FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

April - June 2014

[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)

***Wetherington v. State*, 135 So. 3d 584 (Fla. 1st DCA 2014)**

The district court reversed the lower court's finding of guilt and sentencing of the defendant for a felony DUI conviction. It held that "the testimony of a police officer concerning statements made by the defendant was erroneously admitted into evidence in contravention of the accident report privilege," as was conceded by the state. The court held that this error was not harmless beyond a reasonable doubt, and therefore ordered a new trial.
http://opinions.1dca.org/written/opinions2014/04-16-2014/13-1327.pdf

***Ramos v. State*, 135 So. 3d 530 (Fla. 1st DCA 2014)**

The district court reversed and remanded the lower court's sentence against the defendant in a DUI case. The court held it was reversible error to sentence the defendant, who spoke very broken English, without a qualified interpreter.
http://opinions.1dca.org/written/opinions2014/04-02-2014/12-5446.pdf

***State v. Robertson*, 21 Fla. L. Weekly Supp. 616a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress. The court held that an officer's request that the defendant exit his vehicle, which had been lawfully stopped, did not constitute the initiation of a DUI investigation. However, after exiting the vehicle, the defendant smelled of alcohol, slurred his speech, and voluntarily stated that he had been at a bar and had a few drinks, and therefore the officer had sufficient suspicion of impairment to initiate a DUI investigation. The court held that granting the defendant's motion to suppress the results of the investigation was in error.

***State v. Stillman*, 21 Fla. L. Weekly Supp. 609a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's motion to suppress. The circuit court held that an officer's approach of the defendant's parked vehicle, which had been the subject of an anonymous tip about erratic driving, for a wellness check was a consensual encounter. The court also held that it was not a seizure when the officer had observed signs of distress when he approached the defendant's vehicle and attempted to determine if the defendant needed assistance, and that once the defendant opened his window and the officer smelled alcohol, the officer had sufficient indicia to initiate an investigatory stop.

***Palmer v. State*, 21 Fla. L. Weekly Supp. 541a (Fla. 4th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's denial of the defendant's motion to suppress in a DUI matter. It held that there was no competent substantial evidence to support the trial court's conclusion that a citizen who reached into the defendant's vehicle when she stopped, and removed her keys, had made a citizen's arrest. The citizen did not testify as to what made him approach the defendant's vehicle and remove her keys, or whether he took the keys with the intention of depriving her of the right to leave. The court also held that because neither the first-arriving officer nor the arresting officer had observed the defendant driving or in actual physical control of the vehicle, and the first officer did not testify at trial, information about the defendant's driving provided by that officer's interview with two civilian witnesses could not be relied on by the trial court because it was inadmissible hearsay. Therefore there were no grounds for the trial court to establish reasonable suspicion for the stop.

***State v. Velez*, 21 Fla. L. Weekly Supp. 506a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress. The court held that although the deputy who arrived at the crash scene did not see the defendant in actual physical control of the vehicle, as a firefighter had taken away her key and therefore she "did not have the present capability to operate the vehicle," there was sufficient circumstantial evidence for the deputy to believe she had been driving while intoxicated. The deputy had "personally observed [the defendant], alone in the car, sitting [in] the driver's seat with the car over the curb and into the bushes; he smelled alcohol on her breath; he heard her admit she was coming from a party and was lost; and he saw her bracing herself against the vehicle and swaying."

***State v. Beltran*, 21 Fla. L. Weekly Supp. 510a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's granting of the defendant's motion to suppress evidence related to breath test results. The motion was based on a problematic inspection of the Intoxilyzer and "intentional destruction of evidence" ("data from a failed Intoxilyzer inspection could be erased by cutting the power (i.e. 'pulling the plug') of that instrument before the completion of an inspection cycle"). Although there was conflicting expert testimony regarding the inspection of Intoxilyzers, the circuit court noted that a trial court decision will not be disturbed on appeal if it was supported by substantial, competent evidence.

***State v. Garbutt,* 21 Fla. L. Weekly Supp. 513a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's granting of the defendant's motion to dismiss a DUI charge. The circuit court noted that a motion to dismiss under rule 3.190(c)(4), Florida Rules of Criminal Procedure, must be denied "if the state files a traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss," which the state did in this case. The circuit court further noted that "[o]n a Rule 3.190(c)(4) motion the court may not determine factual issues, weigh evidence, or determine credibility," yet the record showed that in granting the motion to dismiss, the trial court did so. It should not have, and as the state had presented sufficient facts to show a prima facie case, it was error to grant the motion to dismiss.

***Beach v. State,* 21 Fla. L. Weekly Supp. 511a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's conviction and sentencing of the defendant in a DUI case. The defendant had appealed, claiming there was error in limiting the defendant's cross-examination of a state trooper related to issues of field sobriety exercises, and whether they are actually indicative of whether a person's normal faculties are impaired. The court held there was no error, as the testimony would not have been relevant. Moreover, the court allowed the defendant to make such a point during closing arguments.

***Kavoosi v. State,* 21 Fla. L. Weekly Supp. 504a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's denial of the defendant's motion to suppress in a DUI case. The court held that where the trooper saw the defendant run a red light, smelled alcohol, observed that the defendant had a flushed face, and learned the defendant had been drinking, the trooper had reasonable suspicion to detain the defendant for a DUI investigation.

***State v. Melendez,* 21 Fla. L. Weekly Supp. 462b (Fla. 5th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress. The officer had seen the defendant's vehicle drifting within the lane and over the divider line, and upon stopping the defendant noticed the smell of alcohol and that the defendant slurred his words. The court held that the trial court applied the wrong legal standard, stating that the proper standard to determine whether a traffic stop was legal "is not whether the officer had probable cause but whether there were circumstances which would give rise to a 'well-founded suspicion' of criminal activity."

***Garrette v. State,* 21 Fla. L. Weekly Supp. 396b (Fla. 15th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's trial decision and outcome in a DUI case. The court held that a police officer's technically imprecise comments on administrative procedures that result from a refusal to submit to a breath test were not a gross misstatement of the law. It used this as an opportunity to clarify that *State v. Henry*, 42 Fla. Supp. 2d 42 (Fla. 15th Cir. Ct. 1990), did not stand for the proposition that any misstatement of the law would result in the suppression of evidence, but rather only a gross misstatement of the law would.

II. Criminal Traffic Offenses

***Masone v. City of Aventura*, ___ So. 3d ___, 2014 WL 2609201 (Fla. 2014), and *City of Orlando v. Udowychenko*, ___ So. 3d ___, 2014 WL 2609201 (Fla. 2014)**

The supreme court heard these consolidated cases from the Third and Fifth district courts of appeal, which certified conflict. The cases stemmed from red light camera infractions that pre-dated the effective date of the Mark Wandall Traffic Safety Act, ch. 2010-80, Laws of Fla., which authorized the use of red light traffic infraction detectors by local governments and the DHSMV. The Third District had found that, "under section 316.008(1)(w), Florida Statutes (2008), which specifically grants 'local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power,' authority for '[r]egulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways,'" the city had properly installed and used red light cameras as traffic control devices. The Fifth District, however, reached the opposite conclusion, finding that the use of red light cameras before the effective date of the Mark Wandall Traffic Safety Act was not authorized. The supreme court agreed with the Fifth District and held that sections 316.002 and 316.007 preempted the local ordinances that permitted the use of red light cameras prior to the 2010 act. The court noted specifically that the act pointed out that "[t]he provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and *no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized*."
http://www.floridasupremecourt.org/decisions/2014/sc12-644.pdf

***McGowan v. State*, ___ So. 3d ___, 2014 WL 2197729 (Fla. 4th DCA 2014)**

The district court reversed the defendant's conviction for leaving the scene of a crash involving injury or death of a person. The court noted that this case was particularly fact specific. The decedent was initially seen by a Road Ranger to be wandering down the middle of I-595 around 3:20 a.m. When the Road Ranger pulled over to help the woman, he saw her being struck by a white sedan. The officer remembered few details after that, as he stated he went into shock. A 911 caller also reported seeing a white Lexus hit the decedent. The defendant in this case, however, had been driving a grey minivan. He did realize he had struck something (he thought it was debris that fell off of a truck) and was shaken up. The defendant texted his girlfriend about this approximately 20 minutes after the decedent was struck. In the morning, the defendant's father, a police captain, examined the defendant's car and indicated to him that he felt he may have struck a pedestrian. The father called the highway patrol. The investigating officer found hair and blood samples that matched the decedent and concluded that the defendant's vehicle was the "primary vehicle" involved. He did not further investigate, or include in his report, the possible involvement of a white Lexus, but he later admitted that another car could have hit the decedent and caused her to land on the car behind it.

The defendant's trial resulted in conviction. He appealed on the grounds that the state had not proved all four elements of section 316.027, Florida Statutes (2010):

> (1) That the defendant was the driver of a vehicle involved in a crash resulting in injury to or death of any person;

(2) That the defendant knew or should have known that he was involved in a crash;

(3) That the defendant knew or should have known of the injury to or death of the person;

(4) That the defendant willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until he had given identifying information to the injured person, driver, occupant or person attending the vehicle and to any police officer investigating the crash.

The court agreed, holding that even if the accident the defendant was involved in resulted in the decedent's death, the state failed to prove that he "knew or should have known that the accident involved a person." The court reversed the conviction and remanded the case with directions to discharge the defendant.
http://www.4dca.org/opinions/May%202014/05-28-14/4D12-2311.op.pdf

***Snow v. State*, 138 So. 3d 1153 (Fla. 4th DCA 2014)**

The defendant was convicted of leaving the scene of a crash that resulted in the injury of a person (Count I), and driving with a suspended license and by careless or negligent operation causing serious bodily injury (Count II). On appeal, the defendant argued that the trial court committed fundamental error in instructing the jury that he could be convicted of the suspended license charge if he was involved in the crash, rather than if he caused the victim's serious injuries by his negligent or careless driving. Also, although the defendant conceded that his license was suspended at the time of the crash, "he disputed two elements of the charge. He argued that the evidence was insufficient to prove either that he drove the truck or that he negligently caused a crash resulting in the victim's injuries." The district court reversed and remanded for a new trial, holding that the jury instruction constituted fundamental error.
http://www.4dca.org/opinions/May%202014/05-21-14/4D12-1514.op.pdf

***Barber v. State*, 21 Fla. L. Weekly Supp. 642a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's sentencing of the defendant for DUI and leaving the scene of an accident, and denied the his motion to define and clarify sentence. The court held that the time for the defendant to seek relief from his judgment and sentences was when he filed a direct appeal of convictions, and that there was no merit to his claim that convictions for leaving the scene of an accident, careless driving, improper passing, and improper lane change violate the prohibition against double jeopardy.

***Chapas v. State*, 21 Fla. L. Weekly Supp. 615a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed and remanded the lower court's adjudication of guilt and sentence in a speeding case. The trooper testified that he estimated the vehicle's speed at 100 mph so he activated his radar. The radar registered a speed of 100 mph and the log was admitted into evidence. However, while the trooper testified that the radar device was calibrated on a date approximately seven weeks earlier, "there is no evidence of a signed and witnessed certificate that the device was tested on [the date claimed] and that the device was working properly." Further, the radar log admitted into evidence did not comply with the

applicable administrative rules. Therefore, the court reversed the judgment and sentence and remanded the case.

***Reed v. City of Clearwater,* 21 Fla. L. Weekly Supp. 606a (Fla. 6th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed and remanded the lower court's sentencing of the defendant to a $2,500 fine for speeding exactly 50 mph over the speed limit. The court noted that section 318.18, Florida Statutes, provides a $250 fine, plus costs and fees, for a speed 30 or more mph over the limit, and section 318.14, Florida Statutes, provides for a $2,500 fine for a second offense of driving *more* than 50 mph over the speed limit, but the defendant only had one prior offense of driving 23 mph over the speed limit.

III. Arrest, Search and Seizure

***State v. Teamer,* ___ So. 3d ___, 2014 WL 2979378 (Fla. 2014)**

A deputy ran a routine search on the tag of the green vehicle the defendant was driving, which listed the car as blue. The deputy pulled the car over and, although the occupants explained the inconsistency by stating the vehicle had been painted, the deputy noticed a strong of odor of marijuana and performed a search, uncovering marijuana, crack cocaine, and about $1,100 in cash. In his trial on drug charges, the defendant filed a motion to suppress the evidence as "products of an unlawful, warrantless search." The trial court denied the motion, holding that the deputy had a legal right to conduct the investigatory stop and the odor of marijuana then gave him probable cause to conduct a search. The First District Court of Appeal reversed, stating that any concern based on the discrepancy between a vehicle tag and the registration must be balanced "against a citizen's right under the Fourth Amendment to travel on the roads free from governmental intrusions," but it certified conflict with a Fourth District case. The supreme court agreed with the First District, stating: "To warrant an investigatory stop, the law requires not just a mere suspicion of criminal activity, but a reasonable, well-founded one," and in this case the only out of the ordinary thing the deputy observed was that the vehicle color differed from that in the registration, which, standing alone, did not rise to the level of a reasonable suspicion. The supreme court also found that none of the exceptions to the exclusionary rule applied. http://www.floridasupremecourt.org/decisions/2014/sc13-318.pdf

***State v. Daniels,* ___ So. 3d ___, 2014 WL 1976269 (Fla. 5th DCA 2014)**

The district court reversed the lower court's order granting the defendant's motion to suppress evidence seized during a traffic stop. The state argued on appeal that the trial court misconstrued section 316.123(2)(a), Florida Statutes (2011), which makes it a noncriminal traffic infraction to fail to "stop at a clearly marked stop line." The lower court had held that since the defendant's front tires were on the line when he stopped at the stop sign, he was in compliance with the statute and the subsequent traffic stop was unconstitutional. The appellate court, however, agreed with the state's argument that "the statute, properly interpreted, requires a vehicle to stop before any part of the automobile crosses the line." Therefore, the traffic stop was constitutional.

***Gay v. State*, 138 So. 3d 1106 (Fla. 2d DCA 2014)**

The district court reversed the defendant's conviction and sentence for possession of a controlled substance and related charges, and granted the defendant's motion to suppress. It held that the controlled substance and paraphernalia were illegally seized without a warrant and were obtained as the result of an illegal investigatory detention. The arresting officer stopped the vehicle driven by the defendant's husband, in which the defendant was a passenger, for failure to come to a complete stop at a stop sign. After deciding not to issue a citation, the officer asked the driver to get out of the vehicle and asked if he could search it for illegal narcotics. The driver consented to the search. The officer then asked the defendant to step out of the vehicle, which she did, leaving her purse in the vehicle. The officer testified at trial "that he immediately noticed a 'faint odor' of cannabis upon beginning his search of the passenger compartment of the vehicle." He continued searching the passenger area, including the defendant's purse. The officer found no cannabis, but did find in the defendant's purse a small, metal pill container of the type available in many drugstores. The officer went to his patrol car, where he did a web search and discovered that some of the pills were Ritalin and tramadol. The officer testified that when he found the pills he did not know what they were and that he knew the purse belonged to the passenger but did not ask her permission to search it or the pill box, or to take the pill box from the vehicle back to his patrol car.

The court held that although the encounter was "initially a stop due to the traffic violation, once the officer determined not to cite the driver and asked the driver for consent to search the vehicle, the encounter became consensual" as to the driver and the passenger. But when the officer searched the defendant's purse, removed the pill box from the vehicle, and took the box to his car, "the encounter again became an investigatory detention," which "requires reasonable suspicion that an individual has committed or is about to commit a crime," and the officer must have "a well-founded, articulable suspicion of criminal activity" (quoting *Smith v. State*, 95 So. 3d 966, 968). The court noted that "[a]n officer's mere suspicion or hunch is not enough to permit this type of detention" (quoting *Popple v. State*, 626 So. 2d 185, 185 (Fla. 1993)). The court reversed and remanded, stating that, as in *Smith*,

> [t]he deputy's actions constituted a show of authority that would lead a reasonable person to conclude he or she was not free to end the encounter and leave. . . . [N]either the illegal nature of the possession of the pills nor the type of pills was known to the officer at the time he removed them from the vehicle. Nothing about the pills or pill box gave him a reasonable suspicion that the defendant had committed, was committing, or was about to commit a crime. Nor did he know that any of the pills were controlled substances at the time he seized them. . . . The investigatory detention and seizure of the pills and pill box was unauthorized; the officer lacked reasonable suspicion of criminal activity and probable cause to seize the evidence. [The defendant's] motion to suppress should have been granted.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/May/May%2014,%202014/2D13-1706.pdf

***Cooper v. State*, ___ So. 3d ___, 2014 WL 1385328 (Fla. 1st DCA 2014)**

The district court affirmed the lower court's finding that the defendant did not have standing to challenge the search of a rental car driven by the defendant, of which he was neither the renter nor an authorized driver. The defendant lacked a privacy interest because he was an unauthorized driver, and thus he lacked standing to contest the search. The court noted that there was no deciding case in Florida on this subject, and there was a split in the federal circuits. The court affirmed, in its decision, the Third, Fourth, Fifth, and Tenth circuits, which "have adopted a general 'bright-line' rule that absent extraordinary circumstances, a driver of a rental car who is not authorized by the rental car agreement has no reasonable expectation of privacy and thus no standing to challenge a search of the car."
http://opinions.1dca.org/written/opinions2014/04-09-2014/13-2922.pdf

***State v. McNally*, 21 Fla. L. Weekly Supp. 393a (Fla. 12th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress. A deputy had stopped the defendant, to determine if he was sick, tired, or injured, or intoxicated, after observing him weaving in his lane and changing speed for no apparent reason. She smelled alcohol on his breath, and after field sobriety tests the defendant was arrested for DUI. The lower court granted the motion to suppress because the defendant's driving pattern was not "erratic" and therefore the stop was unjustified. The circuit court disagreed, stating that "nothing in the case law establishes a *requirement* that a driver's conduct be 'erratic' before a law enforcement officer can stop him or her to conduct a DUI investigation. Instead, the law merely requires that the officer be able to articulate a 'founded suspicion' that the driver is under the influence, ill, or otherwise unable to drive," which the deputy did.

***Wattam v. State*, 21 Fla. L. Weekly Supp. 378b (Fla. 6th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the lower court's denial of the defendant's motion to suppress. A driver called 911 to report what he thought was dangerous driving by the defendant. The operator, who was at the sheriff's office, relayed the information to the police department whose jurisdiction the defendant had entered. After the police stopped the defendant and made an investigation, the defendant was arrested for DUI. He argued that neither the caller's information nor the 911 operator's dispatch to the police established a lawful basis for the stop. However, the circuit court held that (1) the trial court's finding that the caller was a "citizen informant" was supported by competent, substantial evidence, and (2) the fact that "[t]he 911 operator was not a law enforcement officer and did not relate the facts of the driving" to the police was irrelevant because the information given to the 911 operator by the citizen informant was "by the *fellow officer rule* or *collective knowledge doctrine* imputed to the officer about to conduct the traffic stop." The court also noted that a 911 operator does not have to be a sworn law enforcement officer.

IV. Torts/Accident Cases

***Christensen v. Bowen*, ___ So. 3d ___, 2014 WL 1408557 (Fla. 2014)**

The supreme court reversed the district court's ruling on a motion for directed verdict and examined the certified question, which it rephrased as follows:

> May a person whose name is on the certificate of title of a vehicle as co-owner avoid vicarious liability under an exception to the dangerous instrumentality doctrine by asserting that he never intended to be the owner of the vehicle and further claiming that he relinquished control to a co-owner of the vehicle?

The court answered in the negative and held that a person whose name is on the certificate of title as co-owner is a beneficial owner with the right to control the vehicle. The defendant had paid for the vehicle, and the certificate of title was placed in both his and his now ex-wife's names as co-owners. They both signed the application for certificate of title, under penalty of perjury, to have the title issued to them jointly as "owner" and "co-owner." Approximately 22 months later, the defendant's ex-wife struck and killed the plaintiff's spouse. At the time, the title was still in the names of both the defendant and his ex-wife and the vehicle was being operated with the defendant's consent. The plaintiff alleged that the defendant, as an owner of the vehicle, was vicariously liable for his ex-wife's negligence under the dangerous instrumentality doctrine. The defendant, however, contended that he was not vicariously liable, under the beneficial ownership exception to the dangerous instrumentality doctrine. He testified that his intent was to purchase the vehicle as a gift for his wife at the time and that he had no other involvement with the vehicle. He did not have a key to the vehicle and did not reside with his ex-wife. The court stated:

> The dangerous instrumentality doctrine serves to ensure financial recourse to members of the public who are injured by the negligent operation of a motor vehicle by imposing strict vicarious liability on those with an identifiable property ownership interest in the vehicle. *See Kraemer v. Gen. Motors Acceptance Corp.*, 572 So.2d 1363, 1365 (Fla.1990). The underlying rationale of the doctrine is that if a vehicle owner, who has control over the use of the vehicle, exercises his or her control by granting custody of the vehicle to another, the owner commits himself or herself to the judgment of that driver and accepts the potential liability for his or her torts. *S. Cotton Oil Co. v. Anderson*, 86 So. 629, 634 (Fla.1920).
>
> A narrow exception to the dangerous instrumentality doctrine has been recognized in cases where the titleholder lacks the beneficial ownership of a vehicle. *See Aurbach v. Gallina*, 753 So.2d 60, 64 (Fla.2000) ("In *Metzel v. Robinson*, 102 So.2d 385, 385-86 (Fla.1958), the Court made it clear that, absent a conditional sales agreement, the circumstances where an entity or individual who possessed legal title would not be vicariously liable under the dangerous instrumentality doctrine were extremely limited."). Under this 'beneficial ownership' or 'bare legal title' exception, a titleholder may avoid vicarious liability if the titleholder demonstrates that he or she does not have the authority to exert any dominion or control over the vehicle and therefore is not a beneficial owner of the vehicle. *Id.*

> at 63-65. In such circumstances, this Court has held that the titleholder holds only "naked legal title" in the vehicle. *See Palmer v. R. S. Evans, Jacksonville, Inc.*, 81 So.2d 635, 637 (Fla.1955).

This was not the factual scenario in the instant case, where, as a joint titleholder, the defendant had a legal right to encumber, sell, or take possession of the vehicle. The court held that "the mere fact that he did not act on these legal rights does not alter or diminish their existence. Further, had [the defendant's ex-wife, the other co-owner of the vehicle] died, [the defendant] would have inherited the vehicle because of his joint ownership interest. *See* § 319.22(2)(a)(1)(a)[sic], Fla. Stat. (2013). Therefore, he indisputably was in a position to exercise dominion and control over the vehicle and was a beneficial owner of the vehicle." As such, he would be vicariously liable, under the dangerous instrumentality doctrine, for tortious acts committed with the vehicle.
http://www.floridasupremecourt.org/decisions/2014/sc12-2078.pdf

***Goicochea v. Lopez*, ___ So. 3d ___, 2014 WL 2599898 (Fla. 3d DCA 2014)**

The district court granted certiorari and quashed the lower court's order limiting the defendants in this case to a single independent medical examination (IME) per medical specialty. The plaintiff had sued several defendants regarding three unrelated automobile accidents, claiming that the injuries from these accidents were "indivisible and superimposed upon one another and the Plaintiff is unable to apportion her damages between them." The trial court had granted the plaintiff's motion, citing *Royal Caribbean Cruises, Ltd. v. Cox*, 974 So. 2d 462, 465 (Fla. 3d DCA 2008), which held: "[W]hen a defendant requests a **subsequent** IME, the defendant should make a stronger showing of necessity before the request is authorized." The district court, however, found the current case highly distinguishable from *Cox*. It noted that in *Cox*, the defendant wanted to reexamine the plaintiff after the plaintiff had a second surgery for the same injury, whereas in this case there were three separate injuries, with different defendants allegedly being responsible for the accidents causing them. The defendants were pitted against one another to prove the injuries came from another defendant's negligence, and because they were thus adverse to each other they were entitled to have their own IMEs of the plaintiff in order to prepare their defense.
http://www.3dca.flcourts.org/Opinions/3D14-0873.pdf

***Bellamy v. Ameri-Pride, Inc.*, ___ So. 3d ___, 2014 WL 2537110 (Fla. 2d DCA 2014)**

The plaintiff had been rear-ended by a vehicle owned by the defendant company. The defendant claimed the driver of its vehicle had never been in its employ and had stolen the vehicle, and the trial court granted summary judgment for the defendant. The district court reversed, holding that there was evidence that the driver of the defendant's vehicle was driving with the defendant's knowledge and consent, and therefore the defendant was not entitled to summary judgment.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2006,%202014/2D12-2120.pdf

***Whritenour v. Thompson*, ___ So. 3d ___, 2014 WL 2536830 (Fla. 2d DCA 2014)**

The district court reversed the lower court's granting of summary judgment for the defendant, holding that the defendant was entitled to a jury trial on the issues of negligence and damages. The court noted that this was "an unprecedented situation" and a case of first impression. The plaintiff had brought a negligence action against the defendant that stemmed from a July 2011 automobile accident. The defendant had bodily injury liability insurance coverage of $300,000, but her insurance company hired defense counsel who filed an answer and defenses and advised the defendant to file for bankruptcy, which she did. In her bankruptcy petition she listed the plaintiff's personal injury claim at a value of over $1 million, and on the same day of the filing, the bankruptcy court issued an automatic stay pursuant to 11 U.S.C. § 362. The plaintiff filed an emergency motion for relief from the bankruptcy stay in the negligence action. The bankruptcy court granted the motion and modified the automatic stay to permit the plaintiff to file, prosecute, complete, and liquidate through final judgment her claim against the defendant "for the purpose of pursuing [the defendant's] insurance carrier and not for the purpose of pursuing personal liability against [the defendant]." The order also provided that if the plaintiff wanted to proceed against the insurance company for an excess judgment, she "is to file another motion for relief."

The defendant filed a motion for summary judgment. At the hearing on the motion, the defendant's bankruptcy attorney argued that she had no personal liability and that the plaintiff's maximum recovery was the defendant's liability insurance policy limit of $300,000. The defendant's bankruptcy attorney also argued that *Camp v. St. Paul Fire & Marine Insurance Co.*, 616 So. 2d 12 (Fla. 1993), "authorized a bankruptcy trustee to pursue an action for bad faith against the insurer only if the bad faith action was already pending when the tortfeasor was discharged from bankruptcy." The lower court granted the motion for summary judgment, and the plaintiff appealed.

The district court reversed, finding the trial court's interpretation of *Camp* to be incorrect and stating:

> Under Florida law, a bad faith action is a separate cause of action that does not arise until an insured is legally obligated to pay an excess judgment. *See Cunningham v. Standard Guar. Ins. Co.*, 630 So.2d 179, 181 (Fla.1994). . . . [T]he the viability of a potential bad faith action is not a legal basis that can support granting a summary judgment motion in a negligence case. A plaintiff must be allowed to proceed to trial and liquidate her damages before bad faith becomes an issue. *Cunningham*, 630 So.2d at 181. If a plaintiff chooses to pursue a trial, the trial court cannot compel her to accept the defendant's policy limits. A defendant's discharge in bankruptcy cannot be a legal basis upon which to compel a plaintiff to accept the liability insurance policy limits. If such were the case, every insurance carrier would instruct its insured to declare bankruptcy in order to limit recovery to the policy limits.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2006,%202014/2D13-3434.pdf

***Zelaznik v. Isensee*, ___ So. 3d ___, 2014 WL 2596140 (Fla. 2d DCA 2014)**

The district court affirmed the lower court's jury verdict in an automobile accident case. The defendant and her insurers had appealed on three grounds, all stemming from evidentiary rulings the court made during the trial: (1) limiting the testimony of the defendant's expert witness; (2) limiting the testimony of the officer who responded to the accident; and (3) showing the jury a 15-minute video of excerpts from the plaintiff's surgery. The district court found no error in the showing of the video and concluded that any errors committed by the trial court in conjunction with the other two rulings were harmless.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/June/June%2011,%202014/2D12-2590.pdf

***Rodriguez v. Smith*, ___ So. 3d ___, 2014 WL 2116372 (Fla. 3d DCA 2014)**

The plaintiff alleged that he sustained injuries when he sideswiped the defendant's vehicle, which was stalled on a bridge. The trial court entered an order directing the defendant to answer the plaintiff's special medical interrogatories and allowing additional discovery, and the defendant filed a petition for writ of certiorari to quash the order. The defendant argued that, while he admitted he was injured by the contact with either the plaintiff's motorcycle or debris, he had not asserted any cause of action against the plaintiff, and thus only the plaintiff's alleged injuries were properly subject to pretrial discovery. But the appellate court dismissed the defendant's petition, noting that (1) the discovery order had reasonable limitations, and (2) medical records that could pertain to the accident might be useful to the plaintiff in showing the force and location of the accident and how it occurred. The court stated that the petition did not demonstrate irreparable harm or a departure from the essential requirements of law and therefore must be dismissed.
http://www.3dca.flcourts.org/Opinions/3D13-2363.pdf

***Adams v. Bell Partners*, 138 So. 3d 1054 (Fla. 4th DCA 2014)**

The district court reversed the lower court's granting of summary judgment in favor of the defendant in an automobile accident case, holding that there were genuine issues of material fact for a jury to resolve. Specifically, the court looked at whether the employer's status as bailee of a rented automobile, driven by an employee's husband, created a relationship that would allow for vicarious liability to be imputed, and whether the employee's husband's use of the vehicle amounted to conversion for purposes of liability.
http://www.4dca.org/opinions/April%202014/04-23-14/4D12-3336.op..pdf

V. Drivers' Licenses

***Department of Highway Safety and Motor Vehicles v. Colling*, ___ So. 3d ___, 2014 WL 2532406 (Fla. 5th DCA 2014)**

The defendant, who was under 21, was charged with being in actual control of a vehicle with a breath-alcohol content of greater than .02, in violation of section 322.2616(1)(a), Florida Statutes, and the police officer suspended her driver license. She requested a formal review. At that hearing, which was conducted without witnesses, the affidavit of probable cause indicated

that the defendant's breath-alcohol test results were .0154 and .028. However, two other documents indicated that the results were actually .154 and .028. The hearing officer concluded that (1) the affidavit contained a scrivener's error, and (2) the jurisdiction issue the defendant raised (that "the officer's report failed to establish that he was acting within his jurisdiction, since he failed to designate the location of the incident") was not within the scope of his review. The defendant then filed a petition for writ of certiorari in the circuit court to quash the suspension. The circuit court did not address the discrepancy in the documents as to the breath-alcohol level, but it did conclude that DHSMV's failure to establish jurisdiction required quashing the suspension order. Then DHSMV filed a petition for second-tier certiorari review of the circuit court decision quashing the suspension order. The district court disagreed with the reasoning of the circuit court panel, but concluded that it reached the right result when it quashed the suspension order, based on the defendant's argument regarding the discrepancy in the documents. That is, it held that DHSMV was *not* required to establish that the police officer acted within his jurisdiction, but that the scrivener's error in the affidavit of probable cause was substantial and required that the license suspension be quashed. The district court stated that the hearing officer arbitrarily chose one document over another and "ignored the logical choice in resolving the inconsistency. The disparity between .0154 and 0.028 is within the expected tolerances for breath-testing equipment. *See* Fla. Admin. Code R. 11D–8.002(12). Conversely, a disparity between .154 and .028 exceeds expected tolerances by a factor of over five. The hearing officer acknowledged this 'conundrum' but never offered an explanation of why he chose to ignore the obvious."
http://www.5dca.org/Opinions/Opin2014/060214/5D13-3755.op.pdf

***Forth v. Department of Highway Safety and Motor Vehicles*, ___ So. 3d ___, 2014 WL 2900931 (Fla. 2d DCA 2014)**

The district court granted the defendant's petition for second-tier certiorari and quashed the portion of the circuit court's order that remanded the defendant's driver license suspension case to the hearing officer for rehearing. The district court noted that the license suspension had expired while the case was awaiting review, and therefore held that the case was moot.

***Dillon v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 641c (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that the hearing officer could not consider the arresting deputy's probable cause affidavit because the deputy signed only one of the three pages. But the court held that this did not nullify the affidavit when the completed jurat appears on each page of the affidavit and there was no allegation or evidence that an oath was not given.

***Doyle v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 641a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case, holding that when an officer observed the

defendant drift over a lane divider before jerking back into his lane, and then continue to drive off and onto the divider, the officer had probable cause to make a traffic stop.

***Morocco v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 637a (Fla. 15th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The defendant sought to invalidate the suspension because the probable cause affidavit was not valid for two reasons: (1) it lacked a proper jurat, and (2) it was, along with the other documentary evidence, submitted to the hearing officer with a D.U.I. Enforcement Case Report "which was apparently intended to be a catch-all coversheet affidavit that applied to all of the documents submitted." The circuit court agreed and held that because the invalid affidavit was the only document in the record that identified the basis for the arresting officer's probable cause to suspect DUI, there was not competent substantial evidence to support a finding of probable cause for arrest.

***Moreno v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 633a (Fla. 13th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant claimed that the hearing officer departed from the essential requirements of law by (1) failing to invalidate the suspension because his right to have a formal review hearing within 30 days of his initial request was violated, the probable cause affidavit was not properly sworn, and the stop of his vehicle was unlawful and in violation of the Fourth Amendment; and (2) failing to grant his motion to exclude from consideration the administration and results of the HGN exercise. The defendant also alleged that DHSMV engages in systematic deprivation of drivers' due process rights. The court found that (1) the defendant was accorded procedural process, there was competent substantial evidence that the criminal report affidavit was properly sworn to, and there was competent substantial evidence that the defendant was in actual physical control of the vehicle while speeding and failing to stop at two stop signs, giving rise to a valid basis on which the officer could conduct a traffic stop; and (2) if there was error in considering the HGN exercise it was harmless, especially in light of the other evidence of impairment. The court also held that the defendant's argument that DHSMV engages in systematic deprivation of due process rights was beyond the scope of review of the order.

***Harkins v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 632a (Fla. 13th Cir. Ct. 2014)**

DHSMV suspended the defendant's license for driving with an unlawful breath-alcohol level. The hearing officer upheld the suspension. The defendant filed a petition for writ of certiorari, alleging that the hearing officer "departed from the essential requirements of law by improperly admitting the breath test results into evidence" because "there was no department inspection of the breath test machine after the machine was returned from the repair facility and before it was placed into evidentiary use." However, the circuit court, in its appellate capacity, denied the petition, stating that the documents admitted at the formal review hearing showed that the machine was properly inspected a few times shortly before the defendant's breath test and

was found to be in compliance with applicable administrative rules. The defendant's argument that the department inspection occurred at the repair facility rather than at the sheriff's office was not proof of substantial noncompliance but rather "constitutes an insubstantial difference that the hearing officer was free to determine did not render the breath test machine in less than substantial compliance with the applicable regulations."

***Clark v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 631a (Fla. 13th Cir. Ct. 2013)**

The defendant's license was suspended for his refusal to take a breath-alcohol test. The hearing officer upheld the suspension, and the defendant filed a petition for writ of certiorari, alleging that he was denied procedural due process when the hearing officer did not allow him to introduce into evidence a video his attorney made establishing the actual speed limit at the time he was stopped speeding. He also argued the arresting deputy lacked probable cause to stop him based on a traffic violation. The circuit court denied the petition, stating that although the hearing officer agreed that he was not "inclined to accept [the video] based on the Rules of the Administrative Hearings," the defendant never actually tried to enter it as evidence. Even if it had constituted a due process violation, it would have been harmless. With regard to the defendant's lack of probable cause argument, the court noted that the hearing officer had not made a finding that the deputy stopped the defendant based on probable cause that a traffic violation had occurred, but rather "there was competent, substantial evidence introduced at the hearing from which the hearing officer could have found that the stop was valid based on reasonable suspicion of DUI."

***Massey v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 630a (Fla. 12th Cir. Ct. 2013)**

A police officer saw the defendant's vehicle stopped behind a closed store and then parked in a roadway next to a bank, where all businesses were closed. The officer made consensual contact with the defendant, who told her he was on the phone with his mother trying to find her house. The officer noticed the odor of alcohol coming from the defendant and that his eyes were bloodshot, and the defendant admitted having drunk five beers. The officer asked him to perform field sobriety exercises, which he performed poorly, and arrested him for DUI. At the jail the defendant refused to take a breath test, and his Class E and CDL driver licenses were suspended. The hearing officer upheld the suspensions, and the defendant filed a petition for writ of certiorari. The circuit court, in its appellate capacity, dismissed the petition, stating that the officer's initial contact with the defendant was a welfare check, during which the officer acquired probable cause to believe the defendant was DUI. The court also held that the implied consent form signed by the defendant "was an unequivocal indication" that the defendant was read the form. However, as to the suspension of the CDL license, the court noted that there was no competent substantial evidence that the defendant was given notice that it could be suspended if he refused to take the breath test, and therefore the court ordered that the license be reinstated.

***Shi v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 620a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. During cross-examination of the police officer, the hearing officer pointed out certain statements and circled evidence in an exhibit to facilitate the officer's answers. The court stated that this was not a practice that a "neutral and impartial hearing officer" should use. The court further held that the hearing officer erred in terminating the cross-examination of the arresting officer when the one hour allotted for the hearing expired. The hearing officer had told the defendant's attorney that he could ask for a continuance and the subpoena would remain in effect, but when the attorney filed a motion to continue, the hearing officer told the attorney's office that her supervisor said she could not continue the hearing for further cross-examination of the officer, and that at the continued hearing only the defendant's arguments would be heard. The court remanded for a new hearing for further cross-examination of the officer and suggested the hearing be assigned to a different hearing officer, "to avoid the appearance of impropriety."

***Downing v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 618a (Fla. 9th Cir. Ct. 2014)**

A driver had called the police to report that she was being followed by the defendant after a dispute on the highway. The driver drove to the police station, where officers spoke with her. An officer also stopped the defendant's vehicle, and smelled a strong odor of alcohol and noticed the defendant's eyes were bloodshot, red, and glassy and her speech was "lethargic and thick-tongued." The defendant also fumbled with her wallet, rambled and repeated herself, exhibited mood swings, and admitted to drinking before driving. The officer asked her to exit her vehicle, and on doing so the defendant stumbled and swayed. She performed poorly on field sobriety exercises and was arrested for DUI. The hearing officer upheld the suspension, and the defendant filed a petition for writ of certiorari, claiming there was not competent substantial evidence that she was lawfully stopped and detained. The circuit court, in its appellate capacity, denied the petition, holding that the defendant was stopped in the interest of the safety of the other driver and other persons the defendant might come into contact with. The court also held that the detention of the defendant while an officer first interviewed the other driver was lawful.

***Owens v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 613a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The arresting officer's statement did not include facts about the speed limit in the stop area, his vantage point when he concluded the defendant was speeding, or the use of a speed measuring device. The court held that, by itself, the defendant's failure to use his turn signal when there were other vehicles in the area "provided competent substantial evidence for the Hearing Officer to find that the traffic stop was lawful."

The court also held that the defendant was not deprived of his due process rights by the failure of the subpoenaed arresting officer's to appear at the formal review hearing on two occasions. The defendant claimed he did not seek enforcement of the subpoena because "he

would not have been able to have a meaningful hearing within 30 days pursuant to section 322.2615, Florida Statutes, if he attempted to enforce the subpoena." But the court noted that the defendant did not show that the hearing was not held within 30 days from the time the department received the hearing request.

***Smith v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 611a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. A deputy saw the defendant veer off the road and drive on a grassy median and drive 15 mph over the limit. The deputy followed him to his home, where the defendant exited the vehicle and fell down. The deputy noticed the defendant had slurred speech, glassy eyes, and the odor of alcohol on him, and requested a DUI unit. The responding officer made the same observations, asked the defendant questions including as to his medical condition and whether he'd been drinking (the defendant admitted drinking six or seven beers before driving), and asked him to perform field sobriety exercises, but the defendant refused. He was arrested for DUI and taken to the sheriff's office breath test center but refused to submit a second breath sample, upon which his license was suspended and he was cited for violating a traffic control device and failure to carry the vehicle registration. In his petition for certiorari review, the defendant argued there was not competent substantial evidence that he was stopped lawfully. But the court held the stop was justified because the defendant violated a traffic control device by failing to drive in his designated lane, and the officer had a legitimate concern for the safety of the defendant and other persons he could come into contact with.

***Peele v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 610a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. A police officer was flagged down by witnesses who described the driver and a vehicle that hit a parked vehicle. The officer saw the defendant, approached him, and noticed a strong odor of alcohol and that he was swaying. The officer arrested the defendant for DUI and his license was suspended. The police department had refused service of the subpoena for the hearing because the officer was on indefinite medical leave, and the officer did not appear. The court held that the police department was not required to accept service of a subpoena for the arresting officer in this case, but the hearing officer should have either (1) given the defendant the opportunity to continue the hearing until he could obtain service, or (2) stricken the arrest affidavit from the record. The court remanded the case for the hearing officer to determine if the length of the arresting officer's leave would deprive the defendant of his due process rights.

***Weber v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 559a (Fla. 13th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that the arresting officer's decision to stop the defendant, order her out of her vehicle, and conduct a DUI investigation was supported by competent substantial evidence. The court noted that the officer had witnessed the

defendant driving on the wrong side of the road, driving on a raised median, nearly stopping at a green light, and having "slurred speech, sluggish movements, and drooping eyelids."

The court rejected the defendant's claim that her refusal to submit to both breath and urine tests was involuntary. The defendant had denied drinking but displayed indicia of impairment that could suggest that she was under the influence of a controlled substance. Additionally, the officer qualified the request for a urine sample as "if needed." Moreover, the narrative in the officer's arrest report showed competent substantial evidence that the defendant had been informed of the implied consent warning prior to her refusal to submit to testing.

***Strycharz v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 557a (Fla. 20th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The court held there was not competent substantial evidence that either a law enforcement officer or a correctional officer had read the implied consent warnings to the defendant. The court noted that the probable cause affidavit and the refusal to submit to breath test affidavit both stated that the defendant refused to submit to a breath test after having been read the implied consent warning by the arresting officer, but the arresting officer testified that he did not read the implied consent warning to the defendant and was not present when the defendant allegedly refused to submit to the breath test. The court held there was no evidence other than hearsay statements that the defendant refused the breath test.

***Warren v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 555a (Fla. 12th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant, who was initially stopped for speeding, argued that the "evidence of radar speed [was] inadmissible absent the proper statutory predicates," but the court stated that the standards of proof necessary for criminal prosecution of DUI are not the same as for administrative license suspension hearings. The court noted that the deputy who observed the defendant speeding and confirmed his observations with a radar device had probable cause to stop the defendant for speeding. Moreover, once stopped, the court held that the deputy had reasonable suspicion to detain the defendant for a DUI investigation because he observed the defendant had shaky hands, smelled of alcohol, and had unopened beers in the vehicle, and the defendant gave him an "unusual explanation" for why he pulled into a parking lot rather than responding to the deputy's lights and siren.

***Milunski v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 553a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that the hearing officer did not commit error in admitting breath test results and excluding irrelevant testimony regarding the approval process and scientific reliability of the Intoxilyzer, or in refusing to issues subpoenas for "witnesses not identified in the documents required to be submitted" by law enforcement.

***McDaniel v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 552a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that there was no merit to the claim that the defendant was detained longer than necessary to issue a traffic citation pending the arrival of a DUI investigator. The arrest report supported the finding that the DUI investigator arrived as a routine backup officer and then observed signs of impairment, which led to a DUI investigation. The court also held that challenges to the Intoxilyzer approval process are beyond the scope of a license suspension review hearing. The court further held that the defendant had no right to request subpoenas for persons named in the FDLE inspection report, a document that is not required by statute to be submitted by law enforcement in a suspension hearing case.

***Alfons v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 550a (Fla. 7th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. Two officers responded to a report of a suspicious vehicle at a gas station and saw the defendant's vehicle at a gas pump. There was no one near the vehicle and its lights were off. One officer circled the building and then saw the defendant next to the vehicle with the door open and the keys on the floor of the vehicle. The officers noticed the defendant had slurred speech, bloodshot glassy eyes, and the odor of alcohol, he performed poorly on field sobriety exercises, and they arrested him. The defendant argued "there was no competent substantial evidence to support the hearing officer's finding that [the officers] had probable cause to believe [the defendant] was in actual physical control of the vehicle," but the court disagreed. The defendant also argued that the hearing officer's use of an uncertified copy of his driving record to base an 18-month suspension on violated due process, but the court noted that under the applicable rule and statute, driving records are sufficiently authenticated if certified by DHSMV.

***Alfonso v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 549a (Fla. 7th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that the police officer did not have probable cause to believe he was in actual physical control of the vehicle, but the court disagreed, based on a "phone call reporting a suspicious vehicle with the driver possibly using narcotics, together with the officer's observations." The court also held the hearing officer at the suspension hearing did not depart from the essential requirements of the law by finding that the defendant was lawfully arrested for DUI in his sister's driveway, because the defendant did not raise the issue at his hearing or by motion.

***Vanek v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 544a (Fla. 6th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. A police officer saw the defendant leaning very

close to the steering wheel and drifting between lanes. She stopped him to do a welfare check and noticed he had the odor of alcohol, bloodshot and watery eyes, and slow and lethargic speech, so she requested a DUI investigation. A trooper arrived and made the same observations, and asked the defendant to perform field sobriety tests. The defendant refused and said he needed to speak to his lawyer. He was arrested and taken to a testing center, where he was read the implied consent warning and refused a breath test. The defendant argued that the stop was illegal because it was not based on a reasonable suspicion of impairment, as his "simple weaving" was insufficient justification for a stop. While the trooper's investigation report stated that the police officer saw the defendant's vehicle almost hit several vehicles, the officer did not testify to that effect at the hearing. The court held that the evidence nevertheless demonstrated the officer had an objectively reasonable basis to stop the defendant. The court also held that the enhanced suspension was supported by evidence that the defendant had a prior refusal to submit to a breath-alcohol test, as the defendant did not submit evidence to rebut the uncertified driving record that documented a prior refusal.

***Wiggen v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 515a (Fla. 7th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's motion for a rehearing on a driver license suspension case. The court held that when the state presented evidence that the Intoxilyzer was properly calibrated and inspected at the time of the testing, but the defendant presented credible evidence that it failed its next monthly inspection and calibration four days after his test, the burden shifted back to the state "to show proper calibration and analysis on the date of the test." However, the state presented no testimony or evidence to that effect, so the suspension was reversed.

***Smith v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 514b (Fla. 18th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that the defendant's due process rights were not violated when a witness failed to appear for the suspension hearing, and the defendant waived his right to seek assistance from the court to issue a subpoena for the witness's attendance at a later hearing. The court also held that the defendant's refusal to take a breath test was "incident to a lawful arrest" as the arresting officer saw him make a U-turn on a red light and fail to stop at a red signal. The court also held that because the defendant repeatedly refused to take a breath test, even after he was given the implied consent warning, "his right to an independent blood test never matured, and there was no obligation to take [him] for a blood-alcohol test."

***Talavera v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 510a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that the police officer was justified in stopping the defendant when he had observed him continuously swerving within his lane.

***Rodriguez v. State*, 21 Fla. L. Weekly Supp. 508a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the trial court's conviction of the defendant for driving without a valid driver's license and denial of the defendant's motion for a directed verdict. The court held that while there is an exception to the offense of driving without a license if the person charged produces a license that was valid at the time of the arrest, the defendant presented "scant" evidence that his out-of-state license was valid at the time of the stop. Therefore, the trial court did not err in denying his motion for a directed verdict.

***Heard v. State*, 21 Fla. L. Weekly Supp. 507a (Fla. 17th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, affirmed the trial court's conviction of the defendant for driving while license suspended. The police officer testified that he saw a vehicle strike a concrete pole and leave the scene. He located the suspect vehicle nearby and stopped it, and the defendant got out of the vehicle. The officer ran a search and discovered the defendant's driver license had been suspended, and arrested him. The defendant argued that there was no specific testimony from the officer stating that he had been operating or in control of the vehicle, but the circuit court found that there was competent substantial evidence to support the trial court's finding otherwise.

***Drabin v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 499a (Fla. 11th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The court held that the amendment to section 322.2615(11), Florida Statutes, which stated DHSMV "shall invalidate" a driver license suspension "if the arresting officer or breath technician fails to appear pursuant to a subpoena," is applicable to a case pending appeal at the time of its enactment, as it is procedural or remedial in nature. The court held that, because the arresting officer failed to appear for the suspension hearing or provide good cause for not appearing, the statute requires that the defendant's license suspension be invalidated.

***Miranda v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 490a (Fla. 11th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension because the arresting officers failed to appear for the defendant's review hearing. An amendment to section 322.2615(11), Florida Statutes, that was enacted after the hearing states that DHSMV "shall invalidate" a driver license suspension if the arresting officer or breath technician fails to appear pursuant to subpoena. The court applied the amendment to this case, stating: "Generally, an appellate court is required to follow the law as it exists at the time of appellate disposition, rather than the law as it existed at the time when the lower tribunal or administrative agency rendered its decision. . . . This rule only applies when the amendment pertains to a remedy or procedure," which the court found to be the case with this amendment.

***South v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 484a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. A police officer saw the defendant's vehicle traveling so slowly that other vehicles were going around it to avoid hitting it. Fearing that the driver might be having a medical emergency or mechanical problem or was DUI, the officer followed him, saw the vehicle drift onto and slightly over the lane separator line and then onto the right shoulder of the road, and stopped the vehicle. The officer observed the smell of alcohol and that the defendant's eyes were bloodshot and glassy and his actions and responses were lethargic. When asked if he was refusing to perform field sobriety exercises, the defendant said he wanted to speak to an attorney. The officer arrested the defendant for DUI, took him to the DUI center, and read him the implied consent warnings. The defendant did not give a breath sample, at which time he was issued a notice of license suspension and citations for DUI and failure to drive in a designated lane. He argued that there was not competent substantial evidence (1) that he was legally stopped, (2) that the arresting officer had reasonable suspicion to detain him for a DUI investigation and ask him to perform field sobriety exercises, or (3) that he was lawfully arrested for DUI. The court, considering the facts of the case, disagreed.

***Oliveri v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 481b (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. A deputy stopped the defendant for speeding, and another deputy eventually arrested the defendant for DUI. At the breath test center the defendant asked for an attorney. The arresting deputy read him *State v. Hoch*, 500 So. 2d 597 (Fla. 3d DCA 1986), informing him that he was not entitled to meet with an attorney before taking the breath test. The defendant asked about taking a blood test, and the deputy told him "he would have to do it on his own after he got to the jail and at the jail he would have to get a phone book, look for a phlebotomist, have them scheduled to come to the jail, draw the blood and submit it into evidence, all at his own expense." Although the defendant said he did not want to take the breath test and that he felt he had no choice and was being forced to, eventually he submitted to the breath test and his license was suspended for driving with an unlawful breath alcohol level. The defendant made six arguments:

(1) The suspension should have been set aside based on the failure of law enforcement staff to provide him with an independent blood test or assistance upon request. The court disagreed, noting that the defendant used the phone at the jail but did not tell anyone there that he wanted an independent blood test.

(2) The hearing officer deprived him of procedural due process by failing to issue subpoenas for four FDLE employees to appear along with the documents requested in the subpoena duces tecum. The court disagreed, citing *Klinker v. Dep't of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 1a (Fla. 9th Cir. Ct. 2012), and *Morrow v. Dep't of Highway Safety & Motor Vehicles*, 19 Fla. L. Weekly Supp. 704a (Fla. 9th Cir. Ct. 2012).

(3)–(5) The breath test results were not properly approved under administrative rules "because they were obtained by use of an unapproved breath testing machine and provided scientifically unreliable results"; the breath test results were inadmissible because the record

failed to include the most recent department inspection; and the Intoxilyzer 8000 machine was improperly evaluated for approval in violation of administrative rules. The court held it was not error for the hearing officer to admit evidence as to these claims, citing *Klinker* and *Morrow*.

(6) The lntoxilzyer 8000 machine was not kept in a secure location and was accessible to unauthorized persons, and was not properly reinspected. The court stated that the breath alcohol test affidavit was presumptive proof of results of an authorized test, and the defendant failed to show that the department did not substantially comply with applicable administrative rules.

***Gross v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 481a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that the hearing officer's failure to issue subpoenas for FDLE employees identified in an Intoxilyzer inspection report did not deprive the defendant of due process. "[T]he FDLE Inspection Report is not a document required to be submitted by law enforcement pursuant to section 322.2615(2) and therefore, the driver has no right to request subpoenas for individuals identified in that report." As to the defendant's claims of improper breath test machine approval procedure, the court stated that "challenges to the approval process of the Intoxilyzer machine are beyond the scope of a formal driver's license review proceeding and the Intoxilyzer 8000 is approved for evidentiary use in Florida."

***Meade v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 479a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. A university police officer got a radio call regarding a possible drunk driver. He spotted the vehicle and saw it swerve over the right lane marker several times, stop at a red light in the far left lane way past the stop line, turn right from the left lane, and cross over lane markers. Upon stopping the defendant, the officer noticed indicia of impairment. The defendant performed poorly on field sobriety exercises, was arrested for DUI, and refused to take a breath test, and her license was suspended. She argued that she was deprived of due process because the hearing officer refused to issue subpoenas for the arresting officer, stopping officer, breath technician, and record custodians with the State Attorney's Office and the Florida Highway Patrol, and that the suspension was not supported by competent substantial evidence that her vehicle was lawfully stopped. The court disagreed, noting that (1) her attorney had submitted the subpoenas in an improper format, and the hearing officer provided "ample opportunity to provide corrected subpoenas," which she failed to do; and (2) the stop was lawful because the university officer had reasonable suspicion for a stop based on the defendant's erratic driving, and the university had jurisdiction up to 1,000 feet from university property, within which the stop had occurred.

***Rigby v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 477a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that his detention was not lawful, and that there was not competent substantial evidence to support the suspension.

However, the court held that the defendant was lawfully detained when the officer saw him drive into a parking stopper as he parked, and enter a convenience store with slow, unsteady movements and a flushed face and glassy eyes, and the officer noticed the odor of alcohol. After the lawful detention, the officer obtained more information that gave him reasonable suspicion to ask the defendant to perform field sobriety exercises, as the defendant admitted he had been drinking and the officer could smell alcohol coming from him as he spoke. Therefore, "there was competent substantial evidence to support the hearing officer's decision to sustain the license suspension."

***Baez v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 476b (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant had his license suspended for impersonating his twin brother in order to take the written driver license exam for him. The defendant argued that there was not competent substantial evidence on which to base the suspension. But the court disagreed, stating that the administrative report included evidence that the defendant's twin does not have a mole on his face but the defendant, who took the test, does. "That evidence combined with the different signatures, nervous behavior exhibited, and a man without a mole reappearing after the trooper threatened to fingerprint check the man with the mole, is enough for a reasonable mind to support the conclusion that Petitioner engaged in fraudulent actions."

***Ouellette v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 474a (Fla. 9th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. An officer investigating a crash noticed a strong odor of alcohol on the defendant, who was identified by a witness as one of the drivers involved. The officer asked the defendant to perform field sobriety exercises and then arrested him and took him to a DUI testing facility, where the defendant refused to submit to a breath test. He was cited for DUI with property damage, refusal to submit to a breath test, and driving while license suspended without knowledge. The defendant argued that the suspension "was not supported by competent substantial evidence that the arresting officer had the necessary reasonable suspicion to commence a DUI investigation." But the court found that the facts did provide such evidence.

***Corbitt v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 473a (Fla. 7th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The court held that the DHSMV, by giving the defendant 10 days' notice of her formal review hearing, rather than 14 days' notice as required by rule 15A-6.011, Florida Administrative Code, violated the defendant's due process rights. The court also noted that "based on the 10 day period provided by the Rule for filing the prehearing statement, [the defendant] was not even required to file the prehearing statement until the actual hearing date. The arrest packet was not available to [her]

until eight days before the hearing, and due to the limited notice, [she] was not able to properly prepare for the hearing."

***Azbell v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 471a (Fla. 7th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The defendant argued that the arresting officer did not have legal authority to arrest him because the incident did not occur in his jurisdiction. Citing a "callous disregard of plain facts," the court held that there was "clear and convincing evidence, if not evidence beyond and to the exclusion of a reasonable doubt," that the lanes listed by the arresting officer as the site of the offense were outside his jurisdiction.

***Marcantonio v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 469a (Fla. 6th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. An officer responded to an anonymous tip about a brawl outside a restaurant. The officer saw the defendant stumble to his car and told him to stop, but the defendant ignored the officer and nearly backed over him while leaving the parking space. Once the defendant stopped, the officer noticed he had bloodshot eyes and smelled of alcohol. He performed a DUI investigation and arrested the defendant for reckless driving and DUI. The court held that the officer had probable cause to detain the defendant, and the investigation report and breath test affidavit showed the defendant was intoxicated when he was detained.

***Mordini v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 466a (Fla. 6th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that "the hearing officer departed from neutrality when he corrected the notice of suspension from a refusal to a DUBAL" and that "his due process rights were violated by the inclusion of the Intoxilyzer inspection report that was missing from the original arrest packet." He also argued that he was "unlawfully de facto arrested when he was moved from the side of the road to a nearby parking lot to perform the field sobriety exercises." The court disagreed, noting that although the citation was inherently contradictory (it was marked as "refusal" but noted breath alcohol test results), the defendant's application for review listed "refusal" as the reason for suspension. The court stated that the defendant "admits in his Reply brief that he planned on using the error contained in the citation to his advantage at the hearing, and will not be heard to complain that the hearing officer corrected the suspension charge when it was [he] who incorrectly and disingenuously characterized the suspension as a refusal when he knew it should have been an unlawful breath alcohol content suspension." The court also stated there was nothing improper about the hearing officer putting the Intoxilyzer inspection report in the file, and that in any case the "besmirched" hearing officer had been replaced, rendering moot any issue of his impartiality. As to the de facto

arrest claim, the court stated that "transporting a detainee from the scene of a traffic stop to a separate and safer location to perform field sobriety tests does not constitute a de facto arrest."

***Walter v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 464b (Fla. 6th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that his erratic driving was not an objective basis for a stop because no other traffic was affected by his failure to maintain a single lane. But the court held that absence of other traffic was irrelevant because the officer stopped him to determine whether he was ill, tired, or DUI, not for failure to maintain his lane, which the officer had reasonable suspicion to do.

***Bragg v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 464a (Fla. 6th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The arresting officer, who had been subpoenaed, failed to appear at the defendant's hearing. The hearing officer told the defendant's attorney that if no documentation that the attorney was seeking to enforce the subpoena was received, "a decision would be entered based on the preponderance of the evidence admitted at the [original] hearing." No such documentation was received, and the order of suspension was affirmed. The defendant argued this violated his due process rights. The court disagreed, because the defendant had waived any time restrictions and had requested a continuance.

***Kuykendall v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 463a (Fla. 5th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that the hearing officer "impermissibly considered self-incriminating statements" the defendant made, before his *Miranda* rights were read to him, to the law enforcement officer (he admitted to driving and to drinking alcohol). The court held that 2006 amendments to section 322.2615, Florida Statutes, require the hearing officer to consider the crash report notwithstanding section 316.066(4), Florida Statutes (accident report privilege).

***Braddy v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 462a (Fla. 4th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant claimed that his initial detention was not based on reasonable suspicion, but the court held that the police officer had a reasonable suspicion to stop the defendant when he had observed him weaving within his lane for six blocks.

***Sawicki v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 461a (Fla. 4th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. A deputy arrested the defendant for DUI after another deputy stopped the defendant "ostensibly" for violating the "move over" law. The defendant claimed the stop was unlawful. It was uncontroverted that traffic prevented the defendant from safely changing lanes, so the issue was whether the evidence showed that his speed did not comply with the requirements of section 316.126(1)(b)2, Florida Statutes, when he passed the deputies who were on the side of the road. The court held there was no evidence to show the posted speed limit or the defendant's speed; the deputy testified only that the defendant "did not slow down and that he maintained a 'constant speed.'"

***Manno v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 396a (Fla. 15th Cir. Ct. 2014)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The court held that DHSMV's interpretation of section 322.271, Florida Statutes, to mean that an applicant for a hardship license must be not only drug free, but also alcohol free, for the required time period before receiving the license was reasonable. Therefore, the court deferred to DHSMV.

***Tamaki v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 395a (Fla. 12th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that "the hearing officer erroneously determined that the documentary evidence was more credible than [her] testimony at the administrative hearing. [She] also contends that the hearing officer failed to consider a third-party witnesses [sic] who corroborated [her] statements." The court held that the documents constituted competent substantial evidence for the hearing officer's decision, and it did not usurp the hearing officer's fact-finding responsibility.

***Alexandre v. State*, 21 Fla. L. Weekly Supp. 387a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, affirmed in part and reversed in part the trial court's holding, and most importantly reversed the court's judgment and sentence for driving without a valid driver license, remanding for further proceedings. The court held that where the only evidence that the defendant did not have a driver license was the deputy's testimony regarding what he had found on the DHSMV database, which was inadmissible hearsay, the judgment for driving without a valid license must be reversed.

***Castro v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 386a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The arresting trooper was excused from the defendant's first hearing and second re-scheduled hearing and failed to appear at the third,

stating after it started that he was in court. The hearing officer offered to continue the hearing again and denied the defendant's motion to invalidate the suspension. The defendant claimed he was deprived of due process. In this case, although provided for by section 322.2615(6)(c), Florida Statutes, the defendant did not seek enforcement of the subpoena by filing a petition for enforcement in the circuit court. Further, that statute "states that the Department must *schedule* a hearing within 30 days after the request for a hearing is received, not hold a hearing within 30 days of the request." Regarding the defendant's allegations of defects in the Intoxilyzer approval process, the court held that "challenges to the approval process of the Intoxilyzer machine are beyond the scope of a formal driver's license review proceeding and the Intoxilyzer 8000 is approved for evidentiary use in Florida."

***Bond v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 384a (Fla. 9th Cir. Ct. 2013)**

The defendant was arrested for DUI after performing poorly on field sobriety exercises. He consented to a breath test but "failed to provide proper breath samples," and his license was suspended. He filed a petition for writ of certiorari, alleging that (1) the arrest affidavit and statement were improperly notarized or attested; (2) the arrest occurred 17 days before the arrest affidavit was signed by the second officer to sign; and (3) the arrest affidavit and statement did not state why the breath samples were deemed a refusal or that the defendant was re-instructed or "warned that failure to properly blow would result in a refusal." The circuit court, in its appellate capacity, denied the petition, holding that (1) the signatures and badge numbers and their location support that they were properly sworn and attested to before a law enforcement officer and a notary; (2) the discrepancy between the arrest date and the signing date of the arrest affidavit "does not reduce the merit of the document as there are no conflicting dates as to the arrest"; and (3) the breath tech operator's affidavit stated that "he administered the breath test in accordance with Chapter 11D-8," which constituted competent substantial evidence for the hearing officer to deny the defendant's motion to set aside the suspension as to that argument.

***Reis v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 382a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that (1) there was no probable cause to believe he was driving or in actual physical control of the vehicle, and (2) the officers did not have a reasonable suspicion of DUI. The court disagreed, noting that (1) the officer who arrived at the single-vehicle crash scene observed that the defendant was standing by the vehicle, no one else was present, and the defendant got into the vehicle and sat in the driver's seat of the vehicle, which turned out to be his company-assigned vehicle, and (2) the crash was caused by the vehicle hitting a concrete wall, and the defendant was swaying, had slurred speech and glassy eyes, smelled of alcohol, and called the officer "honey."

***Chun v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 381a (Fla. 9th Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant claimed that "there was no well-

founded suspicion of criminal activity or probable cause to seize her because she was lawfully sleeping in a lawfully parked car and [the troopers] had no founded suspicion of criminal activity to order her to open the door and roll down the window." But the court stated that the troopers' initial contact with her "was a consensual encounter for a well-being check," as a Road Ranger had reported the vehicle stopped on the roadside with its engine running, and the driver was unresponsive to the troopers' attempts to waken her. The court further stated that when the defendant did wake up, the trooper "could lawfully request [her] to step out of the vehicle to continue his well-being check since there was still a question about her welfare after she awoke and appeared disoriented." The trooper smelled alcohol, observed other indicia of impairment, and conducted field sobriety exercises on which the defendant performed poorly.

The court also rejected the defendant's argument that she was denied due process based on the hearing officer's failure to issued subpoenas for certain FDLE employees. As to the defendant's claims of improper breath test machine approval procedure, the court stated that "challenges to the approval process of the Intoxilyzer machine are beyond the scope of a formal driver's license review proceeding and the Intoxilyzer 8000 is approved for evidentiary use in Florida."

***Savani v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 378a (Fla. 2d Cir. Ct. 2013)**

The circuit court, in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver license suspension case. The defendant argued that (1) her due process rights were violated when hearing officer did not allow her to cross-examine a witness, and (2) there was not competent substantial evidence to support probable cause that she was DUI. The court held that (1) the defendant had not shown how the testimony sought was relevant and did not ask to make a proffer of the expected testimony, and (2) the facts supported a finding of probable cause that she was DUI.

***Warren v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 377a (Fla. 1st Cir. Ct. 2013)**

The circuit court, in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver license suspension case and quashed the suspension. The defendant was in a Special Supervision Services program, which required installation of an ignition interlock device in his car, and his license was reinstated. Nearly two years later, at his physician's direction he took over-the-counter cough medication, which caused a lock-out when he tried to start his vehicle. The lock-out appeared on the log of the SSS program administrator, which recommended cancellation of the defendant's hardship license. He appealed, and the program administrator that conducted the review concurred with the recommendation. But the court held that "the ignition interlock device does not qualify as a testing device as set forth under Florida Administrative Code Rule 15A-10.031(3) and the results cannot be considered under this provision for purposes of . . . termination from [a Special Supervision Services] Program based on noncompliance."

VI. County Court Orders

***State v. Pistininzi*, 21 Fla. L. Weekly Supp. 720b (Brevard Cty. Ct. 2014)**

The court denied the defendant's motion to suppress, holding that his driving pattern justified "an investigatory stop to determine if [he] was ill, tired or impaired." The defendant failed to come to a complete stop while leaving a parking lot, almost colliding with the deputy's vehicle; veered within his lane; changed his speed; drove onto the fog line as he neared a stop sign; and crossed over a double yellow line while turning.

***State v. Brownlee*, 21 Fla. L. Weekly Supp. 718a (Brevard Cty. Ct. 2014)**

The court denied the defendant's motion to suppress, holding that an officer had probable cause to stop the defendant for reckless driving when the officer saw the defendant driving on the wrong side of the road, requiring the officer to take "evasive action to avoid a head on collision."

***State v. Hernandez*, 21 Fla. L. Weekly Supp. 717a (Brevard Cty. Ct. 2014)**

The court denied the defendant's motion to suppress. After the defendant failed to come to a complete stop at a stop sign, a police officer followed him for about ten seconds, and then pulled into the defendant's driveway and told him he was "being stopped." The defendant had gotten out of his vehicle, and in the approximately ten seconds it took for the officer to get out of his car and get to where the defendant was, the officer told him to get back in. The defendant did get back into his vehicle, but sat sideways in a way that prevented the door from being closed. About 20 seconds later, the officer took the defendant out of the vehicle and arrested him. The defendant did not challenge the validity of the traffic stop itself, but argued that the officer did not have probable cause to arrest him for resisting an officer without violence. The court noted that the elements of the crime charged were that (1) the officer was "engaged in the lawful execution of a legal duty," and (2) the defendant's actions constituted "obstruction or resistance of that lawful duty." It held that the officer's order for the defendant to get back into his truck was lawful, and that detaining a person to conduct a traffic violation investigation "is a recognized legal duty of a police officer." Therefore, "there was probable cause to believe the [officer] was acting in the lawful execution of a legal duty when he had directed [the defendant] back into his truck." However, the defendant's failure to get back into his truck before the officer "physically guided him" did not constitute an obstruction or resisting of a lawful command. The officer gave him only about ten seconds to "hear, process and act" upon the command. On the other hand, the court found that there was probable cause to believe the defendant's failure to put his legs inside the truck obstructed a lawful order. The court ended by stating: "The issue of whether the very short period of time that elapsed between [the officer's] directive to [the defendant] to bring his legs in the car and the physical act of arresting him would establish resisting beyond a reasonable doubt is a question for the jury and not the subject of this order."

***State v. Gillen*, 21 Fla. L. Weekly Supp. 715b (Brevard Cty. Ct. 2014)**

The court denied the defendant's motion to suppress, which was "based on the lack of founded suspicion to justify a traffic stop." A deputy was driving slowly in the left lane to direct traffic into the right lane to avoid a crash. She saw the defendant driving behind her in the left lane, merging into the line of cars in the right lane, and then pulling in front of her in the left

lane. She directed him to get back to the right lane, and after he did, she pulled her vehicle next to his and asked what he was doing. She noticed his eyes were bloodshot and glassy and his movements were lethargic, and she pulled him over, suspecting impairment. The court held that an investigatory stop was justified based on the defendant's driving pattern alone, but the glassy and bloodshot eyes and lethargy further supported the validity of the stop.

***State v. Bolin*, 21 Fla. L. Weekly Supp. 681b (Volusia Cty. Ct. 2014)**

The court denied the defendant's motion to suppress, holding that the officer had probable cause to stop the defendant for speeding where he paced the defendant at 48 mph in a 35 mph zone. The court also held that, even though the officer activated his overhead lights and stopped the defendant outside the officer's jurisdiction, the pursuit had begun in the officer's jurisdiction and was "continuous and uninterrupted," and occurred less than two minutes after the defendant passed the officer.

***State v. Muntifering*, 21 Fla. L. Weekly Supp. 681a (Volusia Cty. Ct. 2014)**

The court granted the defendant's motion to suppress results of a DUI investigation, finding that where an officer arrived at the scene of a single-car accident and saw the defendant seated at a nearby business that was closed, "the arresting officer did not have sufficient information regarding defendant being in actual physical control of the vehicle in order to conduct a DUI investigation."

***State v. Freeman*, 21 Fla. L. Weekly Supp. 680a (Volusia Cty. Ct. 2014)**

The court granted the defendant's motion to suppress evidence. The officer was dispatched to a domestic disturbance where one of the parties had left in a gold Dodge Ram pick-up truck. Within seconds, he saw a silver Dodge Ram pick-up truck within a quarter mile of the address and stopped the truck to determine whether "a crime was committed as far as the disturbance." The driver denied being in a fight, but the officer noticed the smell of alcohol and that the defendant's eyes were bloodshot and his speech was slurred. The officer "waited for another officer to determine whether the 'domestic disturbance' was or was not a crime, and 'handle that part of the investigation.'" About a half hour after the stop, the second officer informed the arresting officer that no crime had taken place, and the latter began a DUI investigation, which resulted in the defendant's arrest. The defendant argued that "that there was an insufficient basis to stop the vehicle because there was no reasonable suspicion of criminal activity; and . . . detaining the Defendant for more than half an hour before commencing an investigation of the alleged DUI is an unreasonable seizure." The court agreed and suppressed "[a]ll evidence seized as a result of the unlawful stop and detention of the Defendant."

***State v. Hayes*, 21 Fla. L. Weekly Supp. 676a (Duval Cty. Ct. 2013)**

The court granted the defendant's motion to suppress evidence based on an unlawful stop. The court held that "[t]he Defendant's driving pattern did not rise to the level of careless driving" or provide "reasonable suspicion of a traffic violation to justify a stop." It noted that while the officer testified that the defendant nearly missed a stop sign, he did not cite him for it or note it in his report. The officer also testified that he saw the defendant come safely to a five-way stop, travel at a normal speed, and slow down for bikers on the road. The officer said he

thought the defendant might be ill, tired, or impaired, and after stopping him smelled alcohol and believed the defendant's eyes were bloodshot and watery and his speech was slurred, but the court found the facts did not justify a welfare check. And "[e]ven assuming the stop was justified, all evidence obtained from the stop must be suppressed because the officer did not have probable cause for the arrest."

***State v. Annatone*, 21 Fla. L. Weekly Supp. 647a (Volusia Cty. Ct. 2014)**

The defendant filed a motion to suppress evidence, because the police officer was outside his jurisdiction when he stopped the defendant, and therefore the detention was unlawful. The court agreed and granted the motion. Although the officer testified that he responded to a sheriff's office dispatch to investigate a suspicious vehicle, believing the sheriff's office requested assistance, the court found no evidence supporting that testimony. The court also stated: "The Mutual Aid Agreement . . . does not include the authority for any law enforcement agency which is a party . . . to enter into any jurisdiction and perform law enforcement functions as it deems appropriate. [It] is quite specific and authorizes concurrent jurisdiction for listed functions."

***State v. Jones*, 21 Fla. L. Weekly Supp. 600a (Brevard Cty. Ct. 2014)**

The court denied the defendant's motion to suppress in a DUI case. A deputy had made a traffic stop on the vehicle the defendant was driving, after seeing that it was at a stop sign, past the stop bar, for four to five minutes with the brake lights engaged. The deputy noticed the driver was not moving, believed the driver was ill, injured, or impaired, and went to the driver's side and began a DUI investigation. The court found that the deputy's suspicion that the driver was ill, injured, or impaired was reasonable under the circumstances.

***State v. Daugherty*, 21 Fla. L. Weekly Supp. 599a (Brevard Cty. Ct. 2014)**

A deputy was running vehicle tags. The truck the defendant, a male, was driving was a different color than the color shown in the records, and the records showed the owner was a female. The court, noting the similarities between the vehicle and its registration data and the lack of other suspicious circumstances, granted the defendant's motion to suppress and stated that vehicle color disparity and gender disparity alone are not bases for a reasonable suspicion for an investigatory stop. (The court noted a conflict among district courts of appeal and that the supreme court accepted jurisdiction based on the direct conflict, in *Van Teamer v. State*, 108 So. 3d 664 (Fla. 1st DCA 2013). On July 3, 2014, the supreme court decided *State v. Teamer*, ___ So. 3d ___, 2014 WL 2979378 (Fla. 2014), and held that the fact that a vehicle's color differs from that stated in the registration, standing alone, does not rise to the level of a reasonable suspicion.)

***State v. Smoot*, 21 Fla. L. Weekly Supp. 598a (Brevard Cty. Ct. 2014)**

A traffic stop for an obstructed tag resulted in the defendant being charged with possession of alcoholic beverage by a person under 21. The basis for the stop was that the state web address at the top of the tag and the words "Sunshine State" at the bottom were partially covered by a frame. The court granted the defendant's motion to suppress because, even though the word "Florida" was partially obstructed, it was part of a website address unrelated to the

identification and registration of the tag or vehicle and thus was not an identification mark and not a violation of section 316.605, Florida Statutes, and the traffic stop was not justified. The court also noted that there are conflicting decisions in its county.

***State v. Mader*, 21 Fla. L. Weekly Supp. 597a (Brevard Cty. Ct. 2014)**

A deputy testified that he observed a vehicle drifting within its lane, touching the right and left lines at least once within a quarter mile, and, believing the driver to be ill, injured, or impaired, made a traffic stop. The court granted the defendant's motion to suppress as the video revealed that the vehicle did not touch either lane line and there was no other traffic on the road. The court stated that the "crucial concern" regarding failure to maintain a single lane "is safety rather than precision."

***State v. McGuinn*, 21 Fla. L. Weekly Supp. 594a (Brevard Cty. Ct. 2014)**

A trooper responded to a one-car accident and later met with the vehicle's occupants at the hospital. He noticed alcohol on the defendant/driver's breath, and that his eyes were red and watery, and told him he was making a criminal investigation. The defendant admitted he was under 21, had been drinking at a party before the crash, and was drunk, and he consented to a blood sample. The court denied the defendant's motion to suppress the results because the officer had reasonable suspicion of DUI, and it would have been impractical to wait for the defendant's release to conduct a breath test (he had not been triaged yet) and a urine test would not detect alcohol.

***State v. Feinstein*, 21 Fla. L. Weekly Supp. 587a (Broward Cty. Ct. 2013)**

The defendant was arrested for DUI and submitted to breath and urine tests. He proffered expert testimony from a former DUI officer and Drug Recognition Expert relating to whether the arresting officer followed standard procedures for field sobriety exercises, but the court sustained the state's objection to the expert's testimony and granted its motion to preclude it. The defendant argued that, while field sobriety exercises are lay witness observations and opinion, if the investigating officer is permitted to testify as to his training and experience regarding the exercises, he would become "an expert witness in lay witness clothing" and the defendant should be able to refute the officer's testimony with his own expert. However, the court stated that a witness's testimony about his or her training and experience relates to the witness's credibility, not whether the witness is an expert, and therefore the officer could testify, but the defendant's expert could not. The court further held that the defendant's expert could not testify regarding a drug influence evaluation that could have been conducted, because the jury did not need expert testimony to understand that it did not occur. Also, the defendant's expert could not testify as to his opinion that he did not see symptoms of drug impairment in the field sobriety exercises video or other case documents. He had no training in toxicology, pharmacology, pharmacokinetics, or chemistry, and he "admitted that his opinion has not been subjected to peer-review or publication, that he has no potential or know[n] error rate for his opinion, that there are no maintenance or standards for controlling the operation of his theory, and that he does not know whether his opinion has been accepted in the relevant scientific community." Therefore, as his testimony would not assist the trier of fact in understanding the evidence or determining any

facts and "is not the product of reliable principles or methods," it was inadmissible under the *Daubert* standard.

***State v. Morris*, 21 Fla. L. Weekly Supp. 584a (Palm Beach Cty. Ct. 2013)**

The defendant was charged with possession of marijuana and reckless driving. A police officer saw the defendant speeding in a parking lot, fail to stop at two stop signs in the lot, and fail to stop for a red light while leaving the lot. The officer smelled alcohol and the "stale odor of burnt marijuana." The officer called for a DUI investigator, who smelled alcohol on the defendant's breath but did not smell marijuana. The defendant performed poorly on field sobriety exercises and was arrested for DUI. His breath results were below .08, so in accordance with local police department policy he was asked to submit to a urine test, which showed the presence of a THC metabolite. None of the incident reports or testimony reflected that marijuana was the basis for the DUI arrest. The court held that although there was probable cause to arrest the defendant for DUI, the evidence did not show that there was reasonable cause to believe the defendant was driving under the influence of marijuana or a sufficient basis to ask him to submit to a urine test. Therefore, the urine test was not lawfully obtained and the defendant's motion to suppress its results was granted. Regarding the police department's policy of requesting urine tests when breath test results are under .08, the court stated that it "cannot condone that practice and that practice cannot always be legally supported by the standard explanation that breath alcohol tests did not support the level of impairment observed. That explanation does not automatically provide a sufficient legal basis for finding reasonable cause to believe some substance other than alcohol is involved, particularly where breath test results are as close to the legal limit as in this case."

***State v. Nicholson*, 21 Fla. L. Weekly Supp. 582b (Sarasota Cty. Ct. 2013)**

A police officer stopped the defendant for speeding, smelled alcohol, took the defendant's keys, and in accordance with department procedures called for a backup officer. When the second officer arrived, the first officer began a DUI investigation, and based on field sobriety exercises arrested the defendant for DUI. The defendant argued that his detention by the first officer was illegal because it was longer than reasonably necessary to confirm or dispel the officer's suspicions that he was impaired. The court held that the first officer "was not engaged in making an arrest or furthering his investigation while waiting for the backup officer. . . . The investigation stopped while awaiting the arrival of the backup officer." The court held that once the investigation stopped, the defendant's detention became unlawful, and it granted the defendant's motion to suppress.

***State v. Castellon*, 21 Fla. L. Weekly Supp. 577a (Miami-Dade Cty. Ct. 2014)**

Based on an anonymous tip about a suspicious vehicle, a police officer parked in front of the defendant's vehicle, which was the only one parked in the area. He saw an unidentified male talking with the defendant through the driver's window. The unidentified male walked away, and the officer ordered him to return and then detained him and the defendant. Another officer arrived, a license check showed the defendant's license had expired, and the defendant was arrested for driving with a suspended license. The court held that the officers did not have reasonable suspicion to believe the defendant was engaging in, or about to engage in, criminal

activity before they initiated the investigatory stop. Further, because the officers positioned their vehicles, with flashing lights, on both ends of the defendant's vehicle, ordered the unidentified male to return, took the defendant's license to run a check, and testified that the defendant was not free to leave, the defendant was in a custodial position, and the information that his license was suspended was obtained through an illegal search. The court granted the defendant's motion to suppress.

***State v. Menear*, 21 Fla. L. Weekly Supp. 574b (Polk Cty. Ct. 2014)**

A deputy responded to a 911 call from an individual who felt threatened by the way a vehicle was parked and the manner in which the driver was handling a gun. The deputy saw the vehicle driving across the parking lot, and the driver stopped and got out. The deputy went to the side of the vehicle, where he saw the driver bent over with a gun sticking out of the top of his shorts and ordered him to remain still. The deputy removed the weapon and two more guns the driver told him about, and patted down the driver but found no weapons. Then the deputy asked the defendant/passenger if he could pat him down, to which the defendant agreed. The deputy felt two cylindrical objects, which the defendant said were lighters, and asked the defendant, "mind if I remove them . . . out of your pocket?" to which the defendant replied, "yes." The deputy found marijuana and a marijuana pipe in the pockets and arrested the defendant. The defendant filed a motion to suppress based on a warrantless search. The court held that, although the stop was lawful, the circumstances did not justify reaching into the defendant's pockets and removing objects. There was no evidence that the items were contraband or that the deputy had a continuing fear that the defendant was armed and dangerous. And even if the defendant's statement could be construed as giving consent to the removal of the items from his pockets, the deputy had his gun drawn and the defendant was not free to leave, contradicting that consent was given freely and voluntarily. The court granted the motion to suppress.

***State v. Reyes*, 21 Fla. L. Weekly Supp. 573a (Osceola Cty. Ct. 2014)**

A deputy stopped the defendant because for not having two working brake lights. The defense argued that two of the three brake lights were functioning, and therefore there was no probable cause for the traffic stop. The court noted that in the past cars had only two brake lights, but that most modern vehicles have a third light in the center of the rear window. In this case, the defense witnesses testified that the defendant's vehicle had three brake lights, two of which were functioning, but the deputy could not remember which lights were functioning. Therefore the state failed to meet its burden in establishing the validity of the stop and the court granted the defendant's motion to suppress.

***State v. Rostad*, 21 Fla. L. Weekly Supp. 563b (Nassau Cty. Ct. 2013)**

A trooper stopped the defendant based on failure to come to a complete stop at a stop sign and crossing over a yellow line. When he pulled her over, she stopped in the middle of the street rather than a parking lot next to it. The trooper observed the defendant had bloodshot, watery eyes, a flushed face, slurred speech, and an odor of alcohol, and asked her to perform field sobriety exercises; he then arrested her and administered a breath test, which showed breath alcohol levels over the legal limit. The defendant filed a motion to suppress, which the court granted based on illegal stop and seizure. The court noted that a video showed the stop at the

stop sign, though brief, was complete, and there was no other traffic in the area that could have been affected by the defendant's failure to maintain her single lane. Further, the trooper had no objectively reasonable basis to make the stop, and did not inform the defendant of her *Miranda* rights even though she was detained.

***State v. Gibson*, 21 Fla. L. Weekly Supp. 563a (Duval County Ct. 2014)**

A police officer saw the defendant at a gas station where illegal drug transactions had previously occurred, talking to a person whom the officer knew frequented the gas station but who was not a known drug dealer. When the defendant saw the officer, he turned and walked into the store. The officer watched the defendant leave the store and walk back to his car. The defendant missed his car door handle while looking at the officer, but then looked down at the handle and opened the car. The officer followed the defendant and observed no suspicious driving pattern, but nevertheless stopped and arrested the defendant. The court granted the defendant's motion to suppress, stating: "The officer did not have a reasonable suspicion to stop Defendant for DUI or any other reason. The State did not meet their burden of proof by a preponderance of the evidence to establish a lawful stop of Defendant without a warrant."

***State v. Ragland*, 21 Fla. L. Weekly Supp. 454a (Brevard Cty. Ct. 2014)**

The court, on the defendant's motion for *Daubert* hearing, denied the defendant's motion to exclude the results of a horizontal gaze nystagmus (HGN) test. The court held that HGN tests are "relevant but can be outweighed by danger of unfair prejudice, confusion, and can mislead the Jury unless the traditional predicate of scientific evidence is satisfied. Further HGN test results should not be admitted as lay observations of intoxication because HGN is scientific evidence which is admissible only if scientific predicates are established." If the predicate is laid by the state, the defendant may offer contradictory expert testimony.

***State v. Cattee*, 21 Fla. L. Weekly Supp. 452a (Brevard Cty. Ct. 2014)**

The defendant filed a motion to suppress, arguing that "he was placed under 'de facto' arrest, without probable cause, when he was placed in [the officer's] police vehicle and transported across the street to a parking lot in order to perform" field sobriety exercises. The court denied the motion, as the officer had a reasonable suspicion to stop the defendant, and he moved him, not handcuffed, from an unlit, unlevel, unpaved lot with potholes and no parking space lines to a well-lit, level, and paved parking lot with marked parking spaces.

***State v. Evans*, 21 Fla. L. Weekly Supp. 451a (Brevard Cty. Ct. 2014)**

The deputy saw the defendant backing up through the parking lot of an apartment complex. Believing it to be unsafe, she shined her spotlight at the defendant's mirror to get her attention, and she stopped. The deputy yelled to the defendant to turn around and drive forward, but testified that the defendant did not seem to understand her. The deputy walked over to the defendant and told her it was unsafe to drive backwards in a pedestrian area, and the defendant replied that "she was following the directions of her passenger." The deputy began a DUI investigation. The defendant filed a motion to suppress, on the ground that the encounter was not consensual. The court granted the motion, holding that the deputy did not have a reasonable suspicion to make an investigatory stop, and the detention was illegal. Shining a spotlight at the

defendant's mirror, the deputy's tone of voice and manner of speech, and her other actions were consistent with a command and not "with a humble supplication which a reasonable person might choose to ignore." The court also stated that the state's community caretaker argument was misplaced as there no evidence that the defendant needed assistance and there were no pedestrians present to be placed in danger.

***State v. Burdine*, 21 Fla. L. Weekly Supp. 450a (Brevard Cty. Ct. 2013)**

An officer responded to an accident in which the defendant had rear-ended another vehicle, and he noticed that the defendant smelled of alcohol, seemed disoriented, and had glassy eyes. Since the defendant was being treated in a rescue vehicle, the officer did not ask her to perform field sobriety exercises but asked her to consent to a blood draw, which she did. She later filed a motion to suppress, which the court denied, finding that the officer had probable cause to arrest her for DUI with property damage or personal injuries, and that her consent to the blood test was given freely and voluntarily.

***State v. Morgan*, 21 Fla. L. Weekly Supp. 449a (Brevard Cty. Ct. 2014)**

The deputy saw the defendant parked on the roadside passed out with the engine running and an open beer bottle between his legs, noticed the smell of alcohol and other indicia of impairment, and began a DUI investigation. The court denied the defendant's motion to suppress, finding that the encounter was consensual and gave the deputy reasonable suspicion that the defendant was impaired.

***State v. McDaniel*, 21 Fla. L. Weekly Supp. 448a (Brevard Cty. Ct. 2014)**

The deputy testified that she saw the defendant veering across lane lines several times in the space of ¾ mile, but the video showed only that she did cross onto the right lane line. The deputy testified that she stopped the defendant because she thought he might be impaired, and that she cited the defendant for failure to obey a traffic control device (TCD) rather than failure to maintain single lane (FMSL) because there had been no safety issue (no other traffic on the road). The court granted the defendant's motion to suppress, finding that the deputy's "conclusory statement that she was concerned the driver may have been impaired without a further explanation is not sufficient" to support a stop based on reasonable suspicion of impairment. The court also stated: "It is a well settled rule of statutory construction that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same subject in general terms [and] FMSL . . . is more specific to the facts at hand than the general provision of TCD," and "[t]he Deputy was correct she did not have probable cause to stop [the defendant] for FMSL."

***State v. Stossel*, 21 Fla. L. Weekly Supp. 447a (Seminole Cty. Ct. 2014)**

The officer who stopped the defendant said to her "in the event that you decline [taking the field sobriety exercises], you are subject to arrest." The court granted the defendant's motion to suppress evidence relating to the field sobriety exercises, finding that the officer's statement "would leave a reasonable person with the impression that he/she would be arrested *because* he/she decline[d]. Therefore her consent to the tests was not free and voluntary. (The court

distinguished this case from one in which the officer told a defendant that based on the officer's observations and signs of impairment, the defendant would be arrested if he did not perform the field sobriety exercises.) But the court held that the arrest and all evidence acquired after it would not be suppressed, "because the officer established that he had probable cause to arrest the Defendant, prior to his request to perform field sobriety exercises."

***State v. Wing*, 21 Fla. L. Weekly Supp. 446a (Brevard Cty. Ct. 2014)**

A trooper saw the defendant over-accelerating and fishtailing, driving too fast for safety in an area where a brush fire was burning, and running into and out of a ditch The court denied the defendant's motion to suppress, finding that the trooper had probable cause to stop the defendant.

***State v. McKibbin*, 21 Fla. L. Weekly Supp. 438a (Palm Beach Cty. Ct. 2013)**

The officer saw the defendant repeatedly "swerving drastically" in a construction zone. The court denied the defendant's motion to suppress for lack of probable cause for a traffic stop, finding that "the Officer had a reasonable and founded suspicion that the Defendant was sick, injured, or impaired."

***State v. Price*, 21 Fla. L. Weekly Supp. 437a (Palm Beach Cty. Ct. 2013)**

After being stopped, the defendant asked the deputy about the consequences of refusal to perform field sobriety exercises, and the deputy replied that he could not give legal advice. While considering whether to perform the exercises, the defendant saw another officer looking around her car, and, concerned that an improper search was occurring, she walked to her car. The deputy followed, handcuffed, and arrested her. The court granted the defendant's motion to suppress the refusal to submit to field sobriety exercises, finding the interaction between the deputy and the defendant to be "ambiguous at best" and that the defendant "did not verbalize a refusal."

***State v. Gonzalez*, 21 Fla. L. Weekly Supp. 405a (Miami-Dade Cty. Ct. 2013)**

The court granted the state's motion to exclude testimony of a defense witness. The proposed witness was "not a forensic toxicologist. He claims that he has attended courses related to DUI that discuss dentures and mouth alcohol, and that portions of the courses were taught by forensic toxicologists. He also claims that he personally met the forensic toxicologists who taught these courses, and that he has read their work. This does not qualify [him] as an expert in mouth alcohol and breath testing."