also provided that it would "be void if the insured intentionally concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct or made false statements." The Clarks argued that there was no showing of intentional failure to disclose, but the court stated that a showing of intent was not required under the policy. Further, "an underwriter for PURE testified clearly that had it known of Brigham and his driving record it would not have issued the policy."
http://www.5dca.org/Opinions/Opin2015/072715/5D13-3981.op.pdf

***Allstate Ins. Co. v. Theodotou*, 171 So. 3d 163 (Fla. 5th DCA 2015)**

A motorist and her insurer were held liable for over $11 million in a personal injury action and sought equitable subrogation from the injured person's medical providers, claiming they were subsequent tortfeasors who were responsible for a substantial part of the injuries. The trial court dismissed their claims because they had not paid all of the injured person's damages. But the appellate court reversed and certified the question: "Is a party that has had judgment entered against it entitled to seek equitable subrogation from a subsequent tortfeasor when the judgment has not been fully satisfied?"
http://www.5dca.org/Opinions/Opin2015/072015/5D14-1291.op.pdf

***Moradiellos v. Community Asphalt Corp., Inc.*, 170 So. 3d 920 (Fla. 3d DCA 2015)**

(The court granted Moradiellos' motion for clarification, withdrew its June 3, 2015, decision (2015 WL 3479620), and substituted this opinion.) The plaintiff's decedent was working on road construction when he was killed by a dump truck, owned by his employer (the general contractor), that had been sent to the site. The plaintiff sued multiple parties, and the defendant contractor moved for summary judgment, claiming the lawsuit was barred by worker's compensation immunity. The trial court granted the contractor's motion for summary judgment, and the plaintiff appealed. The appellate court affirmed, stating that "a trier of fact could not find, based on the undisputed facts . . . , that the General Contractor committed an intentional tort that falls within [the intentional tort] exception to immunity. . . . In fact, based upon the evidence

properly within the record for summary judgement, the dump truck driver violated the Contractor's safety policy and specific instructions."
http://www.3dca.flcourts.org/Opinions/3D14-0794.rh.pdf

***De Los Santos v. Brink*, 167 So. 3d 519 (Fla. 5th DCA 2015)**

Defendant De Los Santos was the owner of a motor vehicle that defendant Pereles was driving when he collided with the plaintiff Brink, who suffered serious brain injuries. The jury awarded Brink over $25 million, which the court reduced to $12,832,837.17 after adjusting for comparative negligence, collateral source setoffs, and taxable costs. De Los Santos appealed, arguing that, under section 324.021(9)(b)3, Florida Statutes, regarding liability of persons who lend their motor vehicle to a permissive user, the judgment against him should not have been more than $600,000 plus costs and interest. The appellate court reversed as to that issue and remanded for the trial court to amend the final judgment to reflect that.
http://www.5dca.org/Opinions/Opin2015/062915/5D13-3833.op.pdf

## VI. Drivers' Licenses

***DHSMV v. Baird*, ___ So. 3d ___, 2015 WL 5438639 (Fla. 3d DCA 2015)**

The defendant was stopped for speeding and was arrested for DUI. His license was suspended, and the trial court reversed the suspension because the officer had told the defendant the breath test was optional (shortly before informing him of the actual consequences), there were "critical discrepancies with respect to the time of refusal within the documentary evidence," and there was no evidence of the refusal. DHSMV appealed. The appellate court quashed the reversal, holding that "the trial court, acting in its appellate capacity, applied the wrong law and substituted its judgment for that of the hearing officer" when it "improperly conducted an independent review of the video tape and reweighed the evidence provided by that video tape."
http://www.3dca.flcourts.org/Opinions/3D15-1199.pdf

***DHSMV v. Kamau*, ___ So. 3d ___, 2015 WL 5090514 (Fla. 1st DCA 2015)**

The appellate court quashed the circuit court's order that overturned the defendant's license suspension, holding that "[t]he circuit court applied the incorrect law when it improperly reweighed the evidence concerning the lawfulness of the [defendant's] detention and arrest."
https://edca.1dca.org/DCADocs/2015/0497/150497_DC03_08312015_101106_i.pdf

***Moore v. DHSMV*, 169 So. 3d 216 (Fla. 2d DCA 2015)**

The defendant's hardship license was terminated and his participation in a DUI program was cancelled. He appealed to another DUI program, which rejected his appeal, and he sought certiorari review in the circuit court, challenging the sufficiency of the documentary evidence the DUI programs had relied on. The circuit court denied his petition, and he sought second-tier certiorari review. The appellate court granted review and quashed the order, stating: "The circuit court failed to determine whether the program documents contained competent, substantial evidence to support the findings that led to [the defendant's] expulsion from the program and

loss of his driver's license; instead, it departed from the essential requirements of law by denying relief based solely on the absence of a transcript."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/July/July%2001,%202015/2D14-1855.pdf

***McDonald v. DHSMV*, 23 Fla. L. Weekly Supp. 71a (Fla. 7th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to submit to blood alcohol testing. The circuit court, in its appellate capacity, granted review and quashed the suspension because the defendant "was unlawfully detained as no DUI investigation occurred for one hour and 9 minutes after [the stopping officer] had concluded his traffic stop."

***Kewitz v. DHSMV*, 23 Fla. L. Weekly Supp. 70a (Fla. 6th Cir. Ct. 2015)**

The defendant's license was suspended for DUI. She sought review, arguing the hearing officer departed from the essential requirements of law by placing the burden on the defendant "to demonstrate the breath-alcohol test results were unreliable, and that it is a question of law whether the test results were admissible as evidence due to alleged non-compliance with the Administrative Rule." The circuit court, in its appellate capacity, denied review, holding there was competent, substantial evidence to support the suspension, and that "it was not a departure from the essential requirements of law to rely on the results from the breath-alcohol test":

> A breath test is admissible as evidence if performed in substantial compliance with the requirements of the FDLE as put forth in the Fla. Admin. Code. . . . Although [the department] met the initial burden required to establish [the defendant's] unlawful alcohol level by admitting the breath-alcohol test affidavit and agency inspection report, [the defendant] alleges that the failure to comply with the rule requiring testing shifted the burden to the [department] to demonstrate substantial compliance with the administrative rules. . . . The affidavit is presumptive proof . . . of the results of the breath-alcohol test, and . . . a test result of .08 or higher is prima facie evidence a person was impaired. The burden then shifts to [the defendant] to rebut the presumption with evidence of non-compliance. . . . If the driver can present such evidence, the burden then shifts back to the Department to prove substantial compliance.
>
> [The defendant] contends the evidence that the machine was not inspected prior to being removed from evidentiary use met the burden of rebutting this presumption, and that the purpose of this Administrative Rule is ensuring scientific reliability of breath tests. The former FDLE employee testified that the machine . . . was not in substantial compliance with the rule. Without citation to authority, [the defendant] contends this evidence shifted the burden to the [department], who provided no additional evidence following this testimony, and that this demonstrated a lack of substantial compliance and the suspension should therefore be quashed.
>
> [But t]he evidence demonstrates substantial compliance with the applicable rules, and supports the finding that [the defendant] failed to rebut the presumption of reliability or otherwise demonstrate the breath test results were unreliable.

***Hughes v. DHSMV*, 23 Fla. L. Weekly Supp. 69a (Fla. 4th Cir. Ct. 2015)**

The defendant's license was suspended for driving with unlawful blood alcohol level. He sought review, which the circuit court, in its appellate capacity, denied. He had argued that there was no competent, substantial evidence to support the determination that he was operating the vehicle, but the court disagreed, citing the video of the stop and the arresting officer's arrest affidavit and booking report. The defendant also argued that the arresting officer did not have probable cause to stop him for a traffic infraction. But the court found that the evidence supported the hearing officer's finding of a lawful arrest. The officer reported that he stopped the defendant because he failed to stop at a stop sign, which was a traffic violation. The defendant further argued that once the arresting officer stopped him for a traffic violation, "he could not develop reasonable suspicion that the [defendant] was driving under the influence and he could not detain [him] any further to request that [he] participate in field sobriety exercises." But the court held that the indicia of impairment observed by the officer, and the defendant's admission that he had had a couple of drinks, along with the officer's observation that the defendant ran a stop sign, "was more than sufficient to detain [him] and conduct a DUI investigation." The defendant's fourth argument was that the officer did not have probable cause to arrest him for DUI "because the officer did not take into account that [he] suffers from Multiple Sclerosis." But the court held that "[u]nder the circumstances surrounding the arrest, it was reasonable for the arresting officer to discount [the defendant's] claim that Multiple Sclerosis, rather than alcohol, was the reason for his poor performance on the walk and turn exercise."

***Thurston v. DHSMV*, 23 Fla. L. Weekly Supp. 14a (Fla. 19th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, quashed the department's order revoking the defendant's license, stating that the defendant "met the Department's qualifications for reinstatement in 1993 as evidenced by the issuance of his Florida driver's license on April 26, 2005 and subsequent renewal on April 5, 2012. There is nothing in the record to indicate that the Department made a mistake in reissuing the license."

***Scammacca v. DHSMV*, 23 Fla. L. Weekly Supp. 7a (Fla. 16th Cir. Ct. 2015)**

After a DUI arrest, the defendant's license was suspended based on her breath alcohol level. She sought review, asserting that the arrest affidavit was defective because the notary's signature was illegible, there was no printed name or accompanying badge number seal or stamp, and the attestation clause did not identify who signed it. She also argued the arrest and breath test affidavits were defective because they were attested the day after the incident. But the circuit court, in its appellate capacity, affirmed, stating that technical omissions or defects in affidavits do not render them invalid. The defendant also argued that the stop was unlawful and that the in-car video did not support the officer's testimony regarding the reason for the stop. But the court noted that the defendant admitted going into oncoming traffic by "approximately half a car length," and crossing over double yellow lines was a traffic offense that gave the officer probable cause to stop her. And the arrest was lawful, as the officer had reasonable suspicion of DUI.

The defendant also argued that, based on the DUI tape, there was an observation period of 14, not 20, minutes, but the court stated: "The evidence . . . established substantial compliance with the rule and any conflict with other evidence was resolved by the hearing officer in favor of

upholding the license suspension." As to the defendant's argument that the officer misstated the implied consent law "and overcame her initial refusal by misinforming her that 'her license would be suspended regardless of whether she blew in the machine or not,'" the court noted the officer stated that "in the case of a refusal, *no matter what*, in her own words, her license would be suspended[;] that was not a misstatement of the law."

***Eichler v. DHSMV,* 23 Fla. L. Weekly Supp. 3a (Fla. 6th Cir. Ct. 2015**)

After a crash, the defendant's license was suspended for refusal to submit to a breath-alcohol test. He sought review, arguing that the officer lacked probable cause for arrest, and the refusal to submit to breath testing was not incident to lawful arrest and it was error to sustain the suspension." The circuit court, in its appellate capacity, denied review, stating that the hearing officer's order was supported by competent, substantial evidence. "The arrest affidavit states that the Trooper observed [the defendant] stop behind his vehicle, despite the fact that other officers were directing vehicles around the scene, that the Trooper approached [him] and observed indicators of impairment, and that [he] performed poorly on field sobriety exercises, was arrested for DUI and refused to submit to breath testing." Further: "Although [the defendant] contends that an unlawful detention occurred prior to the Trooper making contact with [him], the facts and circumstances . . . do not demonstrate a departure from essential requirements of law."

***Heislhorn v. DHSMV*, 22 Fla. L. Weekly Supp. 1140a (Fla. 1st Cir. Ct. 2015)**

The defendant's license was suspended for DUI. He sought review, arguing that there was no competent, substantial evidence. He contended that the trooper encountered him "at least an hour after he had been observed driving and that [the trooper's] observations were equally attributable to alcoholic consumption by [the defendant] after driving." He also argued that the trooper did not smell alcohol on his breath. The court denied review, holding that "the facts were sufficient for the hearing officer to infer or reasonably conclude that [he] was driving a motor vehicle while under the influence of alcohol." The defendant also argued that his arrest was not lawful "because there was no probable cause for the DUI charge." But the court disagreed, "given the [defendant's] operation of a vehicle, striking a curb, failing to maintain a single lane; [his] slurring, staggering, swaying, and glassy or bloodshot eyes; coupled with the trail of radiator fluid leading to [his] residence and the Trooper's observations of [his] appearance, the beer can, and odor of alcohol on [his] breath. . . . Moreover, [the defendant] failed to perform the field sobriety exercises; the Trooper read the Implied Consent warnings to him, and [he] refused to submit to a breath test."

***Johns v. DHSMV*, 22 Fla. L. Weekly Supp. 1139a (Fla. 4th Cir. Ct. 2015)**

The defendant's license was suspended for DUI. She sought review, arguing that the officer who inspected and maintained the Intoxilyzer machine used to test her did not hold a valid inspector's permit at the time because the administrative rules were amended in 2001 and 2002, and the officer's inspector permit did not survive the amendments; i.e., that he had to take the agency inspector course again to obtain a valid agency inspector permit. The court disagreed and denied review, noting that the amendments "since 1997 have provided that agency permits issued under a prior version of the rule remain valid as long as the inspector keeps up with whatever the continuing education requirements are under the current version of the rule."

***Spears v. DHSMV*, 22 Fla. L. Weekly Supp. 1134a (Fla. 5th Cir. Ct. 2015)**

The defendant's license was permanently revoked in 1984 for four DUIs in a ten-year period. It was reinstated in 1991 with an employment purposes only (BPO) restriction, which reinstatement expired in 2012. In 1998, the defendant was granted a full pardon from the governor for the four DUIs, but in 2011, because of a DHSMV computer system error, he was accidentally issued an unrestricted Class E license, which he then used to get a Class A Commercial Driver License (CDL). In 2014, after discovering the computer error, DHSMV issued an order cancelling the defendant's license indefinitely and instructing him to downgrade his license, permanently adding the BPO "C" restriction. The defendant did not do so, and about two months later a DHSMV hearing officer affirmed the decision to downgrade the license. The defendant sought relief, but the circuit court, in its appellate capacity, denied review, holding that because of the restriction, the defendant was disqualified from getting a CDL. The court also stated that "while a pardon restores civil rights, removing punishments and disabilities, a pardon does not eliminate the adjudication of guilt. . . . [T]he purpose of the statute providing for revocation of a driver's license upon conviction of a licensee for driving while intoxicated is to provide an administrative remedy for public protection and not for punishment of the offender.' . . . [The] pardon did not extinguish the fact of his convictions." The court further held that the defendant's double jeopardy argument was without merit, stating that "the actions taken by Department here are not criminal punishments and therefore not subject to Double Jeopardy."

***Ravel v. DHSMV*, 22 Fla. L. Weekly Supp. 1133a (Fla. 20th Cir. Ct. 2015)**

The defendant's license was revoked for DUI. His request for a hardship license/early reinstatement was denied, in part because he did not disclose citations for driving offenses he had received during the revocation period. He sought review, claiming "the question asked by the Hearing Officer regarding 'violations' was ambiguous . . . since the Hearing Officer did not ask him if he received any citations. [The defendant] acknowledged the incident where he was cited but explained that he was not the driver and the citation was ultimately dismissed. Furthermore, he had no motive to lie because the court documents support his contention that he was not driving and confused by the questions." But the circuit court, in its appellate capacity, denied review, stating that "the finder of fact is not required to believe the testimony of any witness, even if unrebutted. . . . The Hearing Officer clearly determined . . . that 'after having been placed under oath at the start of the hearing, [the defendant] failed to disclose an incident where [he was] cited for driving offenses.' . . . The Court cannot reevaluate the credibility of the evidence."

***Kocik v. DHSMV*, 22 Fla. L. Weekly Supp. 1132a (Fla. 20th Cir. Ct. 2015)**

DHSMV received information about the defendant's ability to operate a motor vehicle safely and asked him to submit to a medical examination by his own physician. He did not submit to the requested medical examination but instead asked for information and copies of the allegations. DHSMV responded that it could not divulge the information because of confidentiality, and revoked his license until the medical examination was performed and a report of it submitted to DHSMV. The request for medical examination had not been complied with by the time of the medical hearing, and the medical review board denied the defendant's request to reinstate his license. The defendant sought review, arguing that the court should order DHSMV to reinstate his license until DHSMV "has provided documentation that created the

basis of the revocation." But the circuit court, in its appellate capacity, denied review, stating that DHSMV "is authorized to suspend the driver's license of any person without preliminary hearing upon showing of its records or other sufficient evidence that the driver is incompetent to drive a motor vehicle" and can require the defendant "'to submit medical reports regarding his or her physical or mental condition to the . . . medical advisory board for its review and recommendation' when the department has reason to believe [the defendant] is incompetent to operate a motor vehicle safely[, which reason] can be supported by information authorized to come from 'any physician, person, or agency having knowledge of [the defendant's] mental or physical disability to drive.'" Such reports are confidential and not subject to disclosure.

***McLeod v. DHSMV*, 22 Fla. L. Weekly Supp. 1114a (Fla. 8th Cir. Ct. 2015)**

The defendant was arrested for DUI and her license was suspended. She sought review, arguing that there was not competent, substantial evidence that there was probable cause to arrest her for DUI or that she refused to give a breath test. The circuit court, in its appellate capacity, denied review, stating that the officer had an objectively reasonable basis for making the initial traffic stop, as the defendant failed to maintain a single lane, failed to make a complete stop at a stop sign, and crossed a yellow line several times, and the vehicle did not have functioning passenger rear lights or tag. There was also competent, substantial evidence of DUI. The court also disagreed with the defendant's argument that there was a lack of competent, substantial evidence that she refused to provide a valid breath sample. The printouts had notations such as "No Sample Provided," "Ambient Fail," and "Improper Sample," and officers testified as to her refusal and failure to follow instructions.

## VII. Red-light Camera Cases

***Southeast Florida Zimmer et al. v. City of Fort Lauderdale*, 23 Fla. L. Weekly Supp. 86b (Fla. 17th Cir. Ct. 2015)**

The trial court denied the defendants' motions to dismiss their red-light camera citations. But the circuit court, in its appellate capacity, reversed, holding that section 316.650(3)(c), Florida Statutes, does not permit a traffic infraction enforcement officer to delegate the statutory duty to provide citation data to the court: "The statute *does not* contemplate that such data may be provided to the court by any other entity, let alone a third-party vendor under contract with the officer's agency."

***Murphy v. City of Sunrise*, 23 Fla. L. Weekly Supp. 86a (Fla. 17th Cir. Ct. 2015)**

The defendant was issued a red-light camera citation. He entered a guilty plea and did not seek timely appeal. Almost 11 months after the conviction became final, the Fourth District Court of Appeal decided *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015), and shortly thereafter the defendant filed a motion to dismiss, citing *Arem*. The hearing officer denied the motion, and the defendant appealed, alleging that the court in *Arem* had declared red-light camera citations illegal. But the circuit court, in its appellate capacity, affirmed the denial of the motion to dismiss, noting that "the holding in *Arem* did not declare red light camera citations, in general, to be illegal. Rather, it declared that a specific procedural aspect of the statute improperly delegated certain law enforcement powers to third parties." It also noted that "at the

time *Arem* was issued, [the defendant's] conviction had long been final, and "*Arem* does not have retroactive effect with respect to convictions that are final."

## VIII. County Court Orders

***State v. Lozada*, 23 Fla. L. Weekly Supp. 196a (Brevard Cty. Ct. 2015)**

An unnamed caller reported the defendant, whom she said was intoxicated, and described him and his truck. An officer responded, encountered the defendant, and arrested him. The defendant filed a motion to suppress, arguing it was an unlawful seizure because the initial encounter "was an investigatory stop conducted without the founded suspicion required in situations involving an anonymous tip and no law enforcement corroboration." The court denied the motion, holding that the caller was a citizen-informant who could "provide law enforcement with the reasonable suspicion necessary to conduct an investigatory stop, even without further corroboration of criminal activity," and based on the tip the officer "had just enough founded suspicion to conduct a lawful and reasonable temporary detention of the Defendant."

***State v. Venerable*, 23 Fla. L. Weekly Supp. 195a (Brevard Cty. Ct. 2015)**

An officer stopped the defendant for speeding and noticed indicia of impairment. The defendant admitted to having a couple of drinks, and was arrested for DUI. He filed a motion to suppress, which the court denied, stating that the officer had "probable cause, supported by competent and substantial evidence, to believe the crime of DUI had been committed. The arrest and subsequent administration of the Breath Test was lawful."

***State v. Grant*, 23 Fla. L. Weekly Supp. 194a (Brevard Cty. Ct. 2015)**

A trooper responding to a report of reckless driving saw the defendant failing to maintain the lane and stopped the defendant. The trooper noticed indicia of impairment and requested a trooper to conduct a DUI investigation. The defendant refused to perform field sobriety exercises and a breath test, "citing he was unable to comply due to his various mental illnesses." The defendant was arrested, and the state filed a motion in limine to redact the parts of the trooper's video relating to the defendant's statements concerning his mental health issues," arguing that the defendant's statements were hearsay. The court denied the motion, stating that the defendant "has not sought to testify as to anything as yet, nor is it known whether he intends to testify at trial." It also noted: "It is the State who proposes introduction of the video containing the statements to which it objects," and "the State's argument that [the defendant's] knowledge of any mental health conditions could only have come from a medical professional and is therefore inadmissible hearsay is unpersuasive. . . . Whether any weight should be given to such an excuse for refusing to submit to FSEs or breath test is well within a jury's ability to objectively determine as the finder of fact."

***Rojo v. Windhaven Insurance Co.*, 23 Fla. L. Weekly Supp. 173b (Miami-Dade Cty. Ct. 2015)**

The plaintiff Rojo filed a petition for declaratory relief "to request judicial determination of whether a material misrepresentation existed on his application for automobile insurance."

The defendant later made an offer of judgment, and the plaintiff filed a motion to strike it because "this is an action for declaratory relief, not an action for damages." The defendant alleged that "despite the procedural vehicle taken by the Plaintiff, this is actually an action for damages." The court disagreed, granted the plaintiff's motion, and struck the offer of judgment.

***State v. Langham*, 23 Fla. L. Weekly Supp. 149b (Duval Cty. Ct. 2015)**

The defendants filed motions to dismiss their red-light camera citations for lack of jurisdiction and for violations of due process and equal protection, and cited *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015). The court denied the motions, stating that the facts differed from those in *Arem* and the Jacksonville Sheriff's Office did not improperly delegate its statutory obligations to the vendor, REDFLEX. Under the vendor contract, "REDFLEX is given a very limited and clearly defined set of criteria by which they sort potential violations into working and non-working queue's [sic] for review by the . . . Jacksonville Sheriff's Office. These criteria are those recognized by Statute . . . and others based upon reasonable criteria set by the Sheriff's Office." Also unlike in *Arem*, "REDFLEX does not have an 'unfettered discretion' on which videos are made available to the JSO for review. Once the videos are reviewed and sorted . . . by REDFLEX, *all* videos are made available for review by the Sheriff's Office's TIEOs. JSO retains the ability to review and authorize a notice of violation to incidents contained in the non-working group." The JSO does not "merely acquiesce to the review of videos made by REDFLEX," but rather its traffic infraction enforcement officers "make an independent determination on the issuance of the citations."

The defendants also argued that the processing of the violation notices by the vendor after they are authorized by the Sheriff's Office "is an unlawful delegation of law enforcement authority." But the court did not "see how the ministerial act of printing and mailing these notices constitutes the improper exercise of police powers by REDFLEX as opposed to the provision of support services under the contract. The key to the lawfulness of this contract is who makes the determination on the issuance of violation notices -- not who mails the notices once that decision is made."

***State v. Laprade*, 22 Fla. L. Weekly Supp. 1174c (Brevard Cty. Ct. 2015)**

The defendant was charged with DUI and filed a motion to suppress all evidence obtained as a result of a warrantless stop. The court granted the motion, stating that "the extra-jurisdictional stop . . . was not justified by a breach of the peace. Therefore, the stop was illegal and all evidence subsequently derived must be excluded from evidence at trial."

***State v. Lear*, 22 Fla. L. Weekly Supp. 1174b (Brevard Cty. Ct. 2015)**

The defendant was charged with DUI and filed a motion to redact portions of the audiotape. The court denied the motion as to the portions that involved the trooper's description of the defendant and his driving pattern and the depiction of the defendant being handcuffed, and granted the motion as to the trooper's testimony regarding the defendant's passenger having consumed alcohol. As to the trooper's testimony that the defendant was DUI and "[a]ll commentary" by the defendant and the trooper after the arrest, the court stated that the defendant had to identify more specifically the parts he wanted to have redacted.

***State v. Garfield*, 22 Fla. L. Weekly Supp. 1164a (Alachua Cty. Ct. 2015**)

The defendant was charged with making an improper left turn. The hearing officer issued an order adjudging the defendant not guilty because the defendant "was not within a statutorily defined intersection" but rather in a road that was "more akin to a 'median crossover.'"

***State v. O'Keefe*, 22 Fla. L. Weekly Supp. 1163b (Volusia Cty. Ct. 2015**)

The defendant was charged with DUI and filed a motion to suppress her refusal to take a breath test. The court granted the motion to suppress, stating that the refusal was "not incident to a lawful arrest." The court discussed the three requirements and held that even if (1) the trooper had intended to arrest the defendant and (2) "there was at least an arguable detention of the Defendant at the time of the breath test refusal," the third requirement — that the intention to arrest was communicated by the arresting officer to, and understood by, the person whose arrest is sought" — was not met. The trooper's intention to arrest the defendant was not conveyed to her until after she had refused to take a breath test. The court distinguished the case from cases where an officer's conduct "clearly informed" a defendant that he or she was under arrest, such as being handcuffed or put in the back of a patrol car.