FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

January - March 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)

***State v. Majaraj*, 21 Fla. L. Weekly Supp. 136a (Fla. 17th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, reversed the lower court's order granting the defendant's motion to suppress evidence on the ground that the stopping officer lacked reasonable suspicion to detain the defendant for a DUI investigation. The court held that where the officer observed that the defendant, who had been stopped for speeding, had the odor of alcohol and bloodshot eyes, as well as admitting to drinking earlier in the day, the officer had a reasonable suspicion to detain the defendant for a DUI investigation. The court remanded the case for further proceedings consistent with its opinion.

***State v. Montanez*, ___ So. 3d ___ (Fla. 4th DCA 2014), 39 Fla. L. Weekly D396, Feb. 19, 2014.**

The district court reversed the lower court's downward departure sentences for the defendant in two DUI cases. The court agreed with the state's argument that competent, substantial evidence did not support the court's grounds for the downward departure sentences. The defendant was charged with a third DUI within ten years of his second DUI and refusal to submit to testing. Approximately nine months later, the defendant was charged with a fourth DUI, aggravated fleeing and eluding, refusal to submit to testing, and driving with a suspended license. The trial court, after acknowledging that the defendant scored a minimum sentence of 12.45 months in state prison, offered to impose downward departure sentences if the defendant pled to his remaining charges, including his fourth DUI. The court reasoned, in pertinent part:

> I heard the facts of this case and I did hear testimony from his sister and I find his sister to be a very credible witness, and if anyone knows the inside of your family affairs it is your sister.
>
> So realistically, I consider it to be, if you will, a potential mitigator that he is going through a difficult time in his personal life, specifically a separation and divorce. It is affecting him, it is affecting his family. It is affecting his children, and that as a result of this he turns to substance abuse, and it has come back to haunt him, and no one was injured in either one of these cases.
>
> So, if he is willing to plead to the [remaining charges], foregoing any appeal, if you will, in the present case, I would consider a departure sentence.

The state appealed, on the grounds that this was an unlawful downward departure, and that there was not competent, substantial evidence to support the downward departure. The court agreed with the latter argument, noting that no testimony given by any witness showed that the defendant's difficult personal life made him more susceptible to substance abuse.
http://www.4dca.org/opinions/Feb%202014/02-19-14/4D12-3815.op.pdf

***Montes-Valeton v. State*, ___ So. 3d ___ (Fla. 2d DCA 2014), 2014 WL 950153, March 12, 2014, 3D12-2063.**

The district court affirmed the lower court's conviction and sentence of the defendant for driving under the influence causing serious bodily injury. The defendant appealed his sentence challenging "(1) the admission of the results of a blood alcohol test performed on blood samples obtained from him at the scene of a single-vehicle accident that resulted in the death of a passenger in the vehicle being driven by the defendant, and (2) the admission of autopsy photographs of the victim into evidence." The court held that, as the defendant had not properly objected to the admission of the blood test at the time of trial, the argument was not preserved for appellate review. Regarding the admission of the autopsy photographs, the court held that, while the admission may have been improper, as the medical examiner could have testified to everything contained in the photographs, thus diminishing prejudice, the jury's finding of the lesser included offense of driving under the influence causing serious bodily injury, and not DUI manslaughter (even though a death occurred) shows beyond a reasonable doubt that the admission of the autopsy photographs was harmless.
http://www.3dca.flcourts.org/Opinions/3D12-2063.pdf

***Caton v. State*, 21 Fla. L. Weekly Supp. 239a (Fla. 6th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's conviction of the defendant for driving under the influence. The defendant argued, on appeal, that the state engaged in improper burden shifting in its rebuttal closing argument, and therefore the defendant's motion for a mistrial should have been granted. Specifically, the state, in closing, called attention to the defendant's failure to put into evidence his written prescription for the Xanax the defendant claimed to have taken prior to his DUI arrest, which the defendant claimed was improper burden shifting. While the court agreed, the court held that this was not a

fundamental error, as this was a brief, isolated remark that did not address an essential element of the crime. Moreover, as the trial court twice instructed the jury on the correct burden of proof, there were no grounds for a mistrial.

***State v. Benhakuma*, 21 Fla. L. Weekly Supp. 298a (Fla. 9th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, reversed the lower court's order granting the defendant's motion to suppress evidence of the defendant's refusal to take a breath test. The trial court had ordered this evidence suppressed as sanctions for the state's failure to turn over computer source code and schematics for the Intoxilyzer. The circuit court, however, reversed this holding, and held that the defendant's refusal was admissible without regard to whether the testing machine was in compliance or not, as the defendant had failed to take the test at all.

***State v. Culiner*, 21 Fla. L. Weekly Supp. 311a (Fla. 17th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress evidence of driving under the influence. The court held that a tipster who provided the police with his name, phone number, and location was a citizen informant and entitled to a presumption of reliability even if the arresting officer did not meet with the tipster. Moreover, a BOLO (be on the lookout) based on tips provided by the tipster was sufficient to provide a suspicion for an investigatory stop when the BOLO contained information describing the defendant, the defendant's alleged criminal conduct, the color and make of the defendant's vehicle, and the direction the defendant was driving. The court noted that the defendant was stopped within three minutes of the issuance of the BOLO.

II. Criminal Traffic Offenses

***Peterson v. State*, 129 So. 3d 451 (Fla. 2d DCA 2014).**

The district court affirmed the trial court's judgment and sentences for a defendant charged with leaving the scene of a crash involving death, vehicular homicide, and driving while license suspended. The defendant argued on appeal that the trial court erred when it admitted the air bag control system report from his vehicle into evidence and denied his motion for judgment of acquittal. The district court disagreed, holding that because an air bag control system report is not testimonial, the trial court did not err in admitting the report over a Confrontation Clause objection.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/January/January%2003,%202014/2D11-5083.pdf

***Gonzalez v. State*, 21 Fla. L. Weekly Supp. 114a (Fla. 11th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's order denying the defendant's motion for post-conviction relief. The defendant raised four issues in his appeal: (1) his plea of guilty was not knowing and voluntary because he agreed to a ten-year

driver's license suspension and later learned that the plea subjected him to the collateral consequence of an "indefinite" driver's license suspension due to his status as a habitual traffic offender; (2) he received ineffective assistance of counsel because he timely requested his trial counsel file either a motion to withdraw his plea or a notice of appeal and his request was not honored; (3) he was pressured into taking the plea, thus his plea was involuntary; and (4) he had newly-discovered evidence that would exonerate him of the driving while license suspended counts. The trial court denied relief summarily on all grounds. The circuit court held that the failure to advise the defendant that his plea would subject him to an indefinite driver's license suspension because of his habitual traffic offender status would not render the plea unknowing or involuntary. At the time the defendant entered his plea of guilty to the seven counts of driving while license suspended, a subsequent habitual traffic offender designation and ensuing license suspension constituted a collateral consequence of the plea. *See Bolware v. State*, 995 So. 2d 268, 273 (Fla. 2008). The court also held that his counsel was not ineffective for failing to file a time barred motion to withdraw plea for the defendant. The court also held that this petition was untimely as it was filed seven years after the defendant learned of the licensing consequences of his plea.

***City of Ft. Lauderdale v. Gonzalez*, ___ So. 3d ___ (Fla. 4th DCA 2014), 39 Fla. L. Weekly D286, Feb. 5, 2014, 4D12-1932 & 4D12-1933.**

The district court overturned the lower court's order dismissing a traffic citation and declaration that the owner notification provision of Florida's red light camera law was unconstitutional. The court held that the section 316.0083(1)(c)1.c., Florida Statutes (2011), does not violate equal protection or due process by providing that, in the case of a jointly owned vehicle, the traffic citation shall be mailed only to the person whose name appears first on the registration. The court noted that administrative considerations may be sufficient to show a rational basis for a classification. *See Armour v. City of Indianapolis*, 132 S.Ct. 2073, 2081-82 (2012). The court went on to hold that:

> [t]he statute need satisfy only rational basis review. In this case, it was at least conceivable for the legislature to believe that, in the case of jointly owned vehicles, the first named owner on the vehicle registration is the person who drives the vehicle most frequently or who otherwise wishes to accept primary responsibility for the vehicle. Whether this is empirically true is irrelevant; rational speculation is enough to sustain the distinction.

As such, there were no grounds to declare this statute unconstitutional.
http://www.4dca.org/opinions/Feb%202014/02-05-14/4D12-1932.op.pdf

***Gaulden v. State*, ___ So. 3d ___ (Fla. 1st DCA 2014), 39 Fla. L. Weekly D379, Feb. 17, 2014, 1D12-3653.**

The district court affirmed the trial court's judgment and sentence for a defendant charged with leaving the scene of a crash involving death. The facts of the case show that a passenger in a pickup truck the defendant was driving "separated" from the vehicle, landed on the pavement, and suffered fatal injuries. The facts also showed that although the defendant was

aware of his passenger's exit from the moving truck, the defendant did not stop at the scene, or as close to the scene as possible, much less remain at the scene until he had fulfilled the requirements of section 316.062, Florida Statutes (2010). The defendant, in his appeal, argued that the trial court committed fundamental error in instructing the jury that the defendant could be found guilty if the defendant knew or should have known that injury or death had occurred. The defendant argued that because leaving the scene of a crash involving death is a first-degree felony, while leaving the scene of a crash involving injury, but not death, is a third-degree felony, the state was required to prove that the defendant should have known that a fatal injury had occurred, not merely that an injury of some kind had resulted. The court soundly rejected this argument, citing *State v. Dumas*, 700 So. 2d 1223, 1225-26 (Fla. 1997). The appellate court noted that the *Dumas* court had no difficulty reading the statute as requiring the same duty whether the driver had reason to believe death or mere injury had occurred. http://opinions.1dca.org/written/opinions2014/02-17-2014/12-3653.pdf

***State v. Medina*, 21 Fla. L. Weekly Supp. 229a (Fla. 9th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's final judgment of dismissal in a red light camera traffic infraction case. The circuit court held that the lower court did not err in its finding that the state failed to prove that the traffic infraction enforcement officer who issued the citation for the violation was qualified to do so, as the applicable statute, section 316.640, Florida Statutes, required that the officer possess instruction in traffic enforcement procedures similar to those offered by the Selective Traffic Enforcement Program.

***Simmons v. State*, 21 Fla. L. Weekly Supp. 317a (Fla. 17th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's judgment and conviction of the defendant for driving while license suspended. The defendant was questioned by the police after leaving his vehicle running, unattended in a convenience store parking lot. The defendant was unable to produce his license, and the police teletype check showed the defendant had not had a license for some time. The defendant appealed his judgment of acquittal on the grounds that the state had not proven that the defendant knew his license had previously been suspended. The circuit court held that the trial court had not committed an error in denying the defendant's judgment of acquittal, as it had presented legally sufficient evidence upon which to base a finding of guilt, as the state presented evidence that the defendant had twice been convicted of driving while license suspended.

III. Arrest, Search and Seizure

***James v. State*, 129 So. 3d 1206 (Fla. 1st DCA 2014)**

The district court affirmed the lower court's ruling denying the defendant's motion to suppress evidence of drugs found on the defendant both at the time of his arrest and that fell from his person during a post–arrest inventory. This case arose when two police officers stopped the defendant for a window tint violation. When the officers approached the defendant's car, they

asked if they could search him and his vehicle. The trial court found that the defendant consented. When one officer patted the defendant down, he felt an "unusual" object that he could not identify in the area around the defendant's crotch. At the same time, the other officer checked the defendant's driver license and learned that he was on probation for armed robbery. The officers proceeded to *Mirandize* the defendant and to ask about the unusual object in his pants. The defendant then admitted to carrying a small amount of marijuana. The defendant, on appeal, argued that that the marijuana retrieved by officers from his pants, as well as the cocaine that later dropped from his person, should be suppressed because he never consented to being searched. He argued that the officers, lacking consent could not have lawfully patted him down and discovered the contraband. The district court disagreed, and upheld the denial of the defendant's motion to suppress. The court held that whether the defendant gave voluntary consent to the officers' search is a question of fact determined based on the totality of the circumstances. *Davis v. State*, 594 So. 2d 264, 266 (Fla. 1992). In this case, the trial court found that Mr. James consented to the search, and the appellate court held it must defer to the trial court on this factual finding. The court also held that in this case, as search that included a search of the crotch that was done over the clothes, and that narcotics are commonly stored in this area, that the search of this area did not require separate consent. The court noted that none of the testimony regarding the search or retrieval of the drugs in his pants prior to his detention included touching or exposing the defendant's genitalia.
http://opinions.1dca.org/written/opinions2014/01-23-2014/12-5042.pdf

***State v. Majaraj*, 21 Fla. L. Weekly Supp. 136a (Fla. 17th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress evidence obtained at a traffic stop, finding there were sufficient facts established to justify a *Terry* stop. The court held that, because a tipster followed the trooper to the scene of the traffic stop and, while at the stop, provided his identification to the trooper, the tipster was considered a citizen informant. The court held that the trooper was not required to obtain the informant's identity prior to pursuing the potentially impaired driver.

***State v. Proctor*, ___ So. 3d ___ (Fla. 5th DCA 2014), 39 Fla. L. Weekly D415, Feb. 21, 2014, 5D12-3206.**

The district court reversed the lower court's order granting the defendant's motion to suppress evidence seized during a traffic stop. The court held that the trial court erred as a matter of law when it required the state to prove that the traffic stop was pretextual. The court held that as a general rule, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 810, 813 (1996). The court went on to hold that the actual subjective motivation of the individual officer involved is irrelevant and should not factor into an ordinary, probable-cause Fourth Amendment analysis. *Id*. at 813. Based on this, the court found that the officer had probable cause to detain the defendant's vehicle. http://www.5dca.org/Opinions/Opin2014/021714/5D12-3206.op.pdf

***State v. Hughley*, 21 Fla. L. Weekly Supp. 302a (Fla. 9th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress evidence. The court held that the officer had acted properly under the community care doctrine when he initiated an investigative stop by opening the defendant's door to check on his well-being. The defendant was slumped over his steering wheel in an illegally parked vehicle in a shopping center driveway at 4:00 am, with the engine running. Upon opening the door, the officer immediately smelled alcohol. The court held he had reasonable suspicion to order the defendant out of his vehicle at this point, and overturned the lower court's order granting the defendant' motion to suppress.

IV. Torts/Accident Cases

***Bern v. Camejo,* ___ So. 3d ___ (Fla. 3d DCA 2014), 39 Fla. L. Weekly D94, Jan. 8, 2014, 3D12-2436.**

The district court reversed the trial court's denial of the plaintiff's motion for a new trial, remanding the case for a new trial. The district court held that trial court erred in permitting the defendants to introduce evidence and argue to the jury that one of the trial witnesses had been sued and was originally named as a defendant in the case, in violation of section 768.041(3), Florida Statutes (2012). This case stems from a three-car collision. Before trial, the plaintiff filed a motion in limine, seeking to exclude any evidence or argument that one of the drivers had previously been sued by the plaintiff or named as a defendant in the action, or any evidence that the claims against that driver had been settled or dismissed. The trial court granted in part, and denied in part, the motion in limine. The trial court denied the motion in limine insofar as it sought to prohibit evidence or argument that the driver had been sued by the plaintiff and was a former defendant in the case, agreeing with the defendants that the driver's status as a former defendant in the case was relevant to establishing the driver's bias during her deposition testimony. However, the trial court granted a portion of the motion in limine, prohibiting the parties from mentioning or introducing evidence that the driver had settled with the plaintiff.

On appeal, the plaintiff asserted a new trial was warranted because the trial court erred in allowing significant and repeated evidence and argument that the driver had originally been sued and named as a defendant in the case, leading the jury to the logical conclusion that the plaintiff and the driver reached a settlement before trial and that the driver was dismissed from the lawsuit. The district court agreed, and remanded the case for a new trial.
http://www.3dca.flcourts.org/Opinions/3D12-2436.pdf

***Marcum v. Hayward,* ___ So. 3d ___ (Fla. 2d DCA 2014), 39 Fla. L. Weekly D342, Feb. 12, 2014, 2D12-4658.**

The district court reversed the trial court's judgment against the defendant in an automobile accident case. The court held that because it was undisputed that the defendant lost consciousness while driving due to a seizure, resulting in the accident that caused the plaintiff's injuries, and because the defendant's loss of consciousness was unforeseeable, the trial court should have directed a verdict for the defense.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2014/February/February%2012,%202014/2D12-4658.pdf

V. Drivers' Licenses

***Edwards v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 110a (Fla. 7th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that when the hearing officer forbade the questioning of a witness about the speed of the defendant's vehicle, this was not the best practice for a neutral to take. However, it did not deprive the defendant of his due process where the testimony would have been irrelevant to the issue of whether the defendant was in actual physical control of his vehicle.

***Garcia v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 105a (Fla. 4th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that certiorari relief was not warranted on the assumption that the hearing officer who heard this case used revised prehearing forms that required the defendant to specify his disputed issues of law and fact as well as to summarize expected witness testimony, as the defendant had not established that using these forms resulted in material injury. The court also held that the hearing officer did not depart from neutrality based on the hearing officer's reliance on a memorandum from DHSMV's bureau chief instructing hearing officers that they are not obligated to determine the lawfulness of an arrest in a case alleging driving with an unlawful breath alcohol level. Finally, the court held that the defendant's due process rights were not violated by a trooper's failure to appear at his hearing when the defendant failed to seek enforcement of a subpoena, and the trooper's lack of availability was not the result of the hearing officer's actions.

***Chiavetta v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 129a (Fla. 15th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that when a defendant provided some evidence that the arresting officer did not have a current law enforcement training certificate, the hearing officer erred by allowing DHSMV to submit breath test results without proving that the arresting officer had taken the necessary courses to maintain his certification. The case was remanded to allow DHSMV the opportunity to submit evidence that the officer did possess a valid law enforcement certificate at the time of the arrest.

***Gordon v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 129b (Fla. 15th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of her driver's license. The court held that when a defendant provided some evidence that the arresting officer did not have a current law enforcement training certificate, the hearing officer erred by allowing DHSMV to submit breath test results without proving that the arresting officer had taken the necessary courses to maintain his certification. The case was remanded to allow DHSMV the opportunity to submit evidence that the officer did possess a valid law enforcement certificate at the time of the arrest.

***Corso v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 127a (Fla. 13th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that the arresting officer's statement that the defendant could get a business-purpose license if the defendant had a breath alcohol level above the legal limit, (but was not sure if she could if she refused the test) was not a misstatement of the law. The court went on to hold that even though the hearing officer erred in not invalidating the suspension based on the officer's misstatement that the defendant's license would be suspended for a maximum of six months if the defendant was convicted or entered a no contest plea, the error did not result in a miscarriage of justice as the defendant's license was indeed suspended for six months, and would have been suspended for longer had she refused to submit to a breath test.

***Weintraub v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 128a (Fla. 13th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that there was not competent, substantial evidence for a hearing officer to conclude that a stop was valid when the evidence presented was a probable cause affidavit stating that the window tint in the defendant's vehicle was too dark, but failed to state what the arresting officer saw that caused the officer to believe the window tint was too dark.

***Triglia v. Department of Highway Safety and Motor Vehicles,* 21 Fla. L. Weekly Supp. 116a (Fla. 11th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that because the traffic hearing officer did not have jurisdiction to preside over a case charging the defendant with a failure to obey a red light that resulted in personal injury, and that the hearing officer could not certify through DHSMV that the defendant had admitted to the infraction. The court remanded the case in order to set it before a judicial official having jurisdiction to preside over such a case.

***Hobbs v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 109a (Fla. 7th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that there was competent substantial evidence that the arresting officer had probable cause for a traffic stop as the officer's narrative in the offense report stated that the defendant's tag was not illuminated and that the defendant's tag light was not visible or was inoperable. Following the stop, the officer noticed that the defendant smelled of alcohol and admitted to drinking, among several other factors. The court held that he officer had a reasonable suspicion to conduct a DUI investigation. The court also held that, even though the officer did not corroborate an anonymous tip that the defendant had been drinking prior to the stop that would not render the stop unlawful where the officer observed an inoperative tag light, which would form the basis for a lawful stop.

***Whitehead v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 226b (Fla. 4th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that the defendant waived his objection to the traffic court hearing officer's denial of an extension of the defendant's temporary driving permit, during a continuance to allow the defendant to subpoena other witnesses, where the defendant subpoenaed witnesses and later withdrew his request for a further hearing.

***Crimmins v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 226a (Fla. 4th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that the hearing officer's usage of unpromulgated forms, denial of subpoenas duces tecum for police officers, and admission of an uncertified copy of the defendant's driving record into the court record were harmless errors. Moreover, there was competent substantial evidence to support the finding that the defendant was driving under the influence and that the defendant had been lawfully arrested.

***Lyne v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 235b (Fla. 16th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that the finding for probable cause for the defendant's arrest was supported by competent substantial evidence where there was evidence that the defendant was stopped pursuant to a BOLO (be on the lookout order) based on a tip provided to the police that the defendant was driving while intoxicated. Additionally, the BOLO contained information that the defendant was armed. The court noted that an officer observed the defendant commit traffic infractions before stopping him and found guns, and ammunition in the vehicle. The officer also smelled alcohol on the defendant's breath, and the defendant admitted to drinking. The court also noted, on a different issue, that the

hearing officer was allowed to permit witnesses to appear telephonically over the defendant's objection.

***Mense v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 236a (Fla. 16th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that there was no error in denying the early reinstatement of the defendant's driver's license, even when the defendant denied knowing that his hardship license had been revoked upon the acceptance of a no contest plea to a DUI charge. The court held that the record contained evidence that the defendant should have been aware that the hardship license would be immediately revoked upon the acceptance of his plea in the related DUI case.

***Pitzer v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 225a (Fla. 4th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that the traffic court hearing officer hearing the case was allowed to consider the obvious implications and reasonable inferences that could be drawn from the circumstances surrounding the defendant's arrest. The court also held that the hearing officer could consider the arresting officer's observations in determining whether there was probable cause to believe that the defendant was driving under the influence.

***Velte v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 235a (Fla. 13th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The court held that a deputy had authority to stop the defendant for driving with only one functioning headlight, even if the defendant had functioning headlights. The court also held that the hearing officer in this case did not err in failing to invalidate the defendant's license suspension on the basis that the testing device had been transported through the mail after DHSMV had inspected it, or that the testing device had malfunctioned on a previous occasion, though not when the defendant was being tested.

***Hernandez v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 225b (Fla. 15th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that the hearing officer in this case erred in admitting results of a Breathalyzer test into evidence without shifting the burden to DHSMV to prove that the arresting officer had taken the necessary continuing education courses to maintain his law enforcement certification, as the defendant had provided evidence that the arresting officer's law enforcement certificate had expired.

***Department of Highway Safety and Motor Vehicles v. Corcoran*, ___ So. 3d ___ (Fla. 5th DCA 2014), 2014 WL 885703, March 7, 2014, 5D13-1934.**

The district court reversed the lower court's dismissal of the defendant's appeal on a driver's license suspension and quashed the lower court's reinstatement of the defendant's driver's license. The defendant had been stopped for speeding and, when stopped was observed to be in a state of alleged inebriation. The officer determined, after field sobriety exercises, that the defendant's faculties were impaired and arrested the defendant. The defendant, in the presence of the arresting officer and a breath test operator, refused to take a breath alcohol test.

At his suspension hearing, the defendant called the breath test operator as a witness. However the operator did not appear. The defendant moved to invalidate his suspension on the ground this witness did not appear. This motion was denied by the hearing officer, and the suspension was upheld. The defendant appealed, and the circuit court quashed the suspension, and did not remand for a rehearing. The department then appealed, arguing its procedural due process rights had been violated by not remanding this case. The district court agreed and overturned the lower court's order, remanding the case for a rehearing.
http://www.5dca.org/Opinions/Opin2014/030314/5D13-1394.op.pdf

***Henriquez v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 305a (Fla. 11th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that section 322.2615(6)(c) and (11), Florida Statutes, applied retroactively and required the invalidation of a license suspension if an arresting officer or breath technician failed to appear pursuant to a subpoena. The court held that because the arresting officer in this case failed to appear pursuant to a valid subpoena, the order suspending the defendant's license was quashed.

***Fuller v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 296b (Fla. 7th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that the hearing officer properly considered the verbal statements of the officer who stopped the defendant's vehicle, which had been incorporated into the arresting officer's probable cause affidavit and referenced in the testimony of the arresting officer. Such statements helped to provide competent substantial evidence in support of the defendant's license suspension. However, the court held that the hearing officer erred in refusing to issue a subpoena to the officer who had initiated the traffic stop. In the instant case, as there was only one month left on the license suspension, the court set aside the suspension rather than remanding it back to the hearing officer.

***Richardson v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 299a (Fla. 9th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension case. The defendant had appealed his suspension based on the grounds that the breath test print card had not been entered into the record, along with several other supporting documents, at the suspension hearing. The circuit court held that where the required documents under section 322.2616(3), Florida Statutes, had been submitted, including the breath test affidavit, the submission of the breath test card was not required. The court held that the documentary evidence submitted by DHSMV showed that it substantially complied with the applicable rules and statutes. The court held that the defendant did not present evidence to overcome the presumption of substantial compliance, or the presumption of accuracy of the test results.

***Willett v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 309a (Fla. 13th Cir. Ct. 2014).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension case and quashed the defendant's suspension of his driver's license. The court held that by failing to consider the lawfulness of the stop, the hearing officer departed from the essential requirements of the law. Additionally, the hearing officer also erred in failing to exclude consideration of the results of the horizontal gaze nystagmus test, as the officer who administered the test had not met the requirements to administer such a test. However, the court noted that hearing officer did not depart from the essential requirements of the law by failing to invalidate the suspension for lack of probable cause for arrest, as the record showed that there was competent, substantial evidence establishing probable cause for an arrest. The court remanded the case for a new hearing wherein the hearing officer was to consider whether the stop was lawful.

VI. County Court Orders

***State v. Fernandes,* 21 Fla. L. Weekly Supp. 191a (Broward County Ct. 2014).**

The court ordered that the defendant's expert witness could not testify at trial regarding field sobriety exercises or breath test results pursuant to the *Daubert* standard as codified in section 90.702, Florida Statutes. The court held that field sobriety exercises were not scientific and were not a proper subject for expert testimony. Moreover, the court held that as the witness was not an expert in human physiology, he could not testify as an expert with regard to absorption and elimination phases during alcohol consumption or the temperature of the defendant's breath at the time of the breath test. Moreover, as the defendant has not inspected the Intoxilyzer at issue in this case, his testimony regarding Intoxilyzer was irrelevant.

***State v. Gelinas*, 21 Fla. L. Weekly Supp. 193a (Broward County Ct. 2014).**

The court granted the state's motion to strike the defendant's expert witness. The court held that the witness could not testify as to his opinion on breath volume results in a breath test where the results of the proposed testimony was not a product of reliable principles and methods, and would not assist the trier of fact.

***State v. Stern*, 21 Fla. L. Weekly Supp. 193b (Broward County Ct. 2014).**

The court sustained in part and overruled in part the state's "objection to and motion to strike defense expert testimony under *Daubert* standard." The court held that the defendant failed to meet its burden to establish a foundation for admissibility of his proposed expert under the *Daubert* standard in the areas of proposed testimony where the defendant had failed to offer the proposed expert's actual opinion at an admissibility hearing. However, the court held that the defendant's expert could testify in certain limited areas, but not those where his opinion was not shown to meet the *Daubert* criteria for reliability.

***State v. Hartley*, 21 Fla. L. Weekly Supp. 179b (Alachua County Ct. 2014).**

The court granted the state's motion to exclude expert testimony. The court held that a former law enforcement officer with no scientific background did not have the sufficient knowledge, experience, training, or education to render a scientific opinion on the effects of radio frequency interference or other factors on Intoxilyzer reliability. Moreover, the court held that the proposed expert witness's testimony on DUI investigations and procedure would not assist the trier of fact where the state elected to proceed under a DUBAL (driving with an unlawful blood alcohol level) theory, and not an intoxication theory.

***State v. Fernandes*, 21 Fla. L. Weekly Supp. 192a (Broward County Ct. 2014).**

The court denied the defendant's motion to exclude field sobriety exercises, as well as the state's motion to strike the defense expert witness as not ripe for review and procedurally premature. The court held that because field sobriety exercises are not scientific, the *Daubert* standard is not applicable to testimony about exercises. The court also held that testimony about breath test results was not expert testimony subject to the *Daubert* standard.

***State v. Thomas*, 21 Fla. L. Weekly Supp. 202a (Brevard County Ct. 2014).**

The court denied the defendant's motion to suppress in a DUI case. The court held that a police officer's approach of the defendant's vehicle, which was parked at the dead end of a street with the lights off, was a consensual encounter, but the encounter turned into an investigatory stop when the officer instructed the defendant to raise his hands. However, the court held that the investigatory stop and detention were justified by the officer's observation of the defendant slumped over the steering wheel during his initial observances. The court held that the defendant's unsteady gait and odor of burnt cannabis justified the defendant's continued investigation for a DUI investigation.

***State v. Glacken*, 21 Fla. L. Weekly Supp. 176a (St. Johns County Ct. 2014).**

The county court denied the defendant's motion for acquittal or a new trial on a possession of paraphernalia case, stemming from a traffic accident. The court held that the defendant's admission to ownership of a crack pipe found in the defendant's vehicle following a traffic accident was admissible as the defendant made the admission at the hospital to an officer who informed the defendant that he was investigating both the crash scene and the paraphernalia.

The defendant was not under arrest at the time of admission. Moreover, the court held that the accident report privilege would not apply as the statement did not pertain to the accident investigation.

***State v. Ray,* 21 Fla. L. Weekly Supp. 176b (St. Johns County Ct. 2014).**

The court denied the defendant's motion to suppress in a DUI accident case. The court held that there was no merit to the defendant's argument that law enforcement had no basis to issue a BOLO (be on the lookout) and later stop the defendant, as he had left his driver's license with the driver of the vehicle he struck before leaving the scene of the accident. The court noted that the defendant failed to comply with the statutory requirement to give his vehicle registration number to the other driver. The fact that the other driver took a photograph of the defendant's tag as he drove away did not satisfy the requirement to provide a registration number.

***State v. Walker,* 21 Fla. L. Weekly Supp. 208b (St. Lucie County Ct. 2014).**

The court granted the defendant's motion to suppress evidence. The court held that the defendant's version of events, wherein the defendant stated he did not run a stop sign and had not admitted to having cannabis on his person until the arresting officer told the defendant that he was going to detain the defendant for a canine sniff of his vehicle was more credible than the officer's claim that the defendant had run a stop sign and admitted to having cannabis in his pocket when asked if he had anything illegal on his person.

***State v. Timothee,* 21 Fla. L. Weekly Supp. 209a (St. Lucie County Ct. 2014).**

The court granted the defendant's motion to suppress evidence. The court held that when an officer had an extremely poor memory of the events at a stop, and could not recall the words he interpreted to give consent to a vehicle search, and the defendant and passenger testified they did not give consent, the state failed to prove that there was consent to a warrantless search.

***State v. Phillips,* 21 Fla. L. Weekly Supp. 209b (St. Lucie County Ct. 2014).**

The court granted the defendant's motion to suppress evidence. The court held that a deputy's testimony that he smelled raw marijuana while approaching the defendant's vehicle, which was inside a sealed bottle, inside a sealed bag and inside the defendant's pocket was not credible enough to satisfy the state's burden to prove that the deputy had any justification for detaining the defendant for a vehicle search or pat down.

***State v. Jones,* 21 Fla. L. Weekly Supp. 279a (Monroe County Ct. 2014).**

The court granted the defendant's motion to suppress statements. The court held that the defendant's pre-Miranda statements, made in the DUI investigation room, that were prompted or the result of interrogation by the sheriff's department were to be suppressed, citing *Pennsylvania v. Muniz,* 496 U.S. 582 (1990).

***State v. Johnson,* 21 Fla. L. Weekly Supp. 283a (Brevard County Ct. 2014).**

The court denied the defendant's motion to suppress evidence. The court held that when an officer had a surprise encounter with the defendants, who then made evasive movements in a vehicle parked behind abandoned property that was known to be a site of criminal and drug related activity, the officer acted properly by drawing his weapon and ordering the defendants to raise their hands. Therefore, the bag of marijuana that was in the defendant's hand was evidence that should not be suppressed.

***State v. Lovela,* 21 Fla. L. Weekly Supp. 280a (Broward County Ct. 2014).**

The court granted the defendant's motion to suppress the charge of driving under the influence. The court noted that the defendant's detention after the officer's safety had been established was unreasonable, where the defendant demonstrated facts that she was a victim of stalking and threats.

***State v. Cejda,* 21 Fla. L. Weekly Supp. 283b (Brevard County Ct. 2014).**

The court granted the defendant's motion to suppress "any and all tangible or intangible evidence obtained contemporaneous to and following the illegal seizure" of the defendant. The court held that driving slightly below the speed limit and touching tires to a lane divider, without affecting any other traffic did not provide probable cause for a traffic stop.

***State v. Staff*, 21 Fla. L. Weekly Supp. 267b (Flagler County Ct. 2014).**

The court granted the defendant's motion to suppress. The court held that, under the totality of the circumstances, there was insufficient cause for the detaining officer to believe that the defendant was driving under the influence. Moreover, there were inconsistencies in the arresting officer's testimony and incident reports, and significant and material inconsistencies within the arrest report itself.

***State v. Long,* 21 Fla. L. Weekly Supp. 285a (Brevard County Ct. 2014).**

The court denied the defendant's motion to suppress evidence. The court held that where the defendant's tag light was lit by a dark bulb, and did not appear to be illuminated from 50 feet away, the deputy had probable cause to believe his light was not operable. The court went on to hold that a stop based both on the tag light and the observation that the defendant's vehicle had swerved and crossed the travel lane lines several times was lawful.

***State v. Cochran,* 21 Fla. L. Weekly Supp. 282c (Brevard County Ct. 2014).**

The court denied the defendant's motion to suppress evidence. The court held that when the defendant did not yield to oncoming traffic when entering a roadway, causing a motorcyclist to have to brake heavily to avoid a collision, a deputy made a valid stop for careless driving.

***State v. Stephenson*, 21 Fla. L. Weekly Supp. 281b (Brevard County Ct. 2014).**

The court granted the defendant's motion to suppress the illegal stop of the defendant and all evidence derived therefrom. The court held that touching and driving just over a fog line, without affecting any other traffic did not provide probable cause for a traffic stop.

***State v. Alfson*, 21 Fla. L. Weekly Supp. 343a (Volusia County Ct. 2014).**

The court granted the defendant's motion to suppress evidence of DUI based on an illegal arrest. The court held that the arrest was invalid, as the state had not established that all of the essential elements of the offense were committed in the presence of the officer. The court noted that the officer never saw the defendant driving or in actual physical control of the vehicle, but only saw him standing next to the vehicle, attempting to pump gas into the vehicle.

***State v. Clark*, 21 Fla. L. Weekly Supp. 364a (Broward County Ct. 2014).**

The court denied the defendant's motion to exclude testimony under the *Daubert* standard. The court held that the witness was qualified as an expert in the fields of breath testing, the use and operation of an Intoxilyzer 8000, the absorption and elimination of alcohol, and in the science of breath testing. The court also denied the motion to exclude testimony from police officers regarding their training and experience in administering field sobriety exercises, but such

***State v. Fox*, 21 Fla. L. Weekly Supp. 358a (Palm Beach County Ct. 2014).**

The court denied the defendant's motion to suppress breath test results in a DUI case. The court held that the arresting officer's statement to the defendant that it would be up to the courts to determine if his breath test results were over the legal limits was not a misstatement of the law which would warrant the suppression of the defendant's test results.

***State v. Trippany*, 21 Fla. L. Weekly Supp. 353a (Sarasota County Ct. 2014).**

The court granted the defendant's motion in limine to suppress evidence of breath test results. The court held that while continuous observation of a defendant for 20 minutes was not necessary for substantial compliance of rule 11D-8.007(3), Fla. Administrative. Code, and that brief lapses, when taken individually, did not establish a failure to reasonably ensure that the defendant didn't ingest or regurgitate anything during the period, in the instant case, the totality of all of the lapses amounted to non-compliance with the rule.

***State v. Singh*, 21 Fla. L. Weekly Supp. 363a (Broward County Ct. 2014).**

The court granted the state's "motion to strike and/or deny defendant's motion for evidentiary hearing to exclude physical roadside tests." The court held that a police officer's observations of performance on field sobriety exercises were lay observations and not scientific knowledge that would be required to meet the *Daubert* standard for admissibility.

***State v. Dickenson*, 21 Fla. L. Weekly Supp. 365a (Broward County Ct. 2014).**

The court granted the state's "objection to expert testimony under Fla. Stat. 90.702 and 90.704 (*Daubert* Standard) and motion in limine to preclude expert testimony regarding standardized field sobriety testing." The court held that the testimony regarding the proper administration of field sobriety exercises did not fall within the purview of expert testimony related to scientific or technical knowledge that would assist the trier of fact to understand the evidence. On these grounds, the state's motion to exclude expert testimony was granted.

***State v. Quinn*, 21 Fla. L. Weekly Supp. 375a (Charlotte County Ct. 2014).**

The court granted the defendant's motion to dismiss on charges of driving while license suspended or revoked. The court held that the defendant's admission of his identity to an officer at the scene of a traffic stop was not admissible where other evidence admitted was not sufficient to establish a prima facie case of driving while license suspended or revoked with knowledge.

***State v. Meunier*, 21 Fla. L. Weekly Supp. 372a (Brevard County Ct. 2014).**

The court denied the defendant's motion to suppress and/or dismiss based upon an illegal stop. The court held that the defendant had not been subjected to police detention by virtue of police cruisers blocking his vehicle where he was unaware of the cruisers at the time. Moreover, the court held that police officers were fulfilling their community caretaker function when they tapped on the defendant's window and called out to him while the defendant was slumped over the wheel of his vehicle, which was still running. The court went on to hold that the officer's request that the defendant roll down his vehicle window did not transform a consensual encounter into an investigatory stop, as the officers were still performing a welfare check.

***State v. Seifert*, 21 Fla. L. Weekly Supp. 342a (Volusia County Ct. 2014).**

The court granted the defendant's motion to suppress seizure of the defendant in a DUI case. The court held that an officer who responded to a report by a newspaper delivery man that a person was asleep in a residence's front yard did not have reasonable suspicion to believe that the defendant had committed, was committing, or would commit a crime. Moreover, when the officer testified that the defendant was detained and not free to leave once the officer arrived at the scene, and there were no signs of impairment, the detention was not lawful.