FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

January – March 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)

***Domingues v. State*, ___ So. 3d ___, 2015 WL 1334085 (Fla. 4th DCA 2015)**

An officer responded to a domestic disturbance call, saw the defendant driving away in a vehicle the same color as described in the call, stopped the defendant, and ordered him to return to the residence. After talking with the defendant's girlfriend, who had made the call, the officer determined that no crime had occurred. However, he noticed that the defendant had parked "a little crooked," that he smelled of alcohol, and that his speech was slurred. The officer arrested the defendant for DUI, and the defendant's probation was therefore revoked. The defendant filed a motion to suppress, which the trial court denied. He appealed, arguing that the court erred "because no reasonable suspicion to stop [him] arose from a report of a domestic disturbance call." The appellate court agreed and reversed the denial of the motion to suppress and the revocation of probation, noting that a domestic disturbance call "does not necessarily include any crime, and nothing in the dispatch informed him that a crime had occurred at the residence," nor did the officer observe anything that which suggested that a crime had occurred.
http://www.4dca.org/opinions/March%202015/03-25-15/4D13-1096.op.pdf

***Hammons v. State*, ___ So. 3d ___, 2015 WL 848999 (Fla. 2d DCA 2015)**

The defendant was convicted of DUI third offense. The county court granted him a new trial based on the prosecutor's comment that he "voluntarily gave up his driver's license for either one year or 18 months" by refusing to submit to a breath test, but the circuit court reversed. The defendant sought certiorari review. The appellate court dismissed his petition as

untimely and stated that in any case it was without merit. The challenged statement did not prejudice the defendant "but rather was a proper reference to the arresting officer's testimony regarding the standard warning he gave . . . on the implied consent for a breath test." http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2027,%202015/2D14-2729.pdf

***Gibson v. State*, 22 Fla. L. Weekly Supp. 500a (Fla. 6th Cir. Ct. 2014)**

The defendant appealed his DUI conviction, contending that the trial court erred in preventing him from arguing that he had refused to take sobriety tests not because of a consciousness of guilt but because his license was already suspended. He also argued that the state attorney made an improper closing argument. The circuit court, in its appellate capacity, affirmed, finding no error in the trial judge's ruling, and that the objected-to part of the state's closing argument — a community-conscience argument regarding refusal to participate in field sobriety and breath tests — was "an invited response." The court did, however, note that both parties made improper closing arguments, and it urged the trial court "to take an active role in the control over improper argument while, at the same time, we caution counsel 'not cross the line from zealous advocacy to impermissible emotional and inflammatory arguments.'"

***State v. Bartz*, 22 Fla. L. Weekly Supp. 491a (Fla. 6th Cir. Ct. 2014)**

The trial court granted the defendant's motion to suppress statements he made during a DUI stop. The circuit court, in its appellate capacity, reversed, holding that

> the traffic stop here did not take on the necessary characteristics of custody for the purposes of *Miranda.* The stop was in the center of a busy state road across from a convenience store. Passing motorists and pedestrians were able to observe what was happening. Only two officers were involved. The deputies did not remove their side arms. The deputies were at all times polite and used a calm tone of voice. No threats were made or other form of coercion employed. [The defendant] was not placed in handcuffs. . . . The deputies did not suggest that the only way to possibly avoid arrest was to cooperate. Nor was [the defendant] told that cooperation would mean he would not be arrested. [His] license and registration were returned to him at the end of the civil traffic investigation. In short, the pressure and coercion usually present and necessary to create in the mind of an objective reasonable person that they are in custody are not present here.

***Figueroa v. State*, 22 Fla. L. Weekly Supp. 430b (Fla. 15th Cir. Ct. 2014)**

The defendant was convicted of DUI and appealed, arguing that "the trial court erred in denying his cause challenge to a potential juror [who] indicated that he would give more credibility to a police officer" than to a civilian witness, and who "further indicated that he would presume [the defendant] guilty because he did not submit to a breath test." The circuit court, in its appellate capacity, agreed and reversed and remanded for a new trial, stating: "Although the prospective juror's comments may comport with admissibility of the refusal under Florida Statute section 316.132 in the criminal proceeding, . . . the trial court erred in denying Defendant's cause challenge based upon the totality of [the prospective juror's] responses."

II. Criminal Traffic Offenses

***State v. Dorsett*, ___ So. 3d ___, 2015 WL 790472 (Fla. 2015)**

The defendant was charged with willfully leaving the scene of an accident involving an injury. At trial he requested a jury instruction that included as an essential element that he "knew that he was involved in an accident." The trial court denied the request "and read the standard jury instruction, which provided that the State must prove the defendant 'knew or should have known' that he was involved in a crash." On appeal, the Fourth District Court of Appeal certified the question: "In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require actual knowledge of the crash?" The Florida Supreme Court answered in the affirmative, stating: "Although section 316.027 does not expressly state that actual knowledge is required for a violation, the law does expressly provide that a felony criminal violation requires that the driver 'willfully' violate the statute [which] can be established only if the driver had actual knowledge that a crash occurred."
http://www.floridasupremecourt.org/decisions/2015/sc13-310.pdf

***Aguirre v. State*, ___ So. 3d ___, 2015 WL 1443217 (Fla. 1st DCA 2015)**

The defendant was convicted of DUI manslaughter and vehicular homicide. The trial court conceded that this constituted double jeopardy, and the appellate court ordered it to vacate the vehicular homicide conviction. The appellate court remanded with regard to a discretionary fine and surcharge that were not orally pronounced at the sentencing hearing, stating "the trial court may reimpose the fine and surcharge after following the proper procedure."
https://edca.1dca.org/DCADocs/2013/6060/136060_DC13_03312015_012406_i.pdf

***Graham v. State*, ___ So. 3d ___, 2015 WL 782667 (Fla. 1st DCA 2015)**

The defendant was convicted of fleeing to elude law enforcement with lights and sirens activated, possession of cannabis with intent to sell, grand theft, and misdemeanor resisting an officer without violence. He appealed, arguing that "the trial judge erred by pointing out to the prosecution factual elements that had not been proven." The appellate court affirmed the conviction, but reversed and remanded for correction of the sentencing scoresheet. "[T]he primary score sheet offense of felony fleeing to elude law enforcement with lights and sirens activated under § 316.1935(2), Florida Statutes, should be scored as a level 3 offense . . . and a third-degree felony."
https://edca.1dca.org/DCADocs/2013/0447/130447_DC08_02252015_025608_i.pdf

***Faber v. State*, ___ So. 3d ___, 2015 WL 445155 (Fla. 2d DCA 2015)**

The defendant was charged with first-degree murder, attempted first-degree murder, and fleeing and eluding. The state sought all his VA medical records, he objected, and the trial court overruled his objection. The appellate quashed the order "to the extent that it allows for the discovery of a broad class of medical and mental health records without a sufficient showing of the relevancy of the records to the pending charges." The court noted that the records might become relevant if the defendant were to use an insanity defense.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2004,%202015/2D14-3193.pdf

***White v. State*, ___ So. 3d ___, 2015 WL 445119 (Fla. 2d DCA 2015)**

The defendant pled no contest to fleeing and eluding (high speed), but "[t]he judgment and sentence characterize this offense as 'aggravated fleeing and eluding,' . . . a different offense." He sent the court a letter, which it treated as a motion to correct a sentencing error and denied. He appealed, but the appellate court affirmed, holding that the letter was not timely and that it should have been treated as a motion to correct an illegal sentence, and it did not establish that the sentences were illegal. The affirmance was "without prejudice to [the defendant's] right to raise the issue of the inaccuracy of the judgment's description of the crime to which he pleaded no contest in a timely motion filed in accordance with rule 3.850."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2004,%202015/2D14-2276.pdf

***Gonzalez v. State*, 156 So. 3d 550 (Fla. 3d DCA 2015)**

The defendant was fleeing police in his truck. When he was finally cornered, he drove directly at the officers, at an accelerated speed. The officer directly in his path shot at the truck, and the defendant's passenger died. The defendant pled guilty to "second degree murder, resisting an officer with violence, three counts of aggravated assault on a police officer, driving with an unlawful blood alcohol level, and driving with a suspended license." He agreed to ten years in prison followed by ten years of probation with conditions, including lifetime revocation of his driver license and his agreement to never apply for a license. But soon after his release, he applied for and got a license. His supervising probation officer found out, and a probation violation hearing was set. The defendant's guideline scoresheet range was 25.375 years to life, but before the probation violation hearing he entered into a negotiated plea with the state of six years in prison. The trial court rejected the plea, and at the probation violation hearing the main issue "was whether the defendant, who speaks Spanish and possesses a limited understanding of the English language, was properly advised that, as a special condition of his probation, he had a lifetime driver's license revocation and that he was never to apply for a driver's license." The trial court found the defendant was properly advised and knew he was prohibited from obtaining a license, and that "his violation was substantial and willful," and sentenced him to 15 years.

The defendant appealed his probation revocation and sentence, but the appellate court affirmed. It held that the trial court did not "abandon its role of impartiality or prejudge the case" when it rejected the state's plea offer, and that there was sufficient evidence that the defendant willfully and substantially violated probation. The court also rejected the defendant's argument that the 15-year sentence was not lawful because the "original sentence was a split sentence, and thus, the sentence imposed upon a probation violation must be limited to the probationary period of the split sentence, which is ten years," stating that "the defendant's sentence is not a 'true split sentence,' but rather a 'probationary split sentence,'" and therefore the trial court could impose any sentence that it might have originally imposed.
http://www.3dca.flcourts.org/Opinions/3D13-1872.pdf

***Abraham v. State*, 155 So. 3d 491 (Fla. 3d DCA 2015)**

The defendant was convicted of leaving the scene of an accident causing death and tampering with physical evidence, and was sentenced to six years in prison. He appealed,

arguing that "(1) the trial court erred by denying the motion to suppress his statements, which the defendant claims were procured after he was unlawfully seized by the police; and (2) he was deprived of a fair trial when two of the State's witnesses improperly testified regarding the ultimate issue of whether the defendant knew he had struck a person . . . when he left the scene of the accident." The appellate court affirmed, finding that although the police handcuffing the defendant and taking him into custody at the automotive garage where he had taken his truck was "the functional equivalent of an arrest, no Fourth Amendment violation occurred because the [pre-*Miranda*] confinement was supported by probable cause."
http://www.3dca.flcourts.org/Opinions/3D13-0755.pdf

***Ellzey v. State*, ___ So. 3d ___, 2015 WL 233293 (Fla. 1st DCA 2015)**

The defendant was convicted of leaving the scene of a crash involving death. She appealed, arguing that "the trial court erred by not granting her request for a special jury instruction requiring the State to prove beyond a reasonable doubt that [she] had actual knowledge of the crash." She also appealed with regard to fines imposed and scrivener's errors. The appellate court reversed and remanded for correction of sentencing errors, but affirmed the conviction. It stated that if there had been a dispute as to whether the defendant had been aware of the crash, the conviction would have to be reversed. But the fact of a crash was not in dispute. Rather, the defendant had argued that "she was aware that she had struck something with the vehicle she was driving, but she was unaware that it was a person rather than a traffic cone or barrel." Therefore, the jury instruction was properly given.
https://edca.1dca.org/DCADocs/2013/1403/131403_DC08_01202015_083058_i.pdf

***Anglinphillips v. State*, 154 So. 3d 500 (Fla. 4th DCA 2015)**

The defendant was on probation for embezzlement and ordered to pay restitution. She failed to do so, and her probation officer filed a violation of probation that alleged failure to pay restitution and other costs, three counts regarding traffic violations, and one count of failure to disclose contact with law enforcement. The trial court revoked her probation. The defendant appealed, arguing that while the trial court could have based her violation of probation on the restitution allegation, it did not, but rather based it solely on her noncriminal citation for driving while license suspended and failing to report her contact with law enforcement. The appellate court reversed, stating that "probation may not be revoked based on 'a non-criminal traffic violation absent a special condition of probation proscribing such conduct' [which,] when the dust cleared, [was] the only allegation the court relied upon."
http://www.4dca.org/opinions/Jan%202015/01-07-15/4D13-409.op.pdf

***State v. Curtis*, 22 Fla. L. Weekly Supp. 488a (Fla. 5th Cir. Ct. 2014)**

The trial court dismissed *sua sponte* the defendant's citation for driving with an expired license, after the defendant advised the court that he had surrendered his Florida driver license when he moved to New York, and that he held a valid New York license when the citation was issued. The state appealed, and the appellate court reversed, stating: "Under Florida law, 'in the absence of statute or motion to dismiss, the decision whether to prosecute or to dismiss charges is a determination to be made solely by the State.' . . . Even though a trial judge may have good

reason to dismiss a charge, 'he cannot interfere with the exercise of prosecutorial discretion.' . . . Thus, such a dismissal constitutes an abuse of discretion."

***Israni v. Broward Sheriff's Office,* 22 Fla. L. Weekly Supp. 431a (Fla. 17th Cir. Ct. 2014)**

The defendant was found guilty of failing to obey a traffic signal and failing to wear a safety belt. He appealed, arguing as to the first charge that the flashing sign had malfunctioned, and that "during the few minute delay from when he was pulled over and when the police officer approached him, he only then removed his safety belt." He also argued that he was treated unfairly because of "intensely racial and equally intense misperceived religious prejudices . . . and consequentially retaliatory trailblazing." The circuit court, in its appellate capacity, affirmed, stating that because the defendant did not include a transcript of the trial in his appeal, it could not "properly resolve factual issues to conclude the trial court's judgment is not supported by evidence or an alternate theory."

***Serrano v. State,* 22 Fla. L. Weekly Supp. 424a (Fla. 11th Cir. Ct. 2014)**

The defendant was convicted of leaving the scene of an accident. He appealed, arguing that the trial court committed reversible error by receiving into evidence prejudicial hearsay. But the circuit court, in its appellate capacity, affirmed. On redirect examination of a police officer, the prosecutor had asked whether the defendant admitted having been in the accident. The officer began to reply, but a hearsay objection was made and sustained. The circuit court held that the officer's partial answer — "No. Someone actually said that -- that he was driving the -- " — was "hopelessly ambiguous and inconclusive," and that because of the sustained objection "[i]ts meaning, if it ever had one, is irretrievably lost. The trial judge . . . concluded that the hearsay (if indeed the sentence fragment was understood by the trier of fact to convey an out-of-court statement offered for its truth) was, in light of the sustained objection, insufficiently prejudicial to justify mistrial. We cannot say otherwise."

***Brantley v. State,* 22 Fla. L. Weekly Supp. 421b (Fla. 11th Cir. Ct. 2014)**

The defendant was convicted (second) of driving with a suspended license, and adjudication was withheld. She appealed, arguing that the state had failed to prove venue (that the offense took place in Miami-Dade County). The circuit court, in its appellate capacity, affirmed, holding that "[d]espite the [state's] failure below to ask the 'venue question' of the police officer of whether the offense of DWLS occurred in Miami-Dade County," the evidence was sufficient to allow the trial court to reasonably infer that it was.

***Rosa v. State,* 22 Fla. L. Weekly Supp. 420a (Fla. 7th Cir. Ct. 1995)**

The defendant was found guilty of speeding. He appealed, arguing that it was error for the trial court to admit radar results into evidence because the radar unit was not tested in compliance with administrative rules; it was not tested until about 23 hours after the defendant's citation was issued. The circuit court, in its appellate capacity, agreed and reversed for a new trial, noting that the defendant's attorney had objected to the admissibility of the radar results at the traffic infraction hearing.

III. Arrest, Search and Seizure

***State v. Coley*, ___ So. 3d ___, 2015 WL 774640 (Fla. 4th DCA 2015)**

An officer stopped the defendant's vehicle for illegal window tint and arrested him for possession of cocaine and cannabis. The trial court granted the defendant's motion to suppress, but the appellate court reversed, stating that "the trial court erred by treating the officer's view of the facts as a mistake of law" because he knew what the legal tint threshold was. Therefore, the issue was whether the officer had probable cause to believe the tint was illegal when he stopped the defendant. The state argued that "the fact that the officer could not see the driver of the vehicle through the tint of the side window in the middle of the day gave him probable cause to believe that the vehicle had an illegal tint, and therefore, justified the traffic stop." The appellate court agreed, stating that the officer's "belief (a tint that is too dark to allow one to see the occupant is illegal) is not a mistake of law; rather, this belief relates to the facts he used to conclude he was justified in making a traffic stop." And as the defendant's window tint actually was below the statutory minimum, as the officer had suspected, there was no mistake of fact.
http://www.4dca.org/Website/opinions/Feb%202015/02-25-15/4D13-1402.op.pdf

***Oliver v. State*, ___ So. 3d ___, 2015 WL 585536 (Fla. 5th DCA 2015)**

The defendant was a passenger in a vehicle that a police officer stopped for an inoperable tag light. An officer with a K-9 arrived to make an exterior search of the car and ordered the defendant three times to "keep his hands on the f* * *ing dashboard." After the K-9 alerted to the presence of drugs in the car, the defendant was searched, marijuana and a firearm were found on him, and he was arrested. He filed a motion to suppress, which the trial court denied, focusing on the fact that the defendant had not tried to leave. The appellate court reversed, stating that "the issue is not whether [the defendant] actually made such an effort. Rather, the focus should have been on whether, under the circumstances, a reasonable person would have believed he was free to leave," which was not the case. And while "mindful of the dangers inherent in any traffic stop," the court noted that "in this case, the officers had no basis to believe that the occupants of the car constituted a danger."
http://www.5dca.org/Opinions/Opin2015/020915/5D14-857.op.pdf

***State v. Scott*, 22 Fla. L. Weekly Supp. 682a (Fla. 17th Cir. Ct. 2015)**

A deputy did a computer check on the vehicle the defendant was driving and discovered that its registered owner had a suspended license. He stopped the defendant, and the defendant was charged with driving while license suspended. He filed a motion to suppress all post-stop evidence, arguing that he was stopped without reasonable suspicion or lawful justification. The trial court granted the motion, finding that "the officer did not look at the description of the registered owner prior to stopping [the defendant] and obtaining his identification" and that "the officer could not recall whether the driver was the owner or not." The circuit court, in its appellate capacity, reversed, finding that "the officer did have lawful justification to perform the investigatory stop . . . as it was supported by a well-founded suspicion of unlawful activity."

***State v. Barbosa*, 22 Fla. L. Weekly Supp. 680a (Fla. 17th Cir. Ct. 2014)**

The defendant was parked in his father's vehicle when an officer approached and smelled marijuana. The officer found a partially rolled joint on the driver's side floorboard, and the defendant was charged with possession of cannabis under 20 grams. He filed a motion to dismiss, arguing that there was insufficient evidence to establish a prima facie showing that he had dominion and control of the cannabis as required for constructive possession. The trial court agreed and dismissed, and the circuit court, in its appellate capacity, affirmed. It noted that the defendant was not the owner or regular driver of the vehicle and was not "in exclusive possession of the premises as there was a passenger in the vehicle with him." Further, "[t]he cannabis was not in plain sight . . . and there were no fingerprints, incriminating statements, or other circumstances from which to infer that [the defendant] had dominion and control over the cannabis. . . . [M]ere proximity to the cannabis is insufficient."

***State v. Moreno*, 22 Fla. L. Weekly Supp. 521b (Fla. 11th Cir. Ct. 2014)**

The defendant was charged with, among other things, DUI. The trial court granted his oral motion to suppress and dismissed the case. The state appealed, and the appellate court vacated the suppression order, dismissal, and judgment. It held that although the state's witnesses did not timely appear for trial, nevertheless the state was prejudiced by insufficient notice to subpoena witnesses who could "demonstrate 'evidence of good cause for the stop.'" It also agreed with the state that "defense counsel did not provide a reason for suppression before the court granted the motion" and that the trial court granted the defendant's motion "without first determining [its] legal sufficiency."

IV. Torts/Accident Cases

***McIntosh v. Progressive Design and Engineering, Inc.*, ___ So. 3d ___, 2015 WL 1422590 (Fla. 4th DCA 2015)**

The plaintiff's father was killed in a car accident, and the plaintiff sued the company that designed the intersection's traffic signals. The jury found against him, and he appealed, arguing that "(1) the trial court erred in finding that the *Slavin* doctrine [that a contractor is not liable for patent defects after acceptance of a construction project by the owner] applied to the design company; (2) the evidence did not support the jury's finding that the completed intersection had been 'accepted' before the accident; and (3) the design defect was latent." The appellate court found no error and affirmed, stating:

> The trial court did not err in permitting the jury to determine whether the defect was patent and whether the project was accepted. It also did not err in its instructions to the jury. The factual disputes on these issues precluded the court from deciding them as a matter of law for either side. While the jury found the design company negligent, and the legal cause of the plaintiff's father's death, it also found the design was accepted and discoverable (or patent) by FDOT with the exercise of reasonable care. The trial court correctly declined to disturb these findings which were supported by the evidence.

http://www.4dca.org/opinions/March%202015/03-25-15/4D12-2335.op.rehearing.pdf

***Joara Freight Lines, Inc. v. Perez,* ___ So. 3d ___, 2015 WL 1313203 (Fla. 3d DCA 2015**

Perez sued Joara Freight Lines, of which Perez's wife was the sole officer, employee, and agent, alleging a tractor-trailer owned by Joara pinned him against a concrete barrier, causing injuries. The trial court appointed a special master, and Joara Freight sought a writ of mandamus to strike the order. The appellate court granted the writ, finding that "the referral to the special master was made without the consent and over the objection of Joara Freight in contravention of Florida Rule of Civil Procedure 1.490(c)."
http://www.3dca.flcourts.org/Opinions/3D15-0292.pdf

***Russ v. Williams,* ___ So. 3d ___, 2015 WL 1259506 (Fla. 1st DCA 2015)**

Russ sued Mr. Williams, alleging that he was the owner and operator of the vehicle that was involved in a crash with her vehicle. A week after the statute of limitations expired, Mr. Williams filed a motion for summary judgment, offering evidence that his wife was the owner and operator of the vehicle. Russ then filed an amended complaint, substituting Ms. Williams for Mr. Williams. The trial court dismissed the complaint because the statute of limitations had run. The appellate court affirmed, stating that the relation-back doctrine did not apply because the case "involves two separate individuals. The fact that the individuals are married is immaterial because each spouse has his or her own legal rights and obligations and Florida law is clear that one spouse is not responsible for the torts of the other." It also held insignificant whether Ms. Williams knew about the original complaint within the statute of limitations period, because "the Williams did not do anything to mislead Ms. Russ as to the identity of the proper defendant."
https://edca.1dca.org/DCADocs/2014/2772/142772_DC05_03202015_113452_i.pdf

***GEICO v. Ryan,* ___ So. 3d ___, 2015 WL 1040461 (Fla. 4th DCA 2015)**

Ryan was in a car accident and sued GEICO under her uninsured/underinsured motorist insurance. She made a proposal for settlement "in the total amount of One Hundred Thousand Dollars ($50,000.00)." The case went to trial, and the jury awarded Ryan $195,739.81. She sought costs and attorney's fees based on the proposal for settlement. GEICO argued that the proposal for settlement was ambiguous, but the trial court held in favor of Ryan. The appellate court reversed, stating the proposal contained "a patent ambiguity—spelling out $100,000 in words but also referring to $50,000 in numerals."
http://www.4dca.org/opinions/March%202015/03-11-15/4D13-2615.op.pdf

***Peninsula Logistics, Inc. vs. Erb,* ___ So. 3d ___, 2015 WL 965659 (Fla. 5th DCA 2015)**

The Erbs's vehicle was struck by a truck driven by Smith while he was transporting cargo for Peninsula Logistics, Inc. Although the Erbs conceded that Smith was an independent contractor, they argued that Peninsula was liable for his negligence because, under section 316.302(1)(b), Florida Statutes, owners of commercial motor vehicles engaged in intrastate commerce are subject to certain federal rules and regulations under which "employee" includes independent contractors. The trial court agreed and directed a verdict in favor of the Erbs on the issue of Peninsula's vicarious liability. The appellate court reversed, stating that "because Peninsula was neither the owner nor driver of the vehicle operated by Smith, . . , it is not 'subject to' the federal rules and regulations. . . . Second, even if the federal rules and regulations apply to

Peninsula due to its contractual relationship with Smith, Peninsula was not Smith's 'employer,' as defined by those rules and regulations, because it did not 'own or lease' the vehicle, or 'assign' Smith to operate it."
http://www.5dca.org/Opinions/Opin2015/030215/5D13-4099.op.pdf

***Vogan v. Cruz*, ___ So. 3d ___, 2015 WL 965630 (Fla. 5th DCA 2015)**

Vogan sued Cruz for injuries from an automobile accident. Cruz made an offer of settlement for $5,001. Vogan rejected the offer and obtained a verdict for $1,258, and Cruz was awarded attorney's fees and costs. Vogan appealed, and the appellate court reversed, stating that the offer was "ambiguous as to whether it would preclude Cruz's potential uninsured motorist and health insurance claims, and thus, is unenforceable."
http://www.5dca.org/Opinions/Opin2015/030215/5D14-213.op.pdf

***L.E. Myers Co. v. Young*, ___ So. 3d ___, 2015 WL 848200 (Fla. 2d DCA 2015)**

The plaintiff Young's decedent was killed in an automobile accident. The plaintiff sued L.E. Myers Co., which had contracted with FP&L on a project that involved replacing four concrete power poles. On the day of the accident, a subcontractor had parked a truck on the shoulder of the road, with a left rear tire slightly over the white line on the edge of the road and a pole sticking out several feet off the truck bed but not into the road. The plaintiff's decedent had stopped before the work site, waiting to turn left, when another driver, going 91 mph in a 40 mph zone, rear-ended him, pushing him into the concrete pole on the truck bed. The plaintiff sued the other driver, FP&L, Myers, and some subcontractors. The plaintiff filed a motion for partial summary judgment against Myers' affirmative defenses, asserting that "because Myers was engaged in an inherently dangerous activity it was legally responsible for any negligence of its subcontractors and therefore was not entitled to any set-offs for their negligence." The trial court granted the partial summary judgment, but the appellate court reversed, noting that the trial court had found that there were disputed issues of fact. The appellate court also found that the trial court had improperly permitted the jury to consider the issue of punitive damages, stating that "there is simply no view of the evidence presented by the Estate that would support a conclusion that Myers' conduct was of a gross or flagrant character that evinced a reckless disregard for human life" or show that Myers did not have a traffic plan in place at the time of the accident.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/February/February%2027,%202015/2D13-6203.pdf

***Germany v. Darby*, ___ So. 3d ___, 2015 WL 631523 (Fla. 1st DCA 2015)**

Mr. Germany was injured in a job-related accident with an uninsured motorist while driving a car owned and insured by his employer, Hinson Oil Company. Hinson's auto insurance policy had an endorsement providing uninsured and underinsured motorist coverage of "up to $500,000 for executives and their families, but only up to $30,000 for all other insureds, including employees like Mr. Germany." The Germanys argued that Florida law did not allow the policy to have different limits of UM coverage among insureds, but the trial court disagreed and granted summary judgment in favor of the insurance company. The appellate court affirmed, stating that section 627.727, Florida Statutes, "expressly permits the election of '*lower limits*' by

a named insured on behalf of all insureds. It does not specify that there must be a single 'limit' applicable to all insureds."
https://edca.1dca.org/DCADocs/2014/0054/140054_DC05_02162015_104219_i.pdf

***Hall v. West,* ___ So. 3d ___, 2015 WL 72346 (Fla. 2d DCA 2015)**

The plaintiff Hall sued West, Shephard's Beach Club, LLC, and Shephard's Management, Inc. Shephard's security staff had told West "to leave the premises and escorted him and his friends to their car," at which point West drove away, and two hours later he struck and seriously injured Hall. Hall alleged that Shephard's had a duty to prevent West from driving. The trial court did not find such duty and granted a summary final judgment for Shephard's, and the appellate court affirmed. It held that section 768.125, Florida Statutes (2008), barred Hall's argument as West was not under the legal drinking age and the evidence did not suggest Shephard's "knew whether he was habitually addicted to alcohol." Hall also argued that "independent of any sale of alcoholic beverages . . . Shephard's was negligent in allowing Mr. West to drive away while intoxicated." But the appellate court noted that Hall's injuries were caused by West's intoxication, and "Shephard's alleged negligence did not break that chain." It further noted that "Florida law imposes no general duty on a business owner to ensure the safety of an intoxicated person who is about to leave the premises. And, that business has no legal duty to control the conduct of a third person to prevent that person from harming others."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2015/January/January%2007,%202015/2D13-4138.pdf

***Smith v. State*, 154 So. 3d 1191 (Fla. 4th DCA 2015)**

A jury acquitted the defendant of three counts of DUI manslaughter, but he was convicted of three counts of vehicular homicide. He sought postconviction relief, arguing, among other things, that his trial attorney was ineffective for failing to call an accident reconstruction expert to rebut the testimony of the state's experts. The trial court denied the motion, and the appellate court affirmed. It noted the defendant had to show his attorney's performance was deficient and prejudiced the defense, and it agreed with the trial court that the attorney's performance was not deficient "because based on the totality of the evidence at trial, there is no reasonable probability that the outcome of the trial would have been different."
http://www.4dca.org/opinions/Jan%202015/01-07-15/4D14-724.pdf

***Hankerson v. Wiley*, 154 So. 3d 511 (Fla. 4th DCA 2015)**

The trial court allowed the plaintiff to view a post-accident surveillance video before a deposition. The defendant sought certiorari review, which the appellate court granted, stating: "Because the benefit of the surveillance video may be irreparably lost if the plaintiff is permitted to view [it] before [the defendant] has an opportunity to question her, irreparable harm for certiorari jurisdiction has been shown. . . . [The] trial court abuses its discretion where it permits a plaintiff to view a post-accident surveillance video before allowing a defendant to depose the plaintiff. A bright line rule is preferable in this area because it will impose uniformity and avoid disparate rulings based primarily on the identity of the trial judge."
http://www.4dca.org/opinions/Jan%202015/01-07ohhh, -15/4D14-4207.op.pdf

V. Drivers' Licenses

***Rancifer v. State*, ___ So. 3d ___, 2015 WL 1334033 (Fla. 1st DCA 2015)**

The defendant's driver license in the name Keith Douglas Rancifer was suspended. He tried to obtain a Florida ID card using a birth certificate under the name "Male Williams" because no other birth certificate matched his name and date of birth. After finding duplicate ID cards in the names Keith Douglas Rancifer and Male Williams, the state filed criminal charges against the defendant, and he was convicted of seeking to obtain a Florida ID card under a false name. The trial court denied his motion to dismiss, but the appellate reversed and vacated the conviction because "it is undisputed that the birth certificate the appellant presented in seeking the identification card was a certified copy of his actual birth certificate contained in the records of the State of New York and because we find that the name on that birth certificate was the only legal name that the appellant could have used to seek a Florida identification card."
https://edca.1dca.org/DCADocs/2014/2351/142351_DC13_03252015_105618_i.pdf

***DHSMV v. Hirtzel*, ___ So. 3d ___, 2015 WL 873536 (Fla. 1st DCA 2015)**

The defendant's license was suspended for DUI after an accident. He claimed he drank alcohol only after the accident, but the hearing officer upheld the suspension. The circuit court quashed it, holding there was no competent, substantial evidence to establish that the defendant was alcohol impaired when he was driving. DHSMV then sought review, and the appellate court quashed the circuit court order, stating that the circuit court had "conducted, in essence, a de novo review of the hearing officer's factual findings and reweighed the evidence" and "did not address the evidence that supported the hearing officer's finding of probable cause."
https://edca.1dca.org/DCADocs/2014/2688/142688_DC03_03032015_125552_i.pdf

***DHSMV v. Lanning*, 156 So. 3d 533 (Fla. 1st DCA 2015)**

A hearing officer suspended the defendant's driver license, but the circuit court overturned the order. The appellate court quashed the circuit court order, finding that it had "improperly reweighed the evidence concerning substantial compliance with Rule 11D–8.007(3), Florida Administrative Code. By doing so, the circuit court applied the wrong law."
https://edca.1dca.org/DCADocs/2014/2193/142193_DC03_01022015_090844_i.pdf

***DHSMV v. Azbell*, 154 So. 3d 461 (Fla. 5th DCA 2015)**

The defendant's driver license was suspended. The circuit court granted his petition for certiorari and held the department "failed to introduce substantial, competent evidence to justify the suspension." The appellate court denied the department's petition for certiorari as to that order, and the circuit court ordered the department to reinstate the license. The department challenged that order, arguing that rather than reinstating the license, the circuit court should have remanded the case to the department for "a new hearing with different evidence." But the appellate court denied the petition, stating that a new hearing is not required when the lack of evidence was caused by the department's failure to present sufficient proof. It distinguished cases where a party was denied the right to present evidence. The department also argued that "the circuit court lacked the authority to 'direct the administrative agency to take any particular action on remand.'" But the department cited cases that involved "the authority of an appellate

court on second-tier review," whereas in this case "the circuit court on first-tier review made the determination that the evidence to support the suspension was lacking. On review, we allowed that decision to stand. After our mandate issued, the circuit court simply enforced its mandate. A reviewing court on first-tier certiorari review has the inherent authority to enforce its mandate." http://www.5dca.org/Opinions/Opin2014/122914/5D14-838.op.pdf

***Schenck v. DHSMV*, 22 Fla. L. Weekly Supp. 672a (Fla. 9th Cir. Ct. 2015)**

The defendant's license was suspended for refusal to take a breath test. She sought review, arguing that "for a traffic stop that is based on a traffic infraction to be lawful, an officer must have probable cause to believe that a traffic violation has occurred," and the hearing officer "did not rule that she committed a specific civil traffic infraction nor was there evidence that her driving pattern created a danger to herself or to other traffic." But the circuit court, in its appellate capacity, denied review, stating that "notwithstanding that [the defendant] was not cited for a traffic infraction, her driving pattern did not have to rise to the level of a traffic infraction to justify the stop," and that the officer's observations of her erratic driving pattern (changing lanes without signaling, drifting within her lane at least five times, swerving and crossing over the yellow fog line, almost striking a raised median twice) "provided competent substantial evidence to support that he had an objectively reasonable basis to stop [her] vehicle to determine if she was ill, tired, in danger, or driving under the influence."

***Berry v. DHSMV*, 22 Fla. L. Weekly Supp. 671a (Fla. 9th Cir. Ct. 2014)**

An officer saw the defendant behind the wheel of her vehicle, parked perpendicular in a road, partially blocking a lane of traffic. After an investigation, the defendant's license was suspended for refusal to take a breath, blood, or urine test. She sought review, arguing that the officer "did not have probable cause to believe that she was driving or in actual physical control of a motor vehicle . . . because the vehicle was not running, and the keys were not in the ignition," and therefore "there was no evidence that she was impaired when she lawfully parked the vehicle." She also asserted that she did not refuse a breath, blood, or urine test. But the circuit court, in its appellate capacity, denied review, noting that the defendant's vehicle was not lawfully parked, and she cited "no supporting facts or law to support her position that she did not refuse the breath test." In any case, the defendant did not preserve the issues for appeal.

***Geyer v. DHSMV*, 22 Fla. L. Weekly Supp. 670a (Fla. 6th Cir. Ct. 2015)**

An officer stopped the defendant after seeing him drive about 40 mph over the speed limit, and noticed indicia of impairment. Ultimately the defendant's license was suspended for refusal to take a breath test. He sought review, arguing that the stop was not valid because there was no indication that the officer "based his estimation of speed on visual or aural perceptions" or as to his vantage point when he determined the defendant's speed. But the circuit court, in its appellate capacity, denied review, stating that the evidence showed otherwise.

***Xhokli v. DHSMV*, 22 Fla. L. Weekly Supp. 664a (Fla. 6th Cir. Ct. 2015)**

A deputy saw the defendant driving about 24 mph over the speed limit and changing lanes abruptly. He stopped her and noticed indicia of impairment. She refused to take a breath test, and her license was suspended. She sought review, arguing that the deputy was not

authorized to ask for a breath test because he testified that he believed her to be impaired by drugs rather than alcohol, and therefore she did not refuse a *lawful* breath test. But the circuit court, in its appellate capacity, denied review because the deputy did smell alcohol, and the fact that he testified that the defendant also "could have been under the influence of a drug did not negate the probability or possibility that [she] was under the influence of alcohol."

***Zoeller v. DHSMV,* 22 Fla. L. Weekly Supp. 486a (Fla. 4th Cir. Ct. 2014**)

The defendant's license was suspended for DUI and she sought review, claiming that her due process rights were violated when the hearing officer used unpromulgated versions of forms regarding the formal review hearing. The circuit court in its appellate capacity disagreed, stating that even if the use of the newly revised forms was improper, the defendant alleged only that it was error to use them, not that their use caused her any material injury. She also claimed she was denied an impartial hearing because the hearing officer denied her motion to recuse, which was based on a memorandum sent from the chief of the Bureau of Administrative Reviews to all hearing officers "instructing them to refrain from determining the legality of the arrest when deciding cases where the petitioner's license was suspended for driving with an unlawful breath or blood alcohol level." The court disagreed, noting that this issue had been previously decided in the department's favor. The defendant's third claim was that her due process rights were violated "when the Hearing Officer denied her motion to amend the scope of review of the Formal Review Hearing to include a determination of the lawfulness of the arrest." The court noted that although the hearing officer initially stated that the issue was outside the scope of the proceedings, the defendant was permitted to question officers about the lawfulness of the arrest, and the hearing officer did end up considering that issue and found the arrest was lawful.

However, the court granted certiorari relief and quashed the suspension based on the defendant's fourth ground: that her due process rights were violated when the hearing officer denied her requests for subpoenas duces tecum regarding certain documents relevant to the officer's qualifications to conduct breath tests. The defendant sought "any and all permits held by [the officer] under rule 11D-8.008, Florida Administrative Code, as well as all certificates of completion of continuing education courses and the dates of any and all renewal courses that [he] completed regarding his breath test operator permit [and] a copy of his initial breath test operator permit and certificate of completion from his last successfully completed renewal course." The hearing officer denied these requests and issued a more limited subpoena duces tecum requiring that the officer bring "only a copy of his most recent Alcohol Testing Program certification." The court held that the documents the defendant sought were relevant and material.

***Revell v. DHSMV,* 22 Fla. L. Weekly Supp. 485a (Fla. 2d Cir. Ct. 2014)**

The defendant's license was suspended for DUI and she sought review, claiming that "the breath test was coerced when law enforcement provided inaccurate information regarding a hardship license," and that there was not competent substantial evidence to support the suspension. She alleged the trooper told her that she would not be eligible for a ten-day temporary hardship license if she refused the breath test and that "she would be ineligible for a hardship license for 60 days if she refused, rather than 30 days if she consented." The circuit court in its appellate capacity denied review, stating that the suspension did not result in a substantial injury to the defendant's legal rights: "Testimony that some inaccurate information

was provided is not enough to support the issuance of a Writ. . . . Additionally, a refusal would have resulted in a year suspension rather than 6 months, which makes it difficult for [the defendant] to meet her burden." The court also found that there was competent substantial evidence that the trooper read the defendant her a valid implied consent warning.

***Kamau v. DHSMV,* 22 Fla. L. Weekly Supp. 418a (Fla. 4th Cir. Ct. 2014)**

The defendant's license was suspended for DUI. He sought review, arguing that he was unlawfully detained when the officer, "based solely on an anonymous tip, blocked in [the defendant's] car, opened [his] car door, and removed [his] keys while [he] was asleep in his vehicle." The circuit court in its appellate capacity agreed and quashed the suspension, finding that the "seizure was not based on a reasonable suspicion of criminal activity or on a specific concern for officer safety or for the health and safety of the [defendant] or others. . . . Although an officer's concern for safety may justify an individual's temporary detention, the facts of this case do not show a specific concern for officer safety."

VI. Red-light Camera Cases

***Clark v. State*, ___ So. 3d ___, 2015 WL 1071056 (Fla. 5th DCA 2015)**

The defendants received traffic citations after red-light cameras allegedly captured them running red lights. The trial court found that photographic and video evidence obtained from red-light cameras must be authenticated before being admitted into evidence, and it dismissed the citations. The state appealed, and the circuit court in its appellate capacity reversed, holding that the evidence was self-authenticating. The defendants sought review, but the district court of appeal denied their petitions, stating that

> The Legislature expressly provided in the statute that this evidence is admissible in any proceeding to enforce red light camera violations, leaving it unclear whether the Legislature, by its wording of the statute, equated admissibility with self-authentication.
>
> . . . . Because we find that the language of the 2012 version of the statute was ambiguous, we conclude that certiorari relief is not warranted because the circuit court did not violate a *clearly established* principle of law in finding that the photographs and video at issue were admissible in evidence without authentication.

http://www.5dca.org/Opinions/Opin2015/030915/5D14-3495.op.pdf

VII. County Court Orders

***State v. Johnson*, 22 Fla. Law Weekly Supp. 763b (Brevard Cty. Ct. 2015)**

The defendant was arrested for DUI and gave a breath sample. She filed a motion to suppress the results, arguing that the officer had not informed her that failure to submit to it would result in the suspension of her license. The state filed a motion to strike the defendant's

motion to suppress, and the court granted the state's motion, stating: "This not a situation where there was refusal and a failure of law enforcement to inform the Defendant of her implied consent warning." The law requires the warning to be given "*as result of a refusal to submit such a test or tests*." The defendant also sought to suppress based on her claim that "after the 20 minute observation period, the operator ran a second 'purge' of breath test instrument three minutes after the first 'purge' indicated that it 'failed' without waiting a second 20 minute observation period." The court disagreed, stating: First, this is not a proper subject of a Motion to Suppress under the rules of criminal procedure and Second it fails on the merits."

***State v. Venerable*, 22 Fla. Law Weekly Supp. 763a (Brevard Cty. Ct. 2015)**

An officer saw the defendant traveling 20 mph over the speed limit and stopped him. Noticing indicia of impairment, the officer conducted a DUI investigation. The defendant filed a motion to suppress, claiming that after being taken into custody he asked for a blood test, which conflicted with the officer's testimony. The court denied the defendant's motion, stating that "the only witness with a motive to tell an untruth was the Defendant. The court was not impressed by the Defendant's demeanor, and finds that the Officer was in fact the more credible witness."

***State v. Ashmore*, 22 Fla. Law Weekly Supp. 760a (Brevard Cty. Ct. 2014)**

The defendant was arrested for DUI after being stopped for speeding. He filed a motion to suppress, but the court denied it, stating that although the video did not show that the defendant drove over the center line, it did show him "driving to the extreme left portion of his lane," and the deputy's uncontradicted visual estimations of speed justified the stop.

***State v. Primrose*, 22 Fla. Law Weekly Supp. 758b (Brevard Cty. Ct. 2015)**

An individual helping with parking control at a festival told his supervisor he saw the defendant, clearly drunk, get into a gray Astro van. The supervisor told an onsite deputy. Another deputy stopped the van a few minutes later, and the defendant was arrested for DUI. The defendant filed a motion to suppress, arguing that the information given to the arresting deputy was hearsay. The court denied the motion, holding that the stop was proper and stating that

> the Statements made were in fact spontaneous describing the observations in real time while the declarant was perceiving the event or shortly thereafter, or immediately thereafter, and there was no evidence that it lacked trust worthiness. . . .
>
> It is well established that Law Enforcement in Florida, may make a lawful automobile stop based on a reasonable suspicion and that information supplied by an identified citizen informant can serve as a basis for a stop based upon reasonable suspicion.

***State v. Meyer*, 22 Fla. Law Weekly Supp. 757b (Brevard Cty. Ct. 2015)**

Two 911 calls were received about a red Dodge truck driving recklessly. A deputy saw the truck slightly cross the fog line, veer too far to the left of the entrance of an exit lane, make a U-turn in a parking lot, and drive onto a cement divider. The deputy stopped the truck for a well-

check, and the defendant was arrested for DUI. He filed a motion to suppress, but the court denied it, stating: "Based upon the information provided by the two concerned citizens, including the color, make, model and partial tag number, the reports of reckless driving, and [the deputy's] observations, there was more than sufficient reasonable suspicion to conduct a traffic stop."

***State v. Milne*, 22 Fla. Law Weekly Supp. 756b (Brevard Cty. Ct. 2014)**

The defendant was arrested for DUI. The court granted his motion to suppress, stating: "The testimony from the stop officer . . . that the Defendant's vehicle was casting within the lane even combined with the 8-10 mph under the speed limit was insufficient for a traffic stop."

***State v. Hoffman*, 22 Fla. Law Weekly Supp. 755a (Brevard Cty. Ct. 2015)**

While patrolling for possible convenience store robberies, an officer saw the defendant's running car parked next to a gas station/convenience store for about 30 minutes. He approached and spoke with the defendant and saw him put a silver object between the seats. Thinking it might be a weapon, the officer asked the defendant to turn off the car, take the keys out of the ignition, and get out. The silver object turned out to be a pill container with cocaine residue, and the defendant was arrested for possession. He filed a motion to suppress, arguing that the events were a seizure, which was not justified because the officer "had only a mere hunch of criminal activity and not a founded suspicion to temporarily detain" him. While the court found that a seizure had occurred, it was justified because under the totality of the circumstances, the officer had "a founded suspicion based on articulable facts . . . to temporarily seize [the defendant] and investigate the possibility of a robbery."

***State v. Newman*, 22 Fla. Law Weekly Supp. 716a (Volusia Cty. Ct. 2014)**

The defendant was arrested for DUI. She filed a motion to suppress, arguing that "the arresting officer did not have probable cause to believe [she] was in actual physical control of the vehicle and the other officer was outside her jurisdiction thereby not able to make a valid arrest." The court agreed and granted the motion, noting that the out-of-jurisdiction officer could not be held to have made a citizen's arrest because when she arrived at the scene "there was no breach of the peace. There was no erratic driving nor any report of the vehicle in the middle of the road [with the defendant] passed out behind the wheel."

***State v. Vrana*, 22 Fla. Law Weekly Supp. 712a (Pinellas Cty. Ct. 2014)**

The defendant was arrested for DUI. Explaining the consequences of a breath sample result over the legal limit, the officer stated: "The way it works, is if you provide a sample. . .if your breath alcohol level is over the legal limit, then I suspend your license. I don't suspended [sic] it necessarily for a year, that's determined by the court system. It could be suspended for a couple months, it could be suspended for six months, or it could be suspended for a year. I don't determine that. But if you refuse, it's an automatic one year suspension." The defendant filed a motion to exclude the request for and result of the breath test, which the court granted because the officer's statement of the law was inaccurate.

***State v. Wise*, 22 Fla. Law Weekly Supp. 705b (Leon Cty. Ct. 2014)**

A trooper responded to a traffic accident and noticed indicia of impairment as to the defendant. Neither the trooper nor other officers on the scene read her the *Miranda* warnings before questioning the defendant, and she made incriminating statements. She filed a motion to suppress and a motion in limine, which the court granted, based on the accident report privilege.

***State v. Bundy*, 22 Fla. L. Weekly Supp. 654a (Brevard Cty. Ct. 2014)**

The defendant was arrested for DUI after an accident and filed a motion to suppress the request for and results of the urine test. The court denied the motion, stating:

> [B]esides [the officer's] observations of impairment and the fact that there was a traffic crash, there was no additional evidence to indicate whether it was alcohol or drugs that caused [the defendant's] impairment. Factually significant in this case is that there was no breath test result to determine whether there was alcohol in [the defendant's] system nor was there any specialized physiological testing to determine if controlled substances had been consumed. Further there was no evidence of an odor of alcohol or marijuana, admissions of drinking alcohol or taking drugs, alcohol containers or pill bottles, alcohol or controlled substances or paraphernalia, or witness statements indicating drinking or consumption of drugs.

Nevertheless, the officer had reasonable cause to request a urine sample "based on the totality of circumstances observed." The court noted that the result might have been different if the state's burden of proof had been "beyond a reasonable doubt or even probable cause."

***State v. Busshaus*, 22 Fla. L. Weekly Supp. 652a (Brevard Cty. Ct. 2014)**

The defendant was charged with unlawful breath alcohol level. He filed a motion to dismiss based on double jeopardy because the court had previously declared a mistrial. The court denied the motion, stating that "[t]he mistrial was based on 'manifest necessity' due to an insufficient number of jurors remaining on the jury, together with the defendant's unwillingness to proceed with less than the requisite six jurors." The defendant argued that "the Court's excusal of one of the jurors was error and as a result no 'manifest necessity' existed for the mistrial." But the court disagreed, stating that no Florida appellate court "has held that the issue of double jeopardy is dependent upon validity of prior rulings which may have resulted in or contributed to the existence of 'manifest necessity.' The novel proposition that this Court should look behind the obvious existence of 'manifest necessity' to the propriety of preceding rulings would constitute a legally unsupported approach to evaluating the sufficiency of the basis for the mistrial and invite voluminous double jeopardy claims."

***State v. Tista*, 22 Fla. L. Weekly Supp. 632a (Miami-Dade Cty. Ct. 2014)**

The defendant was arrested for DUI. He filed a motion to suppress and declare Florida's implied consent law unconstitutional. The court denied the motion but certified to the district court of appeal the following question:

> IS FLORIDA'S IMPLIED CONSENT LAW CONSTITUTIONAL IN LIGHT OF THE UNCONSTITUTIONAL CONDITIONS DOCTRINE AS WELL AS THE FOURTH AMENDMENT'S SEARCH WARRANT REQUIREMENT?

The court found Florida's implied consent law constitutional because (1) it "does not violate the Unconstitutional Conditions Doctrine," and (2) searches pursuant to it "are reasonable because (a) they fall within the consent exception to the Fourth Amendment search warrant requirement and (b) the State's interest in protecting the public highways outweighs the minimal privacy intrusion inherent in a breath test."

***State v. Gonzalez*, 22 Fla. L. Weekly Supp. 624a (Miami-Dade Cty. Ct. 2014)**

See also State v. Gonzalez, 22 Fla. L. Weekly Supp. 621a (Miami-Dade Cty. Ct. 2014), below. The court denied the defendant's motion in limine to preclude the state from making a "consciousness of guilt" argument based on his refusal to take a breath test, but certified the following question:

> DOES THE FOURTH AMENDMENT PRECLUDE THE STATE FROM MAKING A "CONSCIOUSNESS OF GUILT"ARGUMENT ON THE BASIS OF A DUI REFUSAL BECAUSE THE DEFENDANT HAD A CONSTITUTIONAL RIGHT (AS OPPOSED TO A "STATUTORY OPTION") TO REFUSE THE BREATH TEST?

***State v. Gonzalez*, 22 Fla. L. Weekly Supp. 621a (Miami-Dade Cty. Ct. 2014)**

The defendant refused a breath test and was arrested for DUI. He filed a motion to dismiss and to declare section 316.1939, Florida Statutes, unconstitutional, and a motion in limine to preclude the state from making a "consciousness of guilt" argument based on his refusal (*see also State v. Gonzalez*, 22 Fla. L. Weekly Supp. 624a (Miami-Dade Cty. Ct. 2014), above). The court denied the motion in limine, disposing of the motion to dismiss, but certified to the district court of appeal the following question:

> IS CRIMINALIZATION OF A REFUSAL TO CONSENT TO A BREATH TEST PURSUANT TO FLORIDA STATUTE SECTION 316.1939 CONSTITUTIONAL IN LIGHT OF THE FOURTH AMENDMENT?

It stated: "This Court has previously determined that [Florida's implied consent law] is constitutional. . . . The Court must then consider whether there is a constitutional right to withhold the previously advanced implied consent that all drivers give when they apply for a Florida driver's license. This Court finds that there is no constitutional right to withhold that previously advanced consent and refuse to submit to a breath test. Therefore, the criminalization of a second or subsequent refusal to submit to a breath test does not run afoul of the Fourth Amendment."

***State v. Kozlak*, 22 Fla. L. Weekly Supp. 607b (Volusia Cty. Ct. 2013)**

The defendant was arrested for DUI and filed a motion to suppress/motion in limine because during the 20-minute observation period there were times when he was not in the line of sight of any of the three officers. The court granted the motion to suppress, stating that "when

there is a group effort among several officers, all of whom are multi-tasking, substantial compliance with the twenty minute observation rule is not established."

***State v. DiPrima,* 22 Fla. L. Weekly Supp. 605b (Volusia Cty. Ct. 2014)**

The defendant was arrested for DUI and filed a motion to suppress, asserting that the police officer lacked probable cause or reasonable suspicion to stop him and to conduct a DUI investigation. The court granted the motion, stating that although the defendant's driving on the median might have been a traffic violation, the officer did not stop him for a traffic violation but rather for a medical well-being check, for which there was no reasonable suspicion. "[T]he request to perform Field Sobriety Exercises was based on the few seconds of driving on the median and a faint odor of alcohol from the vehicle and the defendant's admission to having one drink. The Court finds that is insufficient."

***State v. Davis,* 22 Fla. L. Weekly Supp. 605a (Volusia Cty. Ct. 2014)**

The defendant was arrested for DUI. The court granted his motion to suppress, stating that "a wide turn, followed by a brief excursion into the oncoming lane, is not a sufficient basis for a traffic stop. . . . The statute requiring that a motorist maintain a single lane recognizes that it is 'not practicable, perhaps not even possible, for a motorist to maintain a single lane at all times and that the crucial concern is safety rather than precision.'"

***State v. Tapscott,* 22 Fla. L. Weekly Supp. 604a (Volusia Cty. Ct. 2014)**

A police officer stopped the defendant for tag lights not operating correctly, because she could not read the tag from 50 feet away, and for drifting within his lane. The defendant was arrested for DUI, and he filed a motion to suppress. The court denied the motion as to the legality of the stop, but granted it "as to the continued detention for a DUI investigation, subsequent arrest for DUI, and the results of the breath test." The court found the officer had probable cause to believe a traffic violation had occurred, but she "detained the Defendant longer than necessary to issue a traffic citation without reasonable suspicion" to believe he was DUI. "In determining whether an officer had sufficient facts to create a reasonable suspicion, the court must rely on the facts known to the officer prior to the detention and may not consider events that transpired after the detention," and the evidence did not show the defendant swerved in his lane, was confused or unsteady, stumbled over his words, unsteady or had trouble retrieving the requested papers. Indeed, "[t]he fact that the Defendant had the forethought to warn the officer of the handgun in the glove box would seem to show the opposite of impairment."

***State v. Kerr,* 22 Fla. L. Weekly Supp. 602b (Volusia Cty. Ct. 2014)**

An officer stopped the defendant after hearing his car engine revving and tires squealing, and seeing him fishtail. The officer's observations led to a DUI investigation and arrest. The defendant filed motions to suppress and to dismiss, based on the unlawfulness of the stop and the length of the detention. The court granted the motions, noting a lack of evidence of probable cause to stop the defendant for failing to maintain a single lane, reckless driving, or speeding. Regarding the length of the detention, "although the point is academic," the court held that the officer having the defendant wait in his vehicle for almost 30 minutes before he began a formal DUI investigation was an unreasonable delay.

***State v. Dittus*, 22 Fla. L. Weekly Supp. 596a (Duval Cty. Ct. 2014)**

A deputy saw the defendant asleep in the driver's seat of his vehicle, with the engine and lights off, parked at a gas station. The defendant was ultimately arrested for DUI, and he filed a motion to suppress, which the court granted. It held that the interaction began "as a consensual encounter to check on his medical well-being." But the deputy taking the defendant's keys and blocking his car "constituted a seizure without reasonable suspicion" of criminal activity or medical necessity, and therefore his initial detention was unlawful.

***State v. Remmie*, 22 Fla. L. Weekly Supp. 595a (Escambia Cty. Ct. 2014)**

The defendant was arrested for DUI. He filed a motion to suppress his refusal to submit to a breath test, arguing that the test was not lawful because under Florida Administrative Code Rule 11D-8.004(2) (2006), "[a]ny evidentiary breath test instrument returned from an authorized repair facility shall be inspected by the Department prior to being placed in evidentiary use," and that a second FDLE inspection "should take place at the agency upon arrival from ATP in Tallahassee via a common carrier" because the ATP is an "authorized repair facility." The court denied the motion, stating that it did not find that the intent of the rule was "to require the Department to re-inspect the instrument upon its arrival at the agency. Additionally, as the location of said inspection is not specified in the Rule, the Court finds the current procedures being used by ATP to conduct Department inspections are a permissible and reasonable construction of the statute and Rule. Therefore, these procedures are lawful."

***Jones v. DHSMV*, 22 Fla. L. Weekly Supp. 535b (Fla. 18th Cir. Ct. 2014)**

A store manager called the police after seeing the defendant stumble and fall, and an employee removed the keys from the ignition. The defendant was arrested for DUI and her license was suspended. At hearing, the police officers "testified that they were never responding to a call about an accident nor were they investigating an accident." The store manager testified that he did not see or report an accident. The defendant filed a motion to invalidate the suspension for lack of probable cause to arrest, which the hearing officer denied. But the circuit court, in its appellate capacity, quashed the hearing officer's decision, stating that DHSMV

> appears to confuse "substantial competent evidence" with evidence that is merely allowed to be considered by the Hearing Officer. The Department lists out the items that the Hearing Officer is statutorily authorized to consider in the review hearing, and summarily states that these documents are legally sufficient to support the Hearing Officer's decision to uphold Petitioner's driver's license suspension. However, it is the information contained within these documents that must sufficiently support the findings of the Hearing Officer, not just the presence of the documents themselves. In this case, the documents and information contained therein do not support the Hearing Officer's decision.

DHSMV also argued that, because the defendant did not personally appear at the administrative hearing, "she did not contest or dispute the evidence and testimony in the record, and the evidence is therefore sufficient. This argument is entirely erroneous and disregards the fact that [she] had legal representation appear on her behalf at the hearing precisely for the

purpose of holding the Department to its burden of proof. The witnesses contradicted themselves without the need for the [the defendant] to testify." The officers did not see the defendant in possession of her keys, "and thus she was not in actual physical control of the vehicle as a matter of law," they were not investigating an accident, and the "fellow officer rule" did not apply.

***Moya v. DHSMV*, 22 Fla. L. Weekly Supp. 528a (Fla. 15th Cir. Ct. 2014)**

The defendant filed a motion for rehearing, arguing that his case should not have been remanded for a formal hearing because his one-year suspension had expired. But the circuit court, in its appellate capacity, denied his motion, noting that, "while the period of administrative suspension has ended, the suspension itself will remain on [the defendant's] Florida driving records and will continue to have potentially serious implications for [him] in the event of future violations." Furthermore, the underlying administrative order was not quashed for lack of procedure or lack of evidence supporting suspension, but "because this Court's opinion reversed prior precedent regarding [the defendant's] evidentiary obligation." Remand was ordered so the defendant would have the opportunity to present additional evidence.

***Oster v. DHSMV*, 22 Fla. L. Weekly Supp. 525a (Fla. 15th Cir. Ct. 2014)**

The defendant's license was revoked after his conviction for unlawful prescription of a controlled substance. He sought review, arguing that the crime was not one of the crimes listed in the statutes as qualifying for license revocation. The circuit court, in its appellate capacity, agreed and quashed the revocation, stating:

> [T]he plain language of the revocation statute clearly and unambiguously limits its application to convictions for trafficking, possession, or sale of controlled substances, or conspiracy to traffic, possess, or sell. This list does not include 'unlawful prescription of a controlled substance.' . . . Furthermore, . . . the application of the revocation statute is not affected by the fact that [the defendant] was originally charged under the trafficking statute, or that his actions essentially qualify as trafficking. [The defendant] was not convicted under the trafficking statute, and therefore his conviction does not merit application of the revocation statute.

***Gordon v. DHSMV*, 22 Fla. L. Weekly Supp. 523d (Fla. 15th Cir. Ct. 2014)**

See Moya v. DHSMV, 22 Fla. L. Weekly Supp. 528a (Fla. 15th Cir. Ct. 2014), above.

***Mannelly v. DHSMV*, 22 Fla. L. Weekly Supp. 523c (Fla. 15th Cir. Ct. 2014)**

See Moya v. DHSMV, 22 Fla. L. Weekly Supp. 528a (Fla. 15th Cir. Ct. 2014), above.

***Stevens v. DHSMV*, 22 Fla. L. Weekly Supp. 523a (Fla. 15th Cir. Ct. 2014)**

The defendant's license was revoked because of his conviction for DUI manslaughter. He applied for a hardship license, and although the hearing officer told him he would be eligible for the license, the final order denied the application. The defendant sought review, which the circuit court, in its appellate capacity, denied because the defendant had two prior DUI convictions. "The Hearing Officer's indications otherwise during the hearing do not change this analysis."

***Kaminski v. DHSMV*, 22 Fla. L. Weekly Supp. 513a (Fla. 9th Cir. Ct. 2014)**

The defendant's license was suspended for refusal to submit to a blood-alcohol test, and he sought review, arguing that "the 'narrative reports' admitted into evidence . . . are not affidavits as required by statute" as "they did not include proper jurats and, therefore, were not sworn." He also argued that the officer did not have the legal authority to request a blood test because a breath or urine test would not have been impractical or impossible, and therefore his refusal could not sustain the suspension. The circuit court, in its appellate capacity, denied review, holding that the narrative reports and jurats substantially complied with statutory requirements, and that the defendant's behavior, statements, and appearance gave the officers reason to believe he was under the influence of a controlled substance rather than alcohol, and therefore they had legal authority to request a blood test.

***MacWhinnie v. DHSMV*, 22 Fla. L. Weekly Supp. 511a (Fla. 9th Cir. Ct. 2014)**

The defendant's license was suspended for refusal to submit to a breath test, and he sought review. The appellate court denied relief, stating that the defendant was "correct that the Department cannot suspend a license under section 322.2615 for a refusal to submit to a breath test if the refusal is not incident to a lawful arrest. . . . However, [his] license was suspended for a refusal pursuant to section 322.2616 [drivers under 21], not section 322.2615," and the lawfulness of the arrest was not relevant.

***Blainey v. DHSMV*, 22 Fla. L. Weekly Supp. 494a (Fla. 6th Cir. Ct. 2014)**

The defendant's license was suspended for refusal to give a breath sample. He sought review based on the hearing officer denying his motions to (1) exclude the refusal affidavit, although there was inconsistent evidence as to which deputy had read the warnings and signed the affidavit; (2) exclude the evidence of his refusal to take the field sobriety exercises; and (3) invalidate the suspension. The circuit court, in its appellate capacity, denied review, holding that, as to the refusal affidavit, the statutes do not require a particular form, but merely that it state that a test was requested by a law enforcement officer, implied consent warnings were given, and the arrestee refused to submit to the test, and that "[e]ven if the hearing officer did not consider the refusal affidavit, the remaining arrest documents . . . clearly state the implied consent warnings were read and that Petitioner refused the breath test."

As to bases (2) and (3), the defendant alleged that the deputy gave misinformation "about the voluntary versus mandatory nature of the FSE and the consequences of a refusal," which "resulted in the mistaken belief that his license was already suspended upon FSE refusal, and therefore the breath test refusal produced no further consequence." The court disagreed, holding that under the circumstances, any possible misunderstanding "could not have reasonably persisted past the reading of the implied consent warnings for [him] to continue to mistakenly believe that his license suspension was irreversible the moment he first refused the FSE."

***State v. Woods*, 22 Fla. L. Weekly Supp. 459c (Volusia Cty. Ct. 2014)**

After an accident, the defendant was arrested for DUI. She was taken to a hospital, where the officer obtained a blood sample for testing. He did not read her *Miranda* or informed consent warnings, and no indicia of impairment were noted in his accident report or police report, written

over a year after the incident, except that he smelled alcohol on the defendant. He also testified that until he received the blood test results he did not believe he had probable cause to arrest her for DUI. The defendant filed a motion to suppress, arguing that the officer "had no valid grounds to request and obtain a blood sample" and that the accident report privilege precluded admission of her statements. The court denied the motion as to her statements to paramedics. But it granted the motion as to the results of the blood test and statements she made to the officer. As to the blood test, the court noted that the state had not argued implied but rather voluntary consent to the blood draw, but it did not meet its burden of proof. And the statements the defendant made to the officer were inadmissible under the accident report privilege because the officer did not read her the *Miranda* warnings. "It would be the State's burden to show that any statement from the Defendant would be admissible without a violation of the accident report privilege. The best procedure would be either through a pre-trial Motion in Limine or by a proffer at trial."