FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

April – June 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)

***Williams v. State*, ___ So. 3d ___, 2015 WL 1942927 (Fla. 5th DCA 2015)**

The defendant was arrested for DUI and charged with, among other things, refusal to submit. He filed a motion to dismiss that charge, which the trial court denied. The appellate court affirmed, stating: "The issue . . . is whether it is unconstitutional to punish a person criminally for refusing to submit to a breath-alcohol test when the officer conducting the test does not have a warrant. We hold that it is not."
http://www.5dca.org/Opinions/Opin2015/060115/5D14-3543.op.pdf

***Mojica-Hernandez v. State*, 22 Fla. L. Weekly Supp. 996a (Fla. 11th Cir. Ct. 2015)**

An officer stopped the defendant and noticed indicia of impairment, and the defendant was convicted of DUI. He sought a new trial, which the circuit court, in its appellate capacity, granted, based on two grounds. The first was that "the trial court improperly limited the scope of *voir dire* by precluding the Defense from inquiring into jurors' bias on a matter critical to his defense." The defense had been precluded from asking jurors about their willingness to consider expert testimony regarding cognitive limitations caused by traumatic brain injury, and questions posed to the jury later "did not cure the error." The second ground was that, during closing argument, the prosecutor made comments that "improperly denigrated" the defendant and his theory of defense, and the prosecutor's use of the word "fail" in the context of the field sobriety exercises improperly "attached scientific validity to the FSEs."

***State v. Canuet*, 22 Fla. L. Weekly Supp. 900a (Fla. 17th Cir. Ct. 2015)**

An officer stopped the defendant for driving south in a northbound lane and noticed indicia of DUI, and the defendant was arrested for DUI. She filed a motion to suppress the field sobriety exercises, "arguing that she was not advised the exercises were voluntary and that she was coerced into performing them." The trial court granted her motion, but the circuit court in its appellate capacity reversed and remanded, stating that the officer clearly had reasonable suspicion of DUI, and that his "request that [the defendant] perform field sobriety exercises was reasonable under the circumstances and did not violate any constitutional rights." Therefore, the issue of whether consent to perform the exercises was voluntarily was immaterial.

***State v. Ludlow*, 22 Fla. L. Weekly Supp. 870a (Fla. 6th Cir. Ct. 2015)**

A deputy clocked the defendant at 27 mph over the speed limit and stopped him. Noticing indicia of DUI, the officer conducted field sobriety tests and arrested the defendant. The trial court granted the defendant's motion to suppress, holding that while the officer had reasonable suspicion to conduct the stop, he did not have probable cause to arrest the defendant for DUI before the arrest took place. Because there were no findings of fact in the record or final order, the circuit court, in its appellate capacity, conducted a de novo review. It found that "the trial court's order determining that the deputy lacked probable cause to arrest Appellee was not supported by competent, substantial evidence and the judgment should be reversed."

***State v. Palmer*, 22 Fla. L. Weekly Supp. 806a (Fla. 20th Cir. Ct. 2014)**

The state charged the defendant with DUI (second), and the trial court struck its amended information. The state appealed, arguing the court did not have legal authority to sua sponte strike the amended information. The circuit court, in its appellate capacity, disagreed and affirmed, finding that "the trial court did not act *sua sponte* in striking the . . . amended information; rather, when the trial court orally announced . . . that it was striking the State's amended information, it acted within its inherent authority to reconsider its . . . denial [the previous day] of the Appellee/Defendant's . . . motion for discharge."

II. Criminal Traffic Offenses

***Fletcher v. State*, ___ So. 3d ___, 2015 WL 3887475 (Fla. 2015)**

After escaping from jail and committing crimes, the defendant was convicted of first-degree murder, grand theft of a motor vehicle, home-invasion robbery, burglary, and escape, and he was sentenced to death. During trial he had moved to sever the escape and grand theft charges "because (1) they were temporally and physically separate from the other counts, and (2) a separate trial for each was necessary for a fair determination of [his] guilt or innocence." The trial court denied the motion, holding that "the charges were all part of the same criminal episode and severance was not necessary for a fair determination of . . . guilt or innocence. . . , all of the crimes occurred within approximately ten miles of one another and on the same morning. . . , and each crime was relevant to the others because they were all committed to evade re-arrest." The supreme court agreed, and affirmed based on this and other grounds.
http://www.floridasupremecourt.org/decisions/2015/sc12-2468.pdf

***Burns v. State*, ___ So. 3d ___, 2015 WL 3824060 (Fla. 1st DCA 2015)**

The defendant was charged with, among other things, carjacking, and filed a motion for judgment of acquittal, arguing that the truck in question "was, if anything, taken after the fact as an escape," and the trial court's failure to give a proper "afterthought" instruction to the jury was error. But the appellate court affirmed, noting that no objection had been preserved and the error did not rise to the level of fundamental error. It further stated: "Defense counsel's argument implied that the real issue for the jury was whether taking vehicle keys by force constituted taking the truck by use of force. As a matter of law, it clearly does."
https://edca.1dca.org/DCADocs/2013/0033/130033_DC05_06222015_102837_i.pdf

***Matos v. State*, ___ So. 3d ___, 2015 WL 3759657 (Fla. 4th DCA 2015)**

The defendant was convicted of vehicular manslaughter, and his car was taken into state custody. His motion for return of the car was denied summarily, and he appealed. The appellate court reversed and remanded, stating that the state's

> response and accompanying attachments fail to establish defendant previously sought the return of his car on the grounds that he is the owner of the vehicle and it is no longer of evidentiary value to the State. The State's assertion that defendant is not entitled to the return of the car as it was an "instrumentality of the crimes" is also unavailing. While the car appears to fall within the definition of "contraband article," . . . there is nothing in the attached record suggesting the State has instituted forfeiture proceedings. . . . Finally, in the absence of pending postconviction proceedings that involve the car and its claimed evidentiary value, the defendant's past history of postconviction filings is insufficient to conclusively refute the allegations of defendant's motion and establish the State's continued need to retain the car some ten years after defendant's convictions were affirmed on appeal.

http://www.4dca.org/opinions/June%202015/06-17-15/4D13-3995.reh.pdf

***Schreiner v. State*, 163 So. 3d 1293 (Fla. 1st DCA 2015)**

The defendant was sentenced to state prison for driving while license permanently revoked. He appealed, arguing that the sentence was improper because the trial court did not make "written findings that a nonstate prison sanction could present a danger to the public," as required by statute. The state conceded error and the appellate court reversed and remanded for resentencing, ordering that the resentencing hearing be held expeditiously because the defendant had already served more than the maximum prison sentence allowed by law.
https://edca.1dca.org/DCADocs/2013/5906/135906_DC13_06172015_122932_i.pdf

***Escalante v. State*, ___ So. 3d ___, 2015 WL 3522404 (Fla. 2d DCA 2015)**

The defendant was charged with leaving the scene of an accident involving death. He filed a motion to dismiss based on the expiration of the statute of limitations, which the trial court denied. He sought a writ of prohibition. The appellate court granted the writ with directions to the trial court, interpreting section 775.15(1), Florida Statutes (providing that "[a] prosecution for a . . . felony that resulted in a death may be commenced at any time), as applicable only if

state can "prove that it was [the defendant's] leaving the scene, as opposed to the accident itself, that caused the death of the victim."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/June/June%2005,%202015/2D15-419.pdf

***Jackson v. State*, ___ So. 3d ___, 2015 WL 3516641 (Fla. 1st DCA 2015)**

The defendant was convicted of driving on a state highway with a revoked license (revoked for habitual traffic offender). At trial he had claimed mistaken identity, arguing that his son, who resembled him, could have been driving the car on the date of the charged offense. The officer testified about what would have constituted another crime: that he saw the defendant "driving the same vehicle on another occasion after the date of the charged offense." The defendant's lawyer objected on relevance grounds, but the trial court overruled his objection. The appellate court reversed, stating that "[a]bsent circumstances not present here, such evidence is inadmissible. Since the state failed to prove the error in admitting the testimony was harmless, we reverse and remand for a new trial."
https://edca.1dca.org/DCADocs/2014/3022/143022_DC13_06042015_024618_i.pdf

***Somps v. State*, ___ So. 3d ___, 2015 WL 3396661 (Fla. 4th DCA 2015)**

Under a negotiated plea, the defendant was sentenced to concurrent five-year probation sentences for grand theft, grand theft auto, and leaving the scene of a crash with personal injuries. He was later charged with violating conditions of his probation and his probation was revoked. He appealed, arguing "that the trial court erred by: (1) revoking his probation based on a ground not alleged in the affidavit; (2) considering impermissible factors during sentencing; (3) failing to award him full jail credit, and (4) scoring three misdemeanor charges as additional offenses on his scoresheet." The appellate court affirmed on grounds (1)–(3) but based on (4) reversed and remanded for resentencing. The trial court scored as additional offenses charges that were not pending at the time.
http://www.4dca.org/opinions/May%202015/05-27-15/4D13-3083.op.pdf

***Harris v. State*, ___ So. 3d ___, 2015 WL 3388047 (Fla. 4th DCA 2015)**

The defendant was charged with attempted first degree murder with a deadly weapon, carjacking with a deadly weapon, robbery with a deadly weapon, fleeing or attempting to elude (high speed reckless), grand theft of a motor vehicle, and resisting an officer without violence. He was acquitted of the most serious charges but convicted on three felonies and a misdemeanor and sentenced to 9½ years. He appealed, arguing that "the trial court erred in overruling his objection to the state's peremptory challenge to an African-American venireperson because the state failed to provide a genuine, race-neutral reason for the strike." The appellate court affirmed, stating: "We find no abuse of discretion and, on the contrary, find the required on-the-record analysis performed by the trial judge to be quite cogent."
http://www.4dca.org/opinions/May%202015/05-27-15/4D13-4741.op.pdf

***Lambert v. State*, ___ So. 3d ___, 2015 WL 3541914 (Fla. 1st DCA 2015)**

When he was 16, the defendant stole a truck and led police on a high-speed chase that ended when he struck and killed another driver. He pled guilty to vehicular homicide (count 1),

aggravated fleeing or attempting to elude a law enforcement officer (count 2), and grand theft of an automobile (count 3), and was sentenced to concurrent 15-year prison terms on counts 1 and 2 followed by five years of mental health probation on count 3. He appealed the judgment and sentence, and meanwhile filed a motion to correct sentencing error, arguing that the term-of-years sentences for the first two counts "should be amended to reflect that he is entitled to parole eligibility pursuant to the reasoning in *Graham*[*v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)] and Judge Padovano's concurring opinion in *Smith v. State*, 93 So.3d 371 (Fla. 1st DCA 2012)." The trial court denied his motion, finding that *Graham* (holding unconstitutional a sentence of life without parole for juveniles convicted of nonhomicide crimes) did not apply to count 1 or count 2 because the defendant "was not sentenced to life in prison (nor could he have been) and his 15-year sentence on that count did not amount to a *de facto* life sentence." In his initial appellate brief, the defendant challenged only the denial of his motion to correct sentencing as it related to count 2. The appellate court affirmed, stating:

> We do not read *Henry*[*v. State*, ___ So. 3d ___, 2015 WL 1239696 (Fla. 2015),] or *Gridine*[*v. State*, ___ So. 3d ___, 2015 WL 1239504 (Fla. 2015)] to require that all juveniles convicted of nonhomicide crimes must be given an opportunity for early release by parole or its equivalent from their term-of-years sentences. Rather, we read those cases to simply hold that juvenile offenders convicted of nonhomicide crimes cannot be sentenced to an individual or aggregate term-of-years sentence that amounts to a *de facto* life sentence that does not afford the offender a meaningful opportunity for release during his or her natural life.
>
> Here, unlike the sentences in *Henry* (90 years) and *Gridine* (70 years), the 15-year sentence [the defendant] received on count 2 does not amount to anything close to a *de facto* life sentence. Indeed, with gain-time, Lambert may still be in his twenties when he is released from prison; and, even without any gain-time, [the defendant] will be released when he is 31 years old. Moreover, the executive clemency process is available to Lambert to seek earlier release based on a showing of maturity or rehabilitation. . . . Accordingly, [the defendant's] 15-year sentence on count 2 not only affords him a meaningful opportunity for release during his natural life, it guarantees it.

https://edca.1dca.org/DCADocs/2014/2575/142575_DC05_06082015_113428_i.pdf

***Gibbs v. State*, 163 So. 3d 732 (Fla. 5th DCA 2015)**

The defendant was convicted of DUI manslaughter. He appealed, arguing that "the trial judge abandoned his role as an impartial arbiter and failed to consider the totality of the circumstances when deciding whether he should be provided leniency under the sentencing guidelines." The appellate court affirmed, stating that the judge's comments about the impact on the victim's family did "not demonstrate that he, as a personal policy, would not consider a downward departure in a DUI manslaughter case, and did not consider a downward departure in the instant case."
http://www.5dca.org/Opinions/Opin2015/042715/5D14-1147.op.pdf

***Tafolla v. State*, 162 So. 3d 1073 (Fla. 4th DCA 2015)**

The defendant was convicted of DUI causing serious bodily injury. The trial court denied his motion for postconviction relief. The appellate court reversed because the defendant stated a prima facie claim for ineffective assistance of counsel by asserting that his attorney "was ineffective in misadvising him about the need for his trial testimony to support his defense and about whether a letter he had written apologizing to the victims could be used against him." http://www.4dca.org/opinions/April%202015/04-15-15/4D14-1971.op.pdf

***Murphy v. State*, 161 So. 3d 1282 (Fla. 1st DCA 2015)**

The defendant was convicted of felony fleeing or attempting to elude a law enforcement officer and driving while license suspended or revoked, and was sentenced to prison for the felony fleeing conviction. He appealed, arguing that the prison sentence was an improper upward departure because the trial court did not file a written finding that a nonstate prison sanction could present a danger to the public. The appellate court agreed and reversed and remanded for imposition of a nonstate prison sanction. Section 775.082(10), Florida Statutes, provides for a nonstate prison sanction for specified third degree felonies unless the court "specifically finds that sentencing the offender to a nonstate prison sanction could present a danger to the public. The trial court's findings must be in writing. . . . When the trial court fails to support . . . an upward departure sentence with the requisite written finding that a nonstate prison sanction could present a danger to the public, it is not permitted on remand to reimpose the upward departure sentence even with a valid written reason for departure." https://edca.1dca.org/DCADocs/2013/5178/135178_DC08_04072015_082409_i.pdf

***State v. Zamor*, 22 Fla. L. Weekly Supp. 1013a (Fla. 17th Cir. Ct. 2015)**

The trial court sentenced the defendant for driving while license suspended and withheld adjudication without ordering probation. The state appealed, arguing it was error for the trial court to withhold adjudication without imposing probation as required by the version of section 948.01(2), Florida Statutes, that was in effect at the time (in contrast to the amended version). The court agreed and reversed.

***State v. Soto*, 22 Fla. L. Weekly Supp. 1011b (Fla. 17th Cir. Ct. 2015)**

The trial court sentenced the defendant for driving while license suspended and withheld adjudication without ordering probation. The state appealed, arguing it was error for the trial court to withhold adjudication without imposing probation as required by the version of section 948.01(2), Florida Statutes, that was in effect at the time (in contrast to the amended version). The court agreed and reversed.

***Ulloa v. State*, 22 Fla. L. Weekly Supp. 906a (Fla. 17th Cir. Ct. 2015)**

The defendant was found guilty of driving while license suspended and argued on appeal that the trial court erred when it denied his request for a necessity instruction. The circuit court in its appellate capacity affirmed, stating that "the evidence, even when examined in a light most favorable to the defense, fails to satisfy the five prongs of the necessity defense. . . . It is clear

from the record that the [defendant] did not try to utilize potential alternative resources before deciding to operate the vehicle."

***State v. Little*, 22 Fla. L. Weekly Supp. 898c (Fla. 17th Cir. Ct. 2015)**

The defendant was issued a citation for driving without a valid driver license. At a hearing, the trial court suggested that his attorney move to dismiss "because there was not an original citation in the court file." The circuit court, in its appellate capacity, reversed "because the State was not . . . afforded adequate opportunity to controvert the motion to dismiss. . . . Furthermore, the trial court erred in resolving this issue on a motion to dismiss rather than . . . evidentiary hearing to reestablish a lost or destroyed charging document."

***State v. Dieurestil*, 22 Fla. L. Weekly Supp. 898a (Fla. 17th Cir. Ct. 2015)**

The defendant was issued citations for driving while license suspended with knowledge and for violating the right of way. At a hearing, the defendant's attorney argued that "the Information was filed outside the speedy trial window" and made a motion to dismiss. The prosecutor responded that he had not a received a motion to dismiss and asked for time to research the issue. The trial court granted the defendant's motion, the state appealed, and the circuit court, in its appellate capacity, reversed, stating that the trial court erred in granting the defendant's oral motion to dismiss without giving the state the opportunity to controvert it.

III. Civil Traffic Infractions

***State v. Stanton-Lora*, 22 Fla. L. Weekly Supp. 799b (Fla. 17th Cir. Ct. 2014)**

From about 30 feet away, a police officer saw the defendant exit a vehicle parked at a gas station, take a baggie from another man, put the baggie in his waistband, and get back into the vehicle, and the driver drove away. The officer stopped the vehicle and smelled "fresh" marijuana in the car and arrested the defendant for misdemeanor possession of marijuana. The defendant filed a motion to suppress, which the trial court granted, finding that "the area was not known for a high volume of drug transactions" and the officer "was not on surveillance but was at the gas station on a break." It also found the officer could not have seen the contents of the rolled up baggie in the dark from 30 feet away. The appellate court affirmed, holding that the trial court's factual findings were supported by competent substantial evidence, and the officer did not have a reasonable suspicion to stop the defendant.

***Cowden v. Broward Sheriff's Office*, 22 Fla. L. Weekly Supp. 799a (Fla. 17th Cir. Ct. 2015)**

The defendant got a ticket for disobeying a red light. He argued that "he was more than halfway through the intersection when the light turned red," and that the traffic court did not let him present eyewitnesses to support his claim. But the circuit court, in its appellate capacity, affirmed, stating that "the defendant did not include a transcript of the trial proceedings as part of the record on appeal," and therefore it could not properly evaluate his arguments on appeal.

***Dacosta v. Florida Highway Patrol*, 22 Fla. L. Weekly Supp. 797b (Fla. 17th Cir. Ct. 2015)**

The defendant was found guilty of driving 30 mph or more above the speed limit, and fines and court costs were imposed. He appealed, arguing that "he should not have been forced to appear for a mandatory court hearing and that the citation should have been dismissed." The circuit court, in its appellate capacity, affirmed, stating that "when an individual is alleged to have committed a traffic infraction by exceeding the speed limit by 30mph or more, a mandatory civil infraction hearing is required. Because the citation notes that Defendant was traveling 33mph over the speed limit, a hearing was required." It also held that, because the defendant did not include a transcript of the trial proceedings as part of the record on appeal, it could not evaluate his arguments on appeal.

IV. Arrest, Search and Seizure

***Rodriguez v. U.S.*, ___ U.S. ___, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015)**

A K-9 officer saw the defendant's SUV veer slowly onto a highway shoulder for a second or two and then jerk back onto the road. He stopped the defendant, issued him a written warning, and asked for permission to walk his dog around the vehicle, but the defendant did not grant permission. The officer detained him until a second officer arrived, and then got his dog, who alerted to drugs in the vehicle. A search revealed methamphetamine. Seven or eight minutes had passed from the time the officer issued the warning until the dog alerted. The defendant was indicted on drug charges and moved to suppress the evidence, arguing, among other things, that the officer "had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff." The district court adopted the magistrate's finding that, although there was no probable cause to search or detain apart from the dog alert, the prolonging of the stop was a permissible de minimis intrusion. The defendant entered a conditional guilty plea and was sentenced to five years in prison. The circuit court affirmed, and the defendant sought review. The Supreme Court vacated the judgment and resolved a disagreement among lower courts, holding that law enforcement may not routinely extend an otherwise-completed traffic stop, without reasonable suspicion, to conduct a dog sniff. The Court discussed the distinction between the government's interest in highway and officer safety and its interest in detecting "crime in general or drug trafficking in particular," and distinguished a dog sniff (to detect evidence of a crime) from an officer's mission incident to a traffic stop (e.g., checking the driver's license, outstanding warrants, registration, and proof of insurance).

The Court remanded, noting that the circuit court had not reviewed the magistrate's determinations regarding reasonable suspicion for the detention.
http://www.supremecourt.gov/opinions/14pdf/13-9972_p8k0.pdf

***State v. Bullock*, 164 So. 3d 701 (Fla. 5th DCA 2015)**

Law enforcement received a tip that an individual had come to town to purchase and distribute pills, and deputies went to his motel room. The individual agreed to cooperate with the deputies, told them the defendant would be delivering pills to his motel room in about ten minutes, and accurately described the defendant's truck. When the defendant arrived, the deputies stopped him and told him they suspected him of possessing illegal narcotics. The defendant admitted he was delivering pills to the motel and told a deputy where the pills were. A search of the vehicle turned up Oxymorphone pills, cannabis, and drug paraphernalia, and the

defendant was arrested. He filed a motion to suppress, which the trial court granted. But the appellate court reversed and remanded, finding that

> law enforcement had reasonable suspicion to conduct an investigatory stop and that the investigatory stop led to probable cause for [the defendant's] arrest. . . . [The cooperating individual's] information was sufficiently corroborated by law enforcement prior to the detainment of [the defendant]. . . . Importantly, [the individual] was able to predict [the defendant's] future behavior and provided law enforcement with detailed information that would not have been known by the general public. . . . Although [the individual] may have been at the lower end of the spectrum of reliability, we find that once law enforcement officers sufficiently corroborated his information, this provided the requisite reasonable suspicion to justify an investigatory stop and briefly detain [the defendant].

http://www.5dca.org/Opinions/Opin2015/042715/5D14-2164.op.pdf

***Baker v. State*, 164 So. 3d 151 (Fla. 1st DCA 2015)**

A deputy stopped the defendant for having an obscured license tag, and the defendant was charged with possession of cocaine, possession of marijuana, possession of drug paraphernalia, grand theft auto, and grand theft. The defendant filed a motion to suppress, but the appellate court affirmed, interpreting section 316.605(1), Florida Statutes (2013), "to mean that a license tag's alphanumeric designation may not be obstructed by any matter, including a trailer hitch," but certifying conflict with the Second District Court of Appeal.
https://edca.1dca.org/DCADocs/2014/4110/144110_DC05_05152015_062901_i.pdf

***State v. Leach*, ___ So. 3d ___, 2015 WL 2137716 (Fla. 2d DCA 2015)**

An individual called 911 to report someone breaking into a work truck parked at a business and described the perpetrator and the car he was leaving in. A BOLO was issued, and two police officers found the defendant, who matched the perpetrator's description, crouching behind his car, which fit the description of the car. The defendant was arrested. He filed a motion to suppress, based on improper detention. The circuit court granted the motion, but the appellate court reversed because the police officers involved "had a reasonable suspicion sufficient to justify [the defendant's] detention, which . . . was not converted into a premature arrest either by the relatively brief duration of the detention or the officers' decision to place [the defendant] in handcuffs while waiting for the eyewitness to arrive."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2008,%202015/2D14-1569.pdf

***State v. Nelson*, ___ So. 3d ___, 2015 WL 2129237 (Fla. 5th DCA 2015)**

Three defendants in separate cases were arrested on drug and/or firearm charges after being stopped for violating section 316.125, Florida Statutes, governing entry of vehicles onto highways from business locations and parking lots. The stopping deputies believed the statute was violated because the defendants "failed to stop before crossing over a sidewalk or sidewalk area situated over the driveways adjacent to the highway." The defendants filed motions to suppress, which the trial court granted, holding that the statute did not require them to stop

before entering the highway, because there were no vehicles or pedestrians in the area. The state appealed, and the three appeals were consolidated. The appellate court reversed and remanded, holding that the trial court had misinterpreted the statute.

> The trial court's interpretation may be correct if the provisions of subsection one are considered in isolation to the other provisions of the statute. But subsection one does not apply to business or residential districts, subsection two does, and it is undisputed that the events in all three cases occurred in a business district. The trial court's constricted interpretation of the entire statute renders meaningless the provisions of subsection two and, thus, offends well-established principles of statutory construction. . . . Looking to the provisions of subsection two, we see the requirement that the driver stop before "driving onto a sidewalk or onto a sidewalk area extending across the . . . driveway." Proper consideration of this statutory provision and the plain and ordinary meaning of the words used reveal with clarity that drivers must stop before traversing a sidewalk or sidewalk area to enter an adjacent highway.

http://www.5dca.org/Opinions/Opin2015/050415/5D14-1802.op.pdf

***State v. Ravitz*, 22 Fla. L. Weekly Supp. 1014a (Fla. 17th Cir. Ct. 2015)**

After a dispatcher call reporting an informant's tip that a driver was going the wrong way on a street, an officer spotted the described vehicle going the right way on that street. The car in front of the officer pulled over and a person in it pointed at the defendant's car. The officer then stopped the defendant and arrested her for DUI. The defendant filed a motion to suppress, arguing that the officer had not observed her committing a traffic violation or showing indicia of impairment, and that while the identity of the person who had called the dispatcher was obtained after the stop, before the stop the person was just "an anonymous tipster, and without observing anything further, such as a traffic violation, infraction, or indicia of impaired driving, there was no reasonable suspicion to stop" the defendant. The trial court granted the motion to suppress, and the circuit court, in its appellate capacity, affirmed, agreeing "that the informant, at the time of the stop, was an anonymous tipster, and no reasonable suspicion existed prior to the stop."

***State v. Bloom*, 22 Fla. L. Weekly Supp. 1010a (Fla. 17th Cir. Ct. 2015)**

An officer stopped the defendant for going almost 30 mph over the speed limit, noticed indicia of impairment, and requested a DUI investigator. The defendant was arrested for DUI, and the trial court granted her motion to suppress, agreeing that there was not reasonable suspicion to detain her longer than was necessary to write the speeding citation. But the circuit court in its appellate capacity found otherwise and reversed.

***State v. Fox*, 22 Fla. L. Weekly Supp. 1009a (Fla. 17th Cir. Ct. 2015)**

An officer stopped the defendant for having an expired tag. He asked the defendant to consent to a K-9 sniffing the vehicle, but the defendant refused. The officer used the K-9 anyway, the K-9 alerted to drugs near the glove compartment, and the officer found cannabis. The trial court granted the defendant's motion to suppress, and the circuit court in its appellate capacity affirmed because "there was no reasonable suspicion of criminal activity when the

detention for a traffic stop was unnecessarily extended beyond the time it would take to issue a citation."

***State v. Marino,* 22 Fla. L. Weekly Supp. 904a (Fla. 17th Cir. Ct. 2015)**

An officer stopped the defendant for running a red light. In reply to the officer's inquiry, the defendant admitted that he had marijuana. The officer found a small bag of marijuana and a glass pipe, and the defendant was arrested for possession. The officer did not advise the defendant of his *Miranda* rights. The defendant filed a motion to suppress, which the trial court granted, reasoning that because the officer did not have concerns for the defendant's safety, "it was improper for him to ask [the defendant] whether he had anything illegal in the car without advising him of his *Miranda* rights." The circuit court in its appellate capacity reversed, noting that the defendant was not in custody at the time of the officer's questioning. "A person temporarily detained pursuant to a routine, valid traffic stop is not in custody for the purpose of *Miranda*, unless he is subjected to treatment that curtails his freedom of action to a degree associated with formal arrest," which was not the case.

***Diaz v. State,* 22 Fla. L. Weekly Supp. 899b (Fla. 17th Cir. Ct. 2015)**

An officer was dispatched to a closed store because of a suspicious vehicle. He saw the defendant's vehicle parked sideways across parking spaces with the keys in the ignition. He performed a well-being check and could not rouse the defendant. Eventually the defendant woke up, opened her door, and said she was "trying to sober up." The officer smelled freshly burnt cannabis, and the defendant was arrested for possession of cannabis and DUI. She filed a motion to suppress, claiming "she was illegally seized without suspicion of criminal activity." The trial court denied her motion because she was parked illegally and under suspicious circumstances. The circuit court in its appellate capacity affirmed, stating: "The law is well-settled that police officers may conduct welfare checks and that such checks are considered consensual encounters that do not involve constitutional implications," and that the officer's request for the defendant "to open the car door did not transform the consensual encounter into an investigatory stop or seizure, because [his] concern for [her] well-being had not yet been alleviated."

V. Torts/Accident Cases

***Muller v. Wal-Mart Stores, Inc.,* 164 So. 3d 748 (Fla. 2015)**

The defendant was struck by a Wal-Mart truck and sued for personal injuries, including aggravation of pre-existing conditions. The defendant sought information about injuries the plaintiff had sustained while in the military, but the defendant objected, claiming the request was an invasion of his privacy rights and sought irrelevant information, as he was not seeking damages for the aggravation of his military injuries. The appellate court agreed and remanded for the court to "conduct an in camera inspection and segregate any private documents that are not relevant . . . from the relevant documents."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/May/May%2022,%202015/2D14-3433.pdf

***Audiffred v. Arnold,* 161 So. 3d 1274 (Fla. 2015)**

After an automobile collision, Audiffred sued Arnold for personal injuries and property damage, and her husband Kimmons sued Arnold for loss of consortium. Audiffred made a proposal for settlement for $17,500, which Arnold did not accept. The jury awarded her $26,055.54 for past medical expenses, but awarded nothing to her for permanent damages or on her husband's claim. After Audiffred and her husband sought costs and attorney's fees Arnold moved to strike the settlement proposal as defective "because it was filed only on behalf of Audiffred, but offered to settle the claims of *both* Audiffred and Kimmons. Arnold asserted that unapportioned settlement proposals that resolve the claims of multiple parties are improper, even where one claim is a loss of consortium claim filed by a spouse." The trial court denied the motion to strike and awarded the plaintiffs costs and attorney's fees, finding that the proposal for settlement was unambiguous and legally sufficient. On appeal, the First District reversed the award of costs and attorney's fees, holding that the proposal "constituted a joint proposal because, when read as a whole, it clearly expressed that Audiffred and Kimmons would dismiss their claims against Arnold with prejudice upon acceptance," and was invalid because it did not apportion the settlement amount between the plaintiffs. The supreme court granted review because of conflict with other decisions and affirmed:

> We hold that when a single offeror submits a settlement proposal to a single offeree . . . and the offer resolves pending claims by or against additional parties who are neither offerors nor offerees, it constitutes a joint proposal that is subject to the apportionment requirement. . . . We conclude that the statute and the rule mandate apportionment under such circumstances to eliminate any ambiguity with regard to the resolution of claims by nonofferor/nonofferee parties. The decisions in *Frey*, *GSOMR*, and *Alioto–Alexander* are disapproved to the extent they are inconsistent with this opinion.

http://www.floridasupremecourt.org/decisions/2015/sc12-2377.pdf

***SCI Funeral Services of Florida, Inc. v. Walthour*, ___ So. 3d ___, 2015 WL 3824205 (Fla. 1st DCA 2015)**

The Walthours sued SCI for damages from a motor vehicle accident, and sued a surgeon in an independent medical malpractice action for surgery they claimed was necessitated by the accident. The medical expert hired by SCI prepared a "report summarizing his opinions regarding causation between the accident and the surgery as well as the standard of care rendered by" the surgeon. SCI redacted four paragraphs from the report before providing a copy to the plaintiffs, and the plaintiffs filed a motion to compel production of the complete unredacted report. The trial court granted the motion to compel. SCI sought review, claiming the redacted paragraphs were privileged because they did not relate to any issue in the case and they "discussed an opinion rendered in anticipation of potential litigation." The appellate court disagreed with SCI as to the paragraph that related any causal connection between the accident and the surgery and ordered disclosure of that paragraph. But the appellate court agreed with SCI as to the other three redacted paragraphs (relating to standard of care), quashed the order as to those paragraphs, and remanded.
https://edca.1dca.org/DCADocs/2015/0110/150110_DC03_06222015_103948_i.pdf

***Moradiellos v. Community Asphalt Corp., Inc.*, ___ So. 3d ___, 2015 WL 3479620 (Fla. 3d DCA 2015)**

The plaintiff's decedent was working on road construction when he was killed by a dump truck 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, the dump truck driver violated the Contractor's safety policy and specific instructions."
http://www.3dca.flcourts.org/Opinions/3D14-0794.pdf

***Progressive American Ins. Co. v. Grossi*, 164 So. 3d 790 (Fla. 5th DCA 2015)**

John Grossi was the named insured, and his wife Judy was listed as an additional driver, under their Progressive policy. After an automobile accident, Progressive denied the Grossis' claim for uninsured/underinsured motorist (UM) coverage because Judy had modified the policy by rejecting UM coverage. A summary judgment was entered in favor of the Grossis, and Progressive appealed. The issue was whether Judy Grossi had authority to reject UM coverage as her husband's actual or apparent agent. The appellate court held that it was possible, and it reversed and remanded for determination of disputed issues of material fact.
http://www.5dca.org/Opinions/Opin2015/052515/5D14-2932.op.pdf

***King v. Raborg*, ___ So. 3d ___, 2015 WL 2393650 (Fla. 3d DCA 2015)**

Raborg sued another driver and the driver's employer for injuries he sustained in an accident. The other driver and his employer filed a motion to dismiss for improper venue, which the trial court denied, and they appealed. The appellate court reversed and remanded "for an evidentiary hearing to determine whether [the other driver's employer] has an agent or representative in Miami–Dade County, and if not whether venue properly lies in either a county in which [it] has an agent or representative, in Broward County where the cause of action accrued, or in Polk County if it is determined that Polk County is where [the other driver] resides."
http://www.3dca.flcourts.org/Opinions/3D14-2880.pdf

***Barrios v. Locastro*, ___ So. 3d ___, 2015 WL 2393334 (Fla. 4th DCA 2015)**

The plaintiff Locastro sued the defendant Barrios after sustaining injuries in a car accident. The jury found the defendant 25% at fault, and she moved for a new trial and/or juror interview, based on the post-verdict discovery that the mother of a juror was, at the time, the plaintiff in a lawsuit involving a slip-and-fall that had required surgery, and the juror's father had received disability benefits. The appellate court reversed and remanded, stating: "The information [the juror] concealed about her mother's lawsuit was material. It pertained to a lawsuit similar enough to the instant case that not knowing this information prevented [the defendant's] trial counsel from making an informed decision. [The defendant] exhausted two of her peremptory challenges on potential jurors who had histories similar to that of [the juror]."

http://www.4dca.org/opinions/May%202015/05-20-15/4D13-861.op.pdf

***Miley v. Nash*, ___ So. 3d ___, 2015 WL 1930290 (Fla. 2d DCA 2015)**

After an automobile collision, Nash and her husband sued the Mileys. Kyle Miley made a proposal for settlement to Nash offering to pay $58,590 "to resolve all claims and causes of action resulting from the incident or accident giving rise to this lawsuit brought by Plaintiff Martha Nash against Defendant Kyle Miley." Part of the proposal was that Nash would dismiss both Mileys and did not mention Nash's husband's loss of consortium claim. The jury returned a verdict in favor of Nash for $17,955. The Mileys filed a motion for attorney's fees and costs, but the trial court denied it because the proposal was deficient in that it required dismissal of both defendants without designating the amount attributable to each and failed to (1) specifically identify the claim or claims it was attempting to resolve, (2) specifically address Nash's husband's loss of consortium claim, (3) state with particularity any relevant conditions, and (4) specifically state the amount and terms as to each party. But the appellate court reversed, holding that the proposal was sufficiently clear, and that there was no need to address the loss of consortium claim, as it was a "separate and distinct claim, despite its derivative nature." Further, the proposal did not need to state the amount and terms attributable to each party because it was not a joint proposal, even though it required the plaintiff to release both defendants.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2029,%202015/2D14-930.pdf

***Kochalka v. Bourgeois*, 162 So. 3d 1122 (Fla. 2d DCA 2015)**

After an automobile collision, Bourgeois sued Kochalka. A final judgment and a prevailing party cost judgment were entered in favor of Bourgeois, and Kochalka appealed, arguing "that the trial court erred in refusing to excuse a prospective juror for cause; that it improperly excluded opinion testimony of her only expert witness; and that Ms. Bourgeois improperly informed the jury about Ms. Kochalka's liability insurance." The appellate court reversed, agreeing that "the trial court erred in refusing to exclude a potential juror for cause." The trial court had granted Bourgeois' cause challenge to a prospective juror who had expressed distrust of the jury system, but refused to grant Kochalka's cause challenge to a juror wiwth similar distrust.

The court also stated that "it was error for the trial court to exclude the doctor's [Kochalka's expert] testimony opinion as improper biomechanical testimony." As to the reference to Kochalka's liability insurance, the court stated: "For the purposes of remand, we remind the parties and the trial court that in a negligence case the potential existence or amount of a defendant's insurance coverage has no bearing on the issues and should not be revealed to the jury."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/April/April%2022,%202015/2D13-75.pdf

***Hurtado v. Desouza*, ___ So. 3d ___, 2015 WL 1727851 (Fla. 4th DCA 2015)**

The defendant rear-ended the plaintiff at a stop light. The plaintiff sued and a jury awarded him over $1 million. The defendant appealed, arguing that "the trial court erred in

admitting irrelevant and prejudicial evidence." The plaintiff also appealed, arguing that "the trial court erred in setting off unemployment compensation from the judgment." The appellate court reversed and remanded for a new trial. Regarding the defendant's argument, the appellate court initially found the trial court erred in admitting prejudicial evidence about the plaintiff's mental anguish and financial hardship, but that the error was harmless. However, on rehearing it stated that under the harmless error test set forth in *Special v. West Boca Medical Center*, 160 So. 3d 1251 (Fla. 2014), it could not say the error was harmless because the plaintiff did not prove that the error "did not contribute to the verdict."

The appellate court also agreed with the plaintiff's argument that the trial court erred in setting off unemployment compensation benefits from the final judgment, because those benefits "are not specifically listed in section 7[68].76 and cannot be interpreted as a collateral source under any of its provisions."
http://www.4dca.org/opinions/April%202015/04-15-15/4D12-1817.op.Rehrg.pdf

***Evans v. McCabe 415, Inc.*, ___ So. 3d ___, 2015 WL 1609930 (Fla. 5th DCA 2015)**

The plaintiff Evans's decedent died in an automobile accident after drinking at the defendant's bar. Evans sued the defendant, and the defendant filed a motion for summary judgment, arguing that the plaintiff could not establish the "habitual drunkard" exception (that the decedent was a habitual drunkard at the time of the accident and that the defendant was aware of it) to the reverse dram shop liability statute. The trial court granted the defendant's motion for summary judgment, but the appellate court reversed, stating that genuine issues of material fact existed.
http://www.5dca.org/Opinions/Opin2015/040615/5D14-502.op.pdf

***Jones v. Alayon*, 162 So. 3d 360 (Fla. 4th DCA 2015)**

The plaintiff Jones's decedent died in an automobile accident. Jones sued the other driver. Although it was undisputed that the decedent's seatbelt was inoperable, the jury found the decedent 70% at fault. The plaintiff appealed on evidentiary issues, but the appellate court found no abuse of discretion. She also argued that the trial court should have directed a verdict in her favor because the seatbelt was inoperable, but the appellate court affirmed on that issue as well, stating that, in determining comparative fault, "both statutory law and case law permit a jury to consider more factors than simply the availability and operability of a seatbelt," including the reason why it was inoperable and whether the plaintiff was comparatively negligent.
http://www.4dca.org/opinions/April%202015/04-08-15/4D12-4546.op.pdf

***Floyd v. Smith*, 160 So. 3d 567 (Fla. 1st DCA 2015)**

The plaintiff in an automobile collision action rejected the defendants' proposal for settlement, and after the jury found in favor of the defendants, the trial court awarded costs and attorney's fees to the defendants. The plaintiff appealed the award of costs and fees, arguing that the proposal for settlement was not in strict compliance with the statute and rule because it lacked a certificate of service and a typographical error referred to "his claims" rather than "her claims." But the appellate court affirmed, holding that (1) Fla. R. Civ. P. "1.080 no longer requires a certificate of service in a particular form" and the plaintiff did not challenge the email

service of the proposal, and (2) the plaintiff was the only plaintiff and no one else had asserted any claims, so the gender error could not have created any confusion.
https://edca.1dca.org/DCADocs/2014/3117/143117_DC05_04092015_121135_i.pdf

***Farahquaz & Yaniz v. Vescovi*, 22 Fla. L. Weekly Supp. 785b (Fla. 11th Cir. Ct. 2014)**

The plaintiff Vescovi was the owner of a car that had been rear-ended by the defendant Yaniz's car. Yaniz's car had been struck by a third party, against whom an action by the plaintiff had been dismissed with prejudice for the plaintiff's failure to appear. At trial, Vescovi was permitted, over Yaniz's objection, to testify, even though he was not present at the accident, using "knowledge he had acquired by reading the Traffic Accident Report [and] the previous testimony of [the third party]." The trial court did not permit Yaniz to cross-examine Vescovi on the amount of damages to his vehicle or to have those damages proportioned based on multiple tortfeasors, and it ruled in favor of Vescovi. Yaniz appealed, arguing that "Vescovi was incompetent to testify, and his testimony constituted inadmissible hearsay; that Yaniz was denied his constitutional right to cross-examination; and lastly, that the court unlawfully failed to apportion the damages between Yaniz" and the third driver. The circuit court, in its appellate capacity, agreed with Yaniz and vacated the judgment against him.

***Wilson v. Vicheto*, 22 Fla. L. Weekly Supp. 781a (Fla. 6th Cir. Ct. 2015)**

The parties were in an auto accident. The plaintiff Wilson's car was repaired, but he sued, claiming the defendant refused to pay for the diminished value of his vehicle. The defendant had argued that the plaintiff lacked standing because he no longer owned the vehicle; the plaintiff's vehicle was in a subsequent accident, which hadn't been taken into consideration; the extent of the damages could not be established with certainty; and "if the cost of restoring property to its condition prior to injury is less than the diminished value, the law generally requires that damages for wrongful injury of property be measured by the cost of repairs." Without specifying the grounds, the court entered a final summary judgment for the defendant. The plaintiff appealed, and the circuit court, in its appellate capacity, reversed and remanded, noting that there were disputed issues of fact, and that even when a vehicle can be repaired, damages allow for the difference between its value right before the accident and its value after repair.

VI. Drivers' Licenses

***Gordon v. DHSMV*, ___ So. 3d ___, 2015 WL 3609103 (Fla. 4th DCA 2015)**

The defendant was arrested for DUI and refused to submit to a breath test. Her license was suspended, which she challenged based on the arresting officer's original basic training certificate having expired. The circuit court quashed the suspension and remanded, the first time because the burden had shifted to DHSMV to prove the officer's certification was current, and the second time because, under changes in case law that had occurred meanwhile, the burden did not shift to DHSMV but the defendant was entitled to show evidence that the officer was not certified. The defendant sought second tier review, arguing that "the circuit court's remand to allow the submission of evidence that the officer possessed a valid certificate was inappropriate and an unauthorized 'second bite of the apple,' thus violating her due process rights." But the appellate court disagreed, noting that DHSMV had carried its initial burden of proof, and the

court quashed the order and remanded to allow the defendant, not DHSMV, "to submit other evidence, if available, to show that the officer was not properly certified. The court did not provide the Department with a second bite at the apple; it allowed the [defendant] a second bite."

The defendant also argued that because the suspension had expired while appellate proceedings were pending, the appellate court should quash the circuit court order, thereby invalidating the suspension. The appellate court disagreed and certified conflict with the Second District as to whether the validity of a license suspension is moot after the suspension time period expires. The Fourth District held that it is not moot, because "the license suspension has other consequences. A license suspension remains on a driving record for many years into the future. A future DUI or a refusal to take a breath test would call for consideration of the prior record, and the driver could face longer administrative penalties for each one, as well as prohibitions against issuance of a restricted driver's license."
http://www.4dca.org/opinions/June%202015/06-10-15/4D14-4827.op.pdf

***DHSMV v. Hirtzel*, ___ So. 3d ___, 2015 WL 2189761 (Fla. 1st DCA 2015)**

The defendant filed a motion asking the appellate court to certify, as a question of great public importance, "the question of whether a circuit court should review the entire record to determine whether the hearing officer's order is based on competent substantial evidence in the record or whether the circuit court is limited to a review for any evidence in the record without regard to the competent and/or substantial nature of the evidence." The court denied the motion, stating that "the circuit court's order in the present case failed to take into account ample, competent evidence supporting the hearing officer's finding of probable cause. . . . The hearing officer did not believe [the defendant's] story-told for the first time at the hearing . . . , and there is little in the circuit court's order-and no video or anything else in the record-to explain why the circuit court disregarded the competent, substantial evidence supporting the hearing officer's findings of fact."
https://edca.1dca.org/DCADocs/2014/2688/142688_DC02_05122015_102600_i.pdf

***Canalejo v. DHSMV*, 22 Fla. L. Weekly Supp. 1008b (Fla. 16th Cir. Ct. 2015)**

The defendant's license was suspended. He sought review, which the circuit court in its appellate capacity granted, because the hearing officer had refused to issue a subpoena for the officer whose presence was needed for authentication of the video evidence and other issues. The court further stated: "Having been given the opportunity to correct its initial failure to provide due process, indeed, having been ordered to do so and having failed to follow this court's order, . . . the Department's order upholding the suspension is Reversed."

***Dahhane v. DHSMV*, 22 Fla. L. Weekly Supp. 1004a (Fla. 13th Cir. Ct. 2015)**

The defendant's license was suspended for DUI. He sought review, arguing that his prehearing motion to exclude evidence and invalidate the suspension was not ruled on before the hearing officer introduced exhibits. But the circuit court, in its appellate capacity, held that this was not a departure from the essential requirements of the law. The defendant also argued that he was denied due process because one officer did not bring the dash camera video, another officer did not appear pursuant to subpoena and the defendant's request for a continuance so he could

re-serve the officer was denied, he was unable to confront and cross-examine one officer within 30 days, and the defendant thought the hearing officer said he would "set aside" the suspension because of the officer's nonappearance. But the court held that there was no due process violation because the defendant chose not to seek enforcement of the subpoena or production of the video through the court and therefore the hearing officer was not required to grant a continuance. Therefore, the court did not need to address the issue of the defendant's inability to cross-examine the officer within 30 days. Regarding the defendant's impression that the hearing officer was going to set aside the suspension because of the officer's nonappearance, the court stated that while the exchange was confusing, it was not within the court's scope of review.

The defendant also contended that the traffic stop and arrest were unlawful, but the court disagreed, stating that "the stop was based upon reasonable suspicion of impairment beginning with an anonymous tip and corroborated by further police investigation."

The defendant also claimed that "the hearing officer did not determine 'with analysis and without reasonable doubt whether the stop of the vehicle was a lawful stop.'" But the court held that the record showed clearly otherwise.

***Clasby v. DHSMV*, 22 Fla. L. Weekly Supp. 1003a (Fla. 13th Cir. Ct. 2015)**

Officers were called to the scene of a traffic crash, and ultimately the defendant's license was suspended for refusal to submit to a breath test. He sought review, arguing that the arrest was not lawful because the officers did not have probable cause to investigate the traffic crash, arrest him, and detain him. He claimed that "none of the officers witnessed [the defendant] driving or in actual physical control of the vehicle, and none observed any damage other than the flat or blown out tire" and that "law enforcement did not interview the . . . passenger nor medical personnel, but rather eavesdropped on the conversation between the passenger and medical personnel during which time the passenger allegedly stated that she was the passenger and [the defendant] was the driver." The court found the evidence showed otherwise and denied review.

***Ferry v. DHSMV*, 22 Fla. L. Weekly Supp. 1002a (Fla. 13th Cir. Ct. 2015**)

The defendant's license was suspended for DUI. The hearing officer had denied a subpoena duces tecum for the agency Intoxilyzer inspector, who did not appear at the hearing. The defendant sought review on the ground that he had been denied the opportunity to confront the inspector and review the sought documents. DHSMV filed a confession of error and motion to quash, conceding the subpoena should have been issued. The circuit court, in its appellate capacity, quashed the suspension but did not remand, because the suspension period had expired.

***Vanbuskirk v. DHSMV*, 22 Fla. L. Weekly Supp. 1001b (Fla. 13th Cir. Ct. 2014)**

The defendant's license was suspended for DUI. He sought review on six grounds, and the circuit court, in its appellate capacity, quashed the order upholding the suspension based on the third ground: that the defendant was deprived of due process when the hearing officer denied his request for a subpoena duces tecum for the agency inspector. Because the suspension period had not expired, the court remanded for further proceedings.

***Hunter v. DHSMV*, 22 Fla. L. Weekly Supp. 998a (Fla. 11th Cir. Ct. 2015)**

The defendant was arrested for DUI and she failed to provide a breath sample. The breath technician had been excused from the first hearing but failed to appear at the continued hearing until after it was over. At a third hearing he was present and the defendant's license was suspended. The defendant sought review, arguing that the suspension should be invalidated because the breath technician had failed to appear at the second hearing. But the court denied the defendant's petition for review.

***Harapas v. DHSMV*, 22 Fla. L. Weekly Supp. 989a (Fla. 7th Cir. Ct. 2014)**

An officer stopped the defendant after seeing her drive erratically and fail to maintain a single lane. After noticing indicia of impairment and the defendant's poor performance on field sobriety exercises, he arrested her. She refused to submit to a breath test, and her license was suspended. The hearing officer did not hear testimony but received seven exhibits into evidence and upheld the suspension. The defendant sought review, contending that "the officer did not have sufficient probable cause to conduct the traffic stop and all evidence received thereafter was improper and should have been suppressed," and that that the suspension was not supported by competent substantial evidence. The circuit court, in its appellate capacity, granted review, and quashed the suspension order, granted the defendant's motion to strike and suppress, and remanded for further proceedings, stating that although the arresting officer believed the defendant failed to maintain a single lane, to constitute a traffic violation the driver must have thereby created a danger to themselves or others, and there was no evidence of that.

[FLWS editor's note states that on February 16, 2015, the Fifth District Court of Appeal denied DHSMV's petition for writ of certiorari.]

***Shearer v. DHSMV*, 22 Fla. L. Weekly Supp. 988a (Fla. 7th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to submit to a breath test. He sought review, contending that the trooper erroneously told him that "if he was not convicted of the DUI charge he would get his license back." The circuit court, in its appellate capacity, denied review, stating that it was unclear whether the trooper had so advised the defendant, and even if he had, "such a statement would not invalidate the license suspension." The defendant had refused a breath test several times after being advised of the consequences, and even if the trooper had stated the law incorrectly, "it would not render the license suspension invalid."

***Harris v. DHSMV*, 22 Fla. L. Weekly Supp. 987a (Fla. 6th Cir. Ct. 2015)**

Deputies conducted a well-being check on the defendant, who was sleeping at the wheel of an illegally parked vehicle, and noticed indicia of impairment. His license was suspended for refusal to submit to a breath test, and he sought review. The circuit court, in its appellate capacity, denied review, stating that there was an objectively reasonable basis for the initial stop and therefore the refusal was incident to a lawful arrest.

***Simon v. DHSMV*, 22 Fla. L. Weekly Supp. 984a (Fla. 6th Cir. Ct. 2015)**

The defendant's license was suspended for DUI. She sought review, arguing she was denied due process when DHSMV refused to invalidate the suspension when two officers failed to appear at the hearing, and that there was no competent substantial evidence of DUI because

the officers did not see her operating the vehicle. The circuit court, in its appellate capacity, denied review, stating that the two subpoenas had been rejected lawfully, and in any case "only the failure of the subpoenaed *arresting officer or breath technician* to appear at the formal review hearing is grounds to invalidate a suspension." The defendant also argued there was no proof that she had been driving or in actual physical control of the vehicle. But under the fellow officer rule, the observations of the first officer who arrived at the accident scene "were properly imputed to" the arresting officer.

***Dewitt v. DHSMV*, 22 Fla. L. Weekly Supp. 980a (Fla. 6th Cir. Ct. 2015)**

The defendant's Florida license was revoked for five years in 1999 based on three DUIs in New York. The revocation expired in 2004 and the license was renewed in 2008. In 2012 a New York law became effective that permanently revoked licenses of drivers with three or more New York DUIs in the previous 25 years. In 2014, after the defendant's Florida license expired, his application for renewal was denied because of his record in the National Driver Registry, and ultimately a final order was issued finding it unsafe to issue him a driver license. He sought review, arguing that the hearing officer's findings and judgment were not supported by competent substantial evidence; specifically, the finding that his three New York DUI convictions were "unresolved." But the circuit court, in its appellate capacity, denied review, stating: "The fact that the Hearing Officer incorrectly referenced the New York convictions as 'unresolved' did not negate the remaining evidence."

The defendant further argued that the hearing officer failed to observe the essential requirements of law by not complying with sections 322.44 (Driver License Compact) and 322.05, Florida Statutes (Persons not to be licensed), but the court disagreed.

The defendant also raised, for the first time, an argument about equal protection and claims discrimination, but the court noted that a "challenge to the constitutionality of a statute 'must be determined in original proceedings before the circuit court, not by way of a petition for writ of certiorari.'"

***Bober v. DHSMV*, 22 Fla. L. Weekly Supp. 978d (Fla. 6th Cir. Ct. 2015)**

A deputy responded to a citizen informant call about two females arguing in a Jeep that was "all over the place," endangering pedestrians. When the deputy arrived, the Jeep was parked and the defendant was in the driver seat. The person in the passenger seat said that she had been driving but could not drive a stick-shift. The deputy noticed indicia of impairment with regard to the defendant, and after running the women's licenses and speaking with the citizen informant, the deputy returned to the Jeep. The defendant refused the Horizontal Gaze Nystagmus test and would not exit the Jeep. When the deputy and another deputy pulled her out of the Jeep, the keys fell from under her legs and the deputy arrested her for DUI and resisting an officer without violence. She refused a breath test and her license was suspended. She sought review, arguing there was not competent substantial evidence that the deputy had probable cause to believe she was in actual physical control of the vehicle. But the circuit court, in its appellate capacity, disagreed, and stated that because the deputy "personally observed [the defendant] showing signs of intoxication while sitting in the driver's seat with the car keys within her immediate

possession, he personally observed all the elements of the offense as required for a warrantless arrest for misdemeanor DUI."

***Dean v. DHSMV*, 22 Fla. L. Weekly Supp. 975a (Fla. 4th Cir. Ct. 2015)**

Officers found the defendant in a parking lot passed out behind the wheel of his vehicle, and the defendant's license was suspended for DUI. He challenged the suspension, arguing that there was not sufficient competent evidence that the stop and arrest were lawful. The circuit court, in its appellate capacity, quashed the suspension, stating that the evidence did not show "facts that would justify an investigatory stop on the basis of reasonable, articulable suspicion at the time the *Miranda* warnings were given." Although the encounter was initially consensual when the officers approached the defendant's vehicle to speak with him, "their decision to give [him] *Miranda* warnings may very well have elevated the encounter to a detention," which would have required reasonable suspicion, which the evidence did not support.

***Deluce v. DHSMV*, 22 Fla. L. Weekly Supp. 890a (Fla. 15th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to submit to a breath test. He sought review, arguing that his arrest was unlawful. The circuit court, in its appellate capacity, agreed, stating that none of the circumstances when an officer may conduct a warrantless misdemeanor arrest applied. The officer did not witness each essential element of DUI, no traffic crash had occurred, and the fellow officer rule did not apply.

***Freeman v. DHSMV*, 22 Fla. L. Weekly Supp. 875a (Fla. 7th Cir. Ct. 2014)**

The defendant was stopped without a warrant and issued a citation for prior refusal to submit to testing but not for DUI. Ten days later he was given a DUI citation with a notice of suspension. He sought review on several grounds. The circuit court, in its appellate capacity, granted review and quashed the suspension on the ground that the stop and detention were not lawful because the charging affidavit stated that the officer was dispatched "in reference to a domestic disturbance" but did not allege any crime; the vehicle he was stopped in did not match the scant description in the dispatch; and the detention was unlawfully prolonged while another officer investigated the domestic disturbance, determined it to be a noncriminal verbal disagreement, and then responded to the traffic stop.

***Sisois v. DHSMV*, 22 Fla. L. Weekly Supp. 872a (Fla. 6th Cir. Ct. 2015)**

After an officer responded to a single-car crash, the defendant was arrested for DUI and refused to take a breath test, and her license was suspended. She sought to invalidate the suspension, arguing that (1) the arrest was unlawful because the arresting officer did not personally investigate the accident or see her in actual physical control of the vehicle; (2) the hearing officer departed from the essential requirements of law by basing her decision on facts not in evidence (i.e., a misstatement of eyewitness statements); and (3) "the documents and reports cannot be competent, substantial evidence because there are numerous inconsistencies with regard to time and dates." As to ground (2), the court held that the misstatement of the evidence did not change the result of the hearing. Regarding ground (3), the court held that even without considering any defective documents, "the verified or sworn document in the record are competent, substantial evidence that supports the Hearing Officer's finding." However, the court

quashed the suspension on ground (1) because there was no competent, substantial evidence to support the hearing officer's determination that the arresting officer had probable cause to believe the defendant was driving or in actual physical control of the vehicle at the time of the accident. The fellow officer rule did not apply, and the accident exception did not apply because the officer "did not conduct an independent investigation of the crash, did not interview witnesses, and had no independent knowledge that [the defendant] was the driver of the vehicle at the time of the crash."

***Amicarelle v. State*, 22 Fla. L. Weekly Supp. 802a (Fla. 18th Cir. Ct. 2014)**

The defendant's license was suspended for DUI and refusing to submit to a breath test. He sought review, arguing that he was denied due process when the hearing officer did not let him question the breath tech officer about her observations or about her report that was admitted into evidence. The circuit court, in its appellate capacity, agreed and remanded for a new hearing.

***Johnson v. DHSMV*, 22 Fla. L. Weekly Supp. 791a (Fla. 13th Cir. Ct. 2014)**

The defendant's license was suspended for DUI. He sought review, arguing, among other things, that he was denied procedural process because the hearing officer did not permit his proffer of a witness's answer to his questions about the flow sensor. The court agreed and quashed the suspension, stating that "in preventing defense counsel from developing a full proffer, the Hearing Officer violated [the defendant's] right to create a full record for appellate review and to have a fair hearing."

***McLemore v. DHSMV*, 22 Fla. L. Weekly Supp. 777a (Fla. 6th Cir. Ct. 2015)**

An officer saw the defendant parked in front of an open gas station, pulled up next to the defendant, and noticed "his eyes were bloodshot, his eyes were glossy, and his skin was red." The officer asked the defendant to "stay there" and approached the vehicle. He saw an open case of beer on the front seat and asked the defendant if he'd been drinking, and the defendant said he had. The officer asked the defendant to perform field sobriety tasks, which the defendant did poorly on, and arrested him for DUI. The defendant's license was suspended for refusal to submit to a breath test. He sought review, arguing that the request to "stay there" was a seizure, for which there was no reasonable suspicion. The court agreed and ordered DHSMV to reinstate the license and "remove from [the defendant's] permanent driving record any entry that reflects the administrative suspension."

***Javes v. DHSMV*, 22 Fla. L. Weekly Supp. 774a (Fla. 4th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to submit to a breath test. He sought review, arguing that his refusal was not in violation of the law because he was asked to submit to both a breath and a urine test, and there was no factual basis to support a urine test. The court granted review and quashed the suspension, noting that "if only a breath test had been requested, a refusal based suspension would have been justified. Also, if the [defendant] had been requested to submit to a breath test or urine test, [his] refusal to submit to the breath test would have justified the corresponding suspension. . . . Because the Petitioner was asked to perform a breath

and urine test, such a unified combination must be supported by an appropriate factual basis to support an arrest based on breath and urine, and a corresponding test request."

***Ard v. DHSMV*, 22 Fla. L. Weekly Supp. 772a (Fla. 4th Cir. Ct. 2015)**

An officer saw the defendant's vehicle straddling a lane divider, approached the defendant, and noticed indicia of impairment. After the defendant performed poorly on field sobriety exercises and refused to submit to a breath test, his license was suspended. He sought review, arguing that there was not competent, substantial evidence that the arrest was lawful. The court denied review, stating that the defendant "offers no factual support for this contention." The defendant also argued he was denied due process because the officer did not appear at the hearing. But the court disagreed, noting that the officer asked for a continuance before the hearing, and regardless of whether the request was based on just cause, the defendant could have examined the officer at the next hearing and he had a temporary driving permit in the meantime. The defendant further argued that the hearing officer "departed from his role as an impartial finder-of-fact by limiting [his] questioning of [the officer] regarding his continuance request and by refusing to consider evidence that [the officer] received adequate notice of the [original] hearing. But the court noted that the hearing was only to determine probable cause, whether the defendant refused a breath test, and whether he was read the implied consent warning. Questions about the continuance request were outside the scope and purpose of the hearing.

***Colalillo v. DHSMV*, 22 Fla. L. Weekly Supp. 771a (Fla. 4th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to submit to a breath test. He sought review, arguing that there was not competent, substantial evidence establishing a reasonable suspicion for the stop and detention for a DUI investigation, and that he was deprived of due process because the hearing officer did not mention "the slightly different statements" the officer made in his affidavit and his testimony (the affidavit stated the defendant had slurred speech, and in testimony the officer said the defendant's speech was "just different"). The court disagreed and denied review.

VII. Red-light Camera Cases

***Clark v. State*, ___ So. 3d ___, 2015 WL 2458128 (Fla. 5th DCA 2015)**

The defendants received red-light traffic citations. The trial court dismissed the citations, holding that photographic and video evidence obtained from red-light cameras had to be authenticated before being admitted into evidence. The circuit court, in its appellate capacity, reversed, holding that the evidence was self-authenticating. The defendants then sought review, but the appellate court denied review, stating that while it is unclear whether the red-light camera statute was intended to provide for self-authentication, and "because no Florida appellate court has squarely addressed this issue, we conclude that certiorari relief is not warranted as the circuit court did not violate a *clearly established* principle of law. . . . [W]e recognize that there is a great temptation in cases like this one to provide precedent where precedent is needed. However, the solution to the problem exists in section 34.017(1), Florida Statutes [allowing county courts to certify questions]; not through a second-tier certiorari proceeding."
http://www.5dca.org/Opinions/Opin2015/052515/5D14-3495.reh%20.op.pdf

***State v. Meador*, 22 Fla. Law Weekly Supp. 1079b (Polk Cty. Ct. 2015)**

The defendant moved to dismiss his red-light camera citation, but the court upheld the citation, finding that the vendor had "[a]t no time" supplanted the traffic infraction enforcement officer, the defendant had received proper notice of the infraction, and the violation had been proven. The court withheld adjudication and ordered the defendant to pay the ticket.

VIII. County Court Orders

***State v. Bross*, 22 Fla. L. Weekly Supp. 1108c (Brevard Cty. Ct. 2015**)

A trooper stopped the defendant based on his driving pattern and testified he suspected the defendant might be ill, injured, or impaired. He noticed indicia of impairment and eventually arrested the defendant for DUI. The defendant filed a motion to suppress, which the court denied, stating "there was probable cause to believe [the defendant] violated a traffic law, failure to maintain single lane, when he crossed the center line twice and crossed the fogline three times within ¾ of a mile, even though no other traffic was adversely affected. The Court finds that there was probable cause to believe [the defendant] violated a traffic law when he failed to stop before the stop line at the red light." Therefore, the trooper "had reasonable suspicion to conduct a DUI investigation and later probable cause to arrest [the defendant] for DUI."

***State v. Bross*, 22 Fla. L. Weekly Supp. 1105a (Brevard Cty. Ct. 2015**)

A trooper stopped the defendant for a violation of the Move Over Law. The trooper's car had an in-car camera linked to a microphone the trooper wore on his body. The defendant filed a motion to suppress the recording of the conversation he had with the trooper, arguing that he had not consented to the recording of the conversation and the trooper had not stopped him for a criminal violation. But the court denied his motion, stating that under section 934.03(2)(c), Florida Statutes, "law enforcement officers are allowed to intercept communications they are a party to . . . regardless of whether a driver consented to the recording, or what the basis of the stop is." It is only when interception is permitted because one of the parties to the communication gave prior consent "that the purpose of the interception must be for obtaining evidence of a criminal act. . . . Under the facts of this case, Defendant did not have a subjective expectation of privacy, nor is society prepared to recognize the expectation Defendant asserts as reasonable."

***State v. Ramsey*, 22 Fla. Law Weekly Supp. 1095b (Palm Beach Cty. Ct. 2014)**

After a motorcycle accident, the defendant was charged with DUI. He filed a motion to suppress the blood test results, which the court granted, stating that "the officer did not determine the impracticability or impossibility of administering a blood test. Therefore, . . . only a breath or urine test was available to the officer. . . . Defendant did not provide a valid consent because he was not informed that he was required to submit only to a breath or urine test and that the blood test was offered only as an alternative. Therefore, [his] consent to the blood test was not truly voluntary and fully informed."

***State v. Durant*, 22 Fla. Law Weekly Supp. 1095a (Hillsborough Cty. Ct. 2015)**

An officer stopped the defendant because "a tag light was out," noticed indicia of impairment, and summoned a DUI investigator. The defendant was arrested for DUI and filed a motion to suppress. The court denied the motion as to a statement the defendant made to the first officer about consuming alcohol that night, because he was not in custody at the time he made that statement. But the court granted the motion to suppress a similar statement the defendant made to the DUI-investigating officer, because he was in custody at the time he made the statement to that officer. The court also granted the motion to suppress as to the lack of reasonable suspicion to conduct a DUI investigation and probable cause to arrest for DUI, due to a lack of evidence.

***State v. Dandiya*, 22 Fla. Law Weekly Supp. 1089d (Hillsborough Cty. Ct. 2014)**

The defendant was arrested for DUI. The stated filed a motion in limine to preclude his witness's expert testimony regarding the Intoxilyzer 8000. The court granted the motion, stating that even if his opinion "was based upon reliable principles and methods, it is clear that such principles and methods were not reliably applied to the facts of this case." The witness "has not tested or examined the I-8000 used in this case, nor has he performed a specific application of his theory, using variables known for this Defendant, to make a scientific adjustment to Defendant's actual breath test results."

***State v. Loftus*, 22 Fla. Law Weekly Supp. 1084a (Sarasota Cty. Ct. 2015)**

A foot-duty deputy told another deputy, patrolling in a vehicle, that the defendant had committed a traffic infraction and ignored the first deputy's order to stop. The second deputy stopped the defendant, and the first deputy arrested him for fleeing to elude. The defendant's vehicle was searched, and marijuana and drug paraphernalia were found, for which he was also charged. The court granted the defendant's motion to suppress, stating that "the search was not justified . . . because the crime that the Defendant was arrested for was Fleeing to Elude and the Defendant was handcuffed and secured in the back of a SCSO patrol vehicle at the time of the search." The stated argued "that the search should be upheld as being a valid 'inventory search'. . . . However, an inventory search must be conducted in accordance with standardized criteria," and "[i]n the instant case, the State did not introduce any SCSO documentation."

***State v. McCommons*, 22 Fla. Law Weekly Supp. 1076a (Volusia Cty. Ct. 2015)**

After responding to a crash and surmising that the defendant rear-ended a vehicle at a red light, an officer arrested the defendant for DUI. The defendant filed a motion to suppress, which the court granted, stating that all evidence seized from him was the result of an unlawful detention: "While there was a crash and the odor of alcohol was noted coming from the defendant, it appears there was nothing more. There is no testimony that causes this Court to find a nexus between the crash and any level of impairment demonstrated by the defendant. . . . As such, this Court determines that [the officer] did not have reasonable suspicion to detain defendant in order to conduct a DUI investigation."

***State v. Barbeiro*, 22 Fla. Law Weekly Supp. 1074b (Flagler Cty. Ct. 2015)**

A deputy saw the defendant's vehicle swerving in its lane, pace-clocked him as speeding, and stopped him. The deputy testified that he smelled alcohol coming from the vehicle and

noticed the defendant's eyes were glassy and bloodshot, although he had not stated so in his report, and requested a DUI investigation. Another officer arrived 17 minutes later to conduct the investigation, and the defendant was arrested for DUI. The court granted the defendant's motion to suppress, stating that the defendant's driving pattern "did not rise to the level of indicating impairment," and that "based upon the totality of the circumstances, there was insufficient reasonable cause for the deputy to believe the Defendant was under the influence of an alcoholic beverage."

***State v. Brown*, 22 Fla. Law Weekly Supp. 1074a (Volusia Cty. Ct. 2015)**

An officer stopped the defendant after noticing there was a hole in the side of the red plastic light cover on the side of the car, and charged him with violation the statute requiring vehicles to have two tail lights that "shall emit a red light plainly visible from a distance of 1000 feet to the *rear*." The court granted the defendant's motion to suppress, holding that the initial stop was invalid because "nothing but red light was emitted to the rear; the broken piece of the red plastic housing was on the side of the car."

***State v. Green*, 22 Fla. Law Weekly Supp. 1072a (Flagler Cty. Ct. 2015)**

An officer saw the defendant's car veer into another lane and followed him. When the defendant was lawfully parked, the officer drove up and parked in front of him, questioned the defendant, noticed indicia of impairment, and arrested him for DUI. The court granted the defendant's motion to suppress, stating that "[a] seizure occurred when the deputy ordered the Defendant out of his vehicle," and the seizure was not reasonable. The officer did not witness anything to justify the stop and detention, and the state's argument that the defendant "was free to leave is not credible."

***State v. Johnson*, 22 Fla. L. Weekly Supp. 1067b (Putnam Cty. Ct. 2015)**

An officer noticed "a vehicle in front of him exhibiting a suspicious driving pattern." He temporarily lost sight of the vehicle but later caught up with the defendant's vehicle, although he admitted that he was not sure it was the same vehicle he was following earlier. After seeing the defendant's vehicle swerve and correct, he stopped the defendant for failure to stop at a stop sign (about which testimony was unclear) and failing to maintain a single lane, and ultimately the defendant was arrested for DUI. The defendant filed a motion to suppress, which the court granted, stating that "officers must articulate facts sufficient for the stop but . . . the stop must [be] judged by an objective standard not just the subjective motivations of the officers." The officer did not have probable cause to stop the defendant for failure to stop at a traffic signal because it was "objectively unreasonable that [he] actually witnessed such violation occur." Nor did he have probable cause to stop the defendant for failing to maintain a single lane, because "[a]ll [the officer] saw was the back left tire between the two double lines for about a distance of 10 yards," and "the officer admitted that there were no white lines on the right side of the roadway indicating where a lane would be on the road and this also was only a minor deviation from the road and the oncoming vehicle was not endangered." Further, the officer did not give the defendant a citation for failing to maintain a single lane.

The court also found there was no evidence to support a reasonable suspicion to justify a stop on the basis that the defendant was ill, tired, or impaired.

***State v. Harkins*, 22 Fla. Law Weekly Supp. 1060c (Leon Cty. Ct. 2015)**

The defendant was arrested for DUI and, when asked to take a breath test, said she wanted a blood test. She then consented to a breath test and was told that she would be taken to a location where a blood test could be given, but was not given access to a phone or reasonable assistance to obtain a blood test. Therefore the court granted her motion to suppress the breath test results.

***State v. Messer*, 22 Fla. Law Weekly Supp. 1055a (Escambia Cty. Ct. 2014)**

The defendant was arrested for DUI and objected to the admissibility of the breath test results because the Intoxilyzer was not inspected after it was returned from an authorized repair facility. The court granted his motion to suppress, holding that "the annual inspections in the present case are inherently unreliable due to the [FDLE Alcohol Testing Program's] extraneous activities performed on the instruments that are not authorized by rule and have not been through the APA vetting process." It further noted: "Without the Department Inspection after an instrument is returned to its agency, the instrument has not been validated or approved for evidentiary use."

***State v. Romero et al.*, 22 Fla. Law Weekly Supp. 970b (Collier Cty. Ct. 2015)**

Three cases with identical objections as to the sufficiency of an officer's radar and laser speed measuring device logs were heard together. The court sustained the objections and found the defendants not guilty, stating that the radar log failed to include "a written log of *each internal and external tuning fork accuracy check*," and the laser logs "are insufficient to satisfy the requirement that 'the following accuracy checks *shall be performed and recorded* into a written log.'" As there was no predicate to allow the officer's visual estimate evidence as to speed, the court found the defendants not guilty and bade them to drive safely.

***State v. Jones*, 22 Fla. Law Weekly Supp. 968a (Seminole Cty. Ct. 2015)**

At the manager's request, a grocery store employee took away the defendant's keys after seeing her park in the delivery lane and appearing impaired. The employee did not tell the defendant that she was under arrest or could not leave. Officers arrived in response to the manager's call and noticed indicia of impairment. They arrested the defendant for DUI, and she filed a motion to suppress, arguing that the arrest was illegal because the officers did not see her driving or in the vehicle in possession of the keys. The court granted the motion in part on that ground, stating: "In order for a misdemeanor DUI arrest to be legal under Florida Law, a police officer must have probable cause to believe that a crime was committed based upon the totality of the circumstances and all the elements of the offense must be committed within the officer's presence. . . . There are exceptions . . . if the officer personally investigated a traffic crash at the scene [or] the arrest was based on a prior citizen's arrest," neither of which was the case here. Therefore, the court found the arrest was illegal and ordered that any evidence obtained *after* the arrest was to be suppressed.

***City of Ft. Lauderdale v. Wesolowski*, 22 Fla. Law Weekly Supp. 967c (Broward Cty. Ct. 2015)**

The defendant received a red-light camera notice of violation and she filed a motion to dismiss. The court granted it, stating that "the procedures used by the City of Fort Lauderdale in accordance with its contract with ATS violate the requirements of F.S. 316.0083 in that the City's representative does not actually create or issue the Uniform Traffic Citation and pursuant to the Business Rules Questionnaire the City has given ATS unfettered discretion in determining who receives a citation."

***State v. Davenport*, 22 Fla. Law Weekly Supp. 954a (Hillsborough Cty. Ct. 2015)**

After an officer incorrectly told the defendant that he would be arrested for DUI if he refused to perform field sobriety exercises, the defendant performed them and was arrested for DUI. He filed a motion to suppress, which the trial court granted, stating: "In light of the defendant's hesitation and inquiries about the necessity of submitting to FSE's, as well as [the officer's] misstatement of the law that FSE's were required under the implied consent law and his statement that the defendant would be arrested if he refused, this Court finds that the defendant did not freely and voluntarily consent to the performance of FSE's."

***State v. Mayer*, 22 Fla. Law Weekly Supp. 941b (Volusia Cty. Ct. 2015)**

The defendant was arrested for DUI after she refused to submit to field sobriety exercises or a breath test, and she filed a motion to suppress incriminating statements she had made. The court stated that she

> was never interrogated during the accident investigation, and so she was never given any indication that she was required to give accident information. Any misinformation regarding the consequences of refusing to submit to field sobriety exercises did not affect her decision to refuse either the exercises or a breath test. Therefore, these arguments raised in the Motion to Suppress are DENIED in all respects. However, evidence of a pre-arrest refusal to submit to a breath test is inadmissible, and so that single portion of the motion is GRANTED.

***State v. Newman*, 22 Fla. Law Weekly Supp. 939a (Volusia Cty. Ct. 2014)**

The defendant was arrested for DUI after officers investigated a report of a reckless vehicle that had become disabled. The court granted her motion to suppress because the arresting officer did not witness all the elements of DUI, and no exception to that requirement existed (no traffic crash investigation had been made, the officer who did see the defendant in actual physical control of her vehicle was outside her jurisdiction, and there was no evidence of a mutual aid agreement between the jurisdictions). Further, the outside-jurisdiction officer could not have been said to have made a citizen's arrest because she "did not observe any driving, much less erratic driving [and] there was no breach of the peace."

***State v. Ferguson*, 22 Fla. Law Weekly Supp. 848a (Monroe Cty. Ct. 2015)**

The defendant was stopped for violating the Move Over Law and, after a backup officer's drug-sniffing dog alerted, was arrested for having "shake marijuana" and eight seeds. He filed a motion to suppress, which the court granted, stating that the state had not met its burden to establish a Move Over Law violation had occurred. While the deputy had testified that his rear light bar was on, the defendant and his passenger had testified otherwise, and there was "no independent evidence to corroborate the officer, or to discredit the Defendant."

***State v. Jacobs*, 22 Fla. Law Weekly Supp. 831a (Volusia Cty. Ct. 2015)**

A deputy stopped the defendant for driving without his headlights on after dark. Upon approaching the defendant, the deputy noticed the defendant's slightly slurred speech and a slight odor of alcohol coming from the vehicle, but no indicia of impairment. He called for backup, and the second deputy began a DUI investigation. The defendant admitted drinking about 1.5 pitchers of beer that evening, and the second deputy testified that he noticed the odor of alcohol on the defendant's breath and other indicia of impairment. The defendant performed poorly on field sobriety exercises and was arrested for DUI. He refused a breath test. He filed a motion to suppress, which the court granted because "there was an insufficient basis established to justify the continued detention of the Defendant longer than reasonably necessary to issue the traffic citation."

***State v. Baskin*, 22 Fla. Law Weekly Supp. 830a (Flagler Cty. Ct. 2015)**

A deputy was given an anonymous tip that the defendant was involved in an accident. The deputy stopped the defendant, noticed damage to the vehicle that could have been from an accident, and noticed that the defendant was unable to walk or stand straight. After field sobriety exercises, the defendant was arrested for leaving the scene of a crash involving damage, DUI, and drug charges. He filed a motion to suppress, which the court granted, noting the anonymous tip had not been corroborated.

***State v. Prigoda*, 22 Fla. Law Weekly Supp. 829b (Flagler Cty. Ct. 2015)**

The defendant was in a single-car accident. While the defendant was being treated by paramedics, a deputy who had responded noticed the defendant's speech was slurred and the smell of alcohol was coming from the car. The deputy began a DUI investigation, and after his release from the hospital the defendant was arrested for DUI. The defendant filed a motion to suppress his refusal to submit to a blood test and argued there was no reasonable suspicion to detain him for a DUI investigation and no probable cause for the DUI arrest. The court granted his motion, noting that the defendant was released from the hospital and taken to the jail, where a breath test could have been administered, shortly after the deputy had interacted with him, but the deputy did not try to administer a breath test then.