FLORIDA TRAFFIC-RELATED CASE SUMMARIES

October - December 2013

[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)

***Ulloa v. CMI, Inc.*, ___ So. 3d ___, 2013 WL 5942299 (Fla. 2013)**

The supreme court approved the district court's decision in this case, which represented a split in the several circuits. The court, citing section 942.06, Florida Statutes (2010), held that subpoenas cannot be served on "an out-of-state corporation's registered agent in Florida to require that out-of-state, nonparty corporation to produce documents or materials located out-of-state, without utilizing the provisions of chapter 942, Florida Statutes. Chapter 942, the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings (Uniform Law), provides a statutory process by which parties can subpoena out-of-state, nonparty witnesses." In this case, the defendant had sought to retrieve computer source codes from breathalyzer equipment manufactured by an out-of-state corporation, solely by serving its registered agent in Florida, even though the source code was not stored in Florida. The court held that this violated the statutory scheme. Moreover, the court held that pursuant to section 914.001(1), Florida Statutes, the authority to issue subpoenas to nonparty witnesses extends only to witnesses or documents located in this state. Finally, the court held that the protections of the chapter 942 "cannot be circumvented by the issuance of a subpoena duces tecum. Rather, the requirements of that law apply with equal force to subpoenas directed to witnesses required to testify, as well as witnesses required to only produce documents." Therefore, the court affirmed the lower court's ruling.
http://www.floridasupremecourt.org/decisions/2013/sc11-2291.pdf

***Ramirez v. State*, 124 So. 3d 967 (Fla. 4th DCA 2013)**

The district court affirmed the summary denial of the defendant's post-conviction motion, without prejudice, in order to allow him to file a facially sufficient motion. The defendant had entered a negotiated guilty plea to one count of DUI manslaughter. He was sentenced to one year in jail and 15 years' probation. The charges arose from allegations that the defendant had been racing another motorist, whose car crashed. The passenger in the other car died. "The defendant alleged that his counsel failed to advise him of the deportation consequences of entering the plea, and that the trial court indicated only that the defendant *could* be subject to deportation, not that he *would* be subject to deportation. *Hernandez v. State*, 124 So.3d 757, 761" (Fla. 2012). Because the defendant raised colorable claims, the district court affirmed the denial of the motion for relief without prejudice, citing *Cano v. State*, 112 So. 3d 646, 648 (Fla. 4th DCA 2013), which held:

> Where a movant has received the standard "may" or "could" deportation warning required by rule 3.172(c)(8), to state a claim for relief under *Padilla* [*v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010)], a movant must establish the following: (1) that the movant was present in the country lawfully at the time of the plea; (2) that the plea at issue is the sole basis for the movant's deportation; (3) that the law, as it existed at the time of the plea, subjected the movant to "virtually automatic" deportation; (4) that the "presumptively mandatory" consequence of deportation is clear from the face of the immigration statute; (5) that counsel failed to accurately advise the movant about the deportation consequences of the plea; and (6) that, if the movant had been accurately advised, he or she would not have entered the plea.

The district court also noted that if the defendant files an amended motion, the trial court must either attach portions of the record conclusively refuting his claims or hold an evidentiary hearing on the matter.
http://www.4dca.org/opinions/Oct%202013/10-16-13/4D11-1612.op.pdf

***State v. Desmond*, 21 Fla. L. Weekly Supp. 49b (Fla. 20th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to dismiss in a DUI case. The state inadvertently failed to disclose until after the trial began the police officer's affidavit that described the DUI stop, and the trial court dismissed the case. The appellate court held that even though the defendant may have been prejudiced by the state's discovery violation, the sanction of dismissal was an abuse of discretion as the record did not support a finding that a less severe remedy would not have ameliorated the prejudice. It remanded for the trial court to consider remedies less severe than dismissal.

***Bray v. State*, 21 Fla. L. Weekly Supp. 49a (Fla. 20th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, reversed the lower court's denial of a motion for mistrial in a DUI case where the defendant was found guilty. The court held it was an abuse of discretion to deny the motion for mistrial where a testifying officer's testimony equated Horizontal Gaze Nystagmus (HGN) test results with a specific blood alcohol content (BAC) level, the alleged evidence of the defendant's impairment was minimal, and the curative instruction given to the jury stated merely that an HGN test could not be used to establish a

specific BAC level — it did not state that the test could not be used to establish *any* blood alcohol content level or to establish impairment.

***State v. Williams*, 21 Fla. L. Weekly Supp. 39a (Fla. 15th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion for judgment of acquittal after the jury returned a guilty verdict, in a DUI case. The court held that it was error for the trial court to *weigh* the evidence (particularly evidence of his slurred speech) after the state presented *legally sufficient* evidence that the defendant's faculties were impaired. The circuit court remanded with instructions to reinstate the jury's verdict of guilty.

***State v. Long*, 20 Fla. L. Weekly Supp. 1151a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, reversed the lower court's order granting the defendant's motion to suppress based on an unlawful seizure in a DUI case. The court held that a tipster who "provided dispatch with her name, detailed real-time information regarding the subject vehicle and its location, and was willing to provide FHP with a statement" was a citizen informant rather than an anonymous tipster, and the officer did not have to corroborate her tip before conducting the traffic stop. The court also held that the information the informant gave as to her identity and the defendant's vehicle were "constructively imputed" to the stopping officer because of the "fellow officer rule." The court therefore held it was error to grant the motion to dismiss.

***Lopezmoreno v. State*, 20 Fla. L. Weekly Supp. 1150a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, affirmed the lower court's verdict in a DUI case. The defendant argued that the trial court abused its discretion by allowing a breath test technician, who had not taken the interpreter oath and allegedly did not provide a literal translation, to translate Spanish portions of the blood alcohol test video of the defendant for the jury. But the court held that the defendant failed to preserve the claim for appeal because he had failed to object when the court allowed the technician to act as interpreter, with the provision that the defendant could interject if he disputed the accuracy of the translation. The defendant claimed there was fundamental error, which could be raised on appeal even if no contemporaneous objection had been made, because the technician had advised the defendant that he was obligated to submit to the breath test. But the court held no fundamental error had occurred, because the defendant never submitted to the test. The verdict was upheld.

***Lathrop v. State*, 20 Fla. L. Weekly Supp. 1145a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, upheld the lower court's denial of the defendant's motion to suppress in a DUI matter. The motion alleged "a warrantless arrest for a misdemeanor DUI offense that did not occur in the presence of . . . the arresting officer." However, the court held that where an arresting officer relied on information from a fellow officer that had been received by a citizen informant regarding the defendant's erratic driving and near collision, as well as the arresting officer's own observations of impairment, a DUI arrest was lawful.

***State v. Meenan*, 20 Fla. L. Weekly Supp. 1144a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, reversed the lower court's order granting the defendant's motion to suppress based on an unlawful seizure in a DUI case. A passerby told the arresting office she had witnessed a hit-and-run accident. The officer failed to get the witness's identity before leaving to pursue the defendant. Although the trial court granted the defendant's motion to suppress, the circuit court reversed, holding that the witness who identified the defendant as the driver did so in a face-to-face encounter with the officer and her identity was readily ascertainable, and thus she "was a citizen informant and not an anonymous tipster." Therefore, the officer had reasonable suspicion to stop the defendant.

***Lynch v. State*, 20 Fla. L. Weekly Supp. 1141a (Fla. 15th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, affirmed the lower court's verdict and determined it did not commit fundamental error in a DUI case. The court looked at whether the trial court committed reversible error (1) by limiting cross-examination of the arresting police officer, or (2) by considering the defendant's lack of remorse during sentencing. The court noted that where the direct examination of the arresting officer "opened the general subject of field sobriety exercises and left an impression that [the defendant's] performance of the exercises was an indication of impaired normal faculties," it was error to limit the defendant's cross-examination that sought to rebut that impression. However, the court held that any error was rendered harmless by the strength of the evidence suggesting the defendant's guilt.

***State v. Blanchette*, 20 Fla. L. Weekly Supp. 1042a (Fla. 12th Cir. Ct. 2008)**

The circuit court, sitting in its appellate capacity, reversed the lower court's order granting the defendant's motion to suppress evidence of pre-arrest field sobriety test performance. The defendant argued that she had not been given the choice of whether or not to take the tests, but the court held that an officer who has detained a driver based on reasonable suspicion of a DUI may compel the driver to perform field sobriety tests. Moreover, the court held that the state's legitimate interest in protecting citizens from the danger caused by drunk driving outweighs the minimal intrusion into a driver's privacy that such tests require. The court further held that, even if consent were required, the defendant freely and voluntarily consented to perform the field sobriety tests and was not coerced.

II. Criminal Traffic Offenses

***Dixon v. State*, 128 So. 3d 972 (Fla. 1st DCA 2013)**

The district court affirmed the lower court's sentence following the defendant's entry of an open no-contest plea to charges arising from a car accident that happened when the defendant was driving on the wrong side of the road and collided with another vehicle. The other driver was killed, and the driver's minor daughter was injured. The defendant argued on appeal that "the trial court improperly failed to consider his physical condition and apparent need for specialized treatment as a mitigating factor that justified a downward departure in his sentence." The court recognized that there was a split of authority in the district courts on this matter but affirmed the lower court's adherence to *State v. Holmes*, 909 So. 2d 526 (Fla. 1st DCA 2005).

"Under *Holmes*, [the defendant's] argument fails because there is no evidence in the record that the Department of Corrections could not or would not accommodate needed treatment." http://opinions.1dca.org/written/opinions2013/12-31-2013/12-3371.pdf

***Gadison v. State*, ___ So. 3d ___, 2013 WL 6687852 (Fla. 5th DCA 2013)**

The district court reversed the trial court's conviction of the defendant for possession of a firearm by a convicted felon, reckless driving, and resisting arrest without violence, holding that the trial court erred in denying the defendant's motion for mistrial after a state witness improperly commented on the defendant's exercise of the right to remain silent. The comment in question was made by the arresting officer during the prosecution's direct examination. The officer testified that the defendant had made incriminatory statements regarding his knowledge and constructive possession of the firearm. The court held that "[a] comment from a State witness that is 'fairly susceptible of being construed by the jury as a comment on the defendant's exercise of his or her right to remain silent . . . violates the defendant's right to silence.' *State v. Hoggins*, 718 So.2d 761, 769 (Fla.1998)." The court therefore overturned the defendant's conviction and remanded the case for a new trial.
http://www.5dca.org/Opinions/Opin2013/121613/5D12-544.op.pdf

***Stracar v. State*, 126 So. 3d 379 (Fla. 4th DCA 2013)**

The district court reversed the lower court's conviction of the defendant on two counts of vehicular homicide, holding that "the trial court erred in denying her motions for judgment of acquittal on the basis that the State's evidence failed to show that she was driving in a reckless manner sufficient to prove the charges." The lower court's order stated in part:

> The evidence at trial was that the Defendant . . . was driving a vehicle which left the roadway, traveled along a sidewalk and a grassy area, crossed a divided roadway and hit a sign which launched the car over a median of the intersecting street and land[ed] on the victims[']car crushing the two occupants. [The defendant] traveled . . . for over 500 feet at approximately 40 miles per hour. She suffered no serious injuries and was found conscious in her vehicle at the scene. She had to be removed through the roof due to crash damage.

The court noted that there was good weather that day, the defendant had made no attempt to stop, and there was nothing in the road that would have caused the defendant to lose control of her vehicle. However, the district court held that the evidence showed that the defendant's actions, "while certainly negligent, did not rise to the level of recklessness sufficient to sustain the convictions for vehicular homicide," citing *State v. Esposito*, 642 So. 2d 25, 26–27 (Fla. 4th DCA 1994) (reversing conviction for vehicular homicide where evidence demonstrated only negligence, not intoxication, speeding, erratic driving, or failure to observe traffic regulations), and *Berube v. State*, 6 So. 3d 624, 625 (Fla. 5th DCA 2008) (reversing vehicular homicide conviction where driver made improper left turn across oncoming traffic and there was no evidence that driver was intoxicated, distracted, or speeding). The court further stated that "[t]he presence of central nervous system depressants in [the defendant's] blood stream after the crash, in and of itself, is insufficient to support a finding of reckless driving." Therefore the case was reversed and remanded for a judgment of acquittal.

http://www.4dca.org/opinions/Oct%202013/10-23-13/4D12-278.op.pdf

***State v. Rodriguez*, 21 Fla. L. Weekly Supp. 46a (Fla. 20th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, affirmed the defendant's motion to dismiss the charge of leaving the scene of a crash (unattended property). Although the state argued it had asserted facts that would support a prima facie case, the court held that where the state failed to file a written traverse containing facts regarding notice to the property owner and damage, and the defendant objected to an oral traverse, "the facts alleged in [the defendant's] motion to dismiss constituted the whole of the factual body of the alleged crime, and because there were no factual allegations of damage to the property contained in the motion, the trial court was correct in granting the motion to dismiss" the charge of leaving the scene of an accident with unattended property.

III. Arrest, Search, and Seizure

***Forman v. State*, 128 So. 3d 817 (Fla. 2d DCA 2013)**

The district court reversed the defendant's conviction and sentence for possession of cocaine in an incident stemming from an automobile accident. The defendant was a passenger in a vehicle involved in an automobile accident where the driver of that vehicle was not at fault. After arriving as backup at the accident scene, a police officer noticed the defendant sitting in the passenger seat of the vehicle. The officer testified that the defendant was leaning back and forth in the car and that, concerned for "officer safety" (although he did not cite objective facts on which he based the concern), he ordered the defendant to exit the vehicle. The defendant refused, but the officer insisted. Once the defendant was out of the car, the officer noticed a bulge in his waistband, patted him down, and found cocaine. The defendant filed a motion to suppress at trial, but it was denied.

On appeal, the trial court recognized that, had the defendant been a passenger in a car that had been lawfully stopped, the denial of the motion to suppress would have been proper. However, the vehicle was not lawfully stopped but rather had been involved in an automobile accident. The court relied on *Miranda v. State*, 816 So. 2d 132 (Fla. 4th DCA 2002), holding that an officer cannot order a party to exit a vehicle without reasonable suspicion that a crime has occurred. Therefore, the court overturned the denial of the defendant's motion to suppress and ordered his judgment and sentence vacated.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2006,%202013/2D12-1860.pdf

***Moore v. State*, 123 So. 3d 672 (Fla. 2d DCA 2013)**

The district court reversed the defendant's convictions on drug-related charges stemming from a motor vehicle stop. As a result of the stop, the defendant was found with marijuana, paraphernalia, and an unlawful police radio. After the state filed an information charging the defendant with offenses related to those items, the defendant filed a motion to suppress, claiming that the stop was unlawful. The court noted that the evidence in the case showed

> that the officer stopped [the defendant] exclusively because when he ran [the defendant's tag] on his in-vehicle computer, the information he received from the Department of Highway Safety and Motor Vehicles (the "DHSMV") confirmed that the tag was registered to [the defendant], but it indicated that the tag was not assigned to the vehicle [the defendant] was driving. It is undisputed that this information was incorrect and that the data had not been correctly entered into the computer system by the DHSMV. If the DHSMV had properly entered the correct data, [the defendant] would not have been stopped by the officer.

The court noted three sources of pertinent law. The first, *Shadler v. State*, 761 So. 2d 279 (Fla.), *cert. denied*, 531 U.S. 924 (2000), found that DHSMV, "including all of its divisions," constituted a law enforcement agency for the purpose of interpreting the Fourth Amendment, and thus would have clearly supported the defendant's motion to suppress. However, the court also noted that, following that case, the legislature enacted section 322.202(1), Florida Statutes (2002), which stated that "the Division of Driver Licenses and the Division of Motor Vehicles of the [DHSMV] are not law enforcement agencies." (Under chapter 2011-66, Laws of Florida, the Division of Driver Licenses and the Division of Motor Vehicles were consolidated into the new Division of Motorist Services, and section 322.202(1), Florida Statutes, was amended to reflect that change.) However, the court noted that this in no way changed any functions of DHSMV. The court could not conclude that the state could pass a law that just disagreed with the ruling in a supreme court case without actually changing anything. The court noted that this had not been argued at the trial court level. The court also recognized a third source of law. The court noted that

> the United States Supreme Court ruled, in *Hudson v. Michigan*, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006), that the Fourth Amendment does not compel the use of the exclusionary rule in every instance of a violation of the knock-and-announce rule. Then, in 2009, the United States Supreme Court, in *Herring v. United States*, 555 U.S. 135, 146, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009), extended the holding in [*Arizona v.*] *Evans*[, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995)] to other "recordkeeping errors by the police" and further discussed the limits of the exclusionary rule.

As a result, the court was not confident as a matter of law whether *Shadler*, section 322.202(1), Florida Statutes, or newer case law controlled in this case. The court therefore reversed and remanded the case to the trial court for a hearing on these issues, noting that they had not been properly argued and addressed at the time of trial.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2018,%202013/2D12-1376.pdf

***Smith v. State*, 123 So. 3d 656 (Fla. 2d DCA 2013)**

The district court affirmed in part and reversed in part the lower court's judgment and sentence for possession of a controlled substance and possession of paraphernalia. An officer conducted a traffic stop of a truck the defendant was driving, based on an expired tag. A female was riding in the front passenger seat. The officer approached the truck and asked for the defendant's license and registration. The defendant "appeared nervous and began fumbling

behind the visor that was located above his seat. The officer removed [him] and the passenger from the vehicle and placed [him] under arrest. . . . The officer then conducted an inventory search of [the defendant's] truck . . . and found contraband in three locations," including two oxycodone pills and an eyeglass case that held syringes and a spoon covered in an unidentified residue behind the driver's visor. The court noted that because the defendant "was not in actual possession of the controlled substance or paraphernalia, the State was required to prove his constructive possession of these items. And to establish constructive possession, the State was required to prove that [the defendant] had knowledge of the contraband and dominion and control over it" (citing *Gizaw v. State*, 71 So. 3d 214, 217 (Fla. 2d DCA 2011)). The court stated that "[t]he only evidence suggestive of [the defendant's] dominion and control over the oxycodone pills was his nervousness upon being stopped. However, nervousness itself does not provide legally sufficient evidence of dominion or control because it could be attributed to the fact that [the defendant's] vehicle had been stopped or that he was in possession of the paraphernalia. . . . Accordingly, there was insufficient evidence to sustain [the defendant']s conviction for possession of a controlled substance. *See Hargrove v. State*, 928 So.2d 1254, 1256 (Fla. 2d DCA 2006)." However, the court found there to be sufficient evidence related to the conviction of paraphernalia and affirmed that conviction.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/October/October%2016,%202013/2D12-1794.pdf

***Staggs v. State*, 21 Fla. L. Weekly Supp. 10a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, affirmed the lower court's denial of the defendant's motion to suppress in a traffic stop case. The court held that the officer who conducted the stop had reasonable suspicion to make an investigatory stop based on observing the defendant's vehicle weave, stop at a light but remain stopped for six to eight seconds after the light had turned green, and drift to the right and almost hit a curb before jerking to the left.

IV. Torts/Accident Cases

***Swanson v. Robles*, 128 So. 3d 915 (Fla. 2d DCA 2013)**

The district court granted the defendant's appeal from final judgment in a wrongful death matter and remanded the case for a new trial. The defendant was driving his truck when he collided with a city vehicle that was parked in the striped median area of the road, killing the decedent. The defendant

> filed motions to bifurcate the trial to prevent prejudicial evidence of his drug use from being admitted in the first phase of trial in which the jury would determine compensatory damages. He argued that the evidence of his drug use would inflame the jury and affect its deliberations regarding compensatory damages.
>
> The trial court ruled that the trial would proceed in two phases, the first dealing with entitlement to compensatory and punitive damages and the second dealing with the amount of punitive damages. The trial court also denied the motions in limine and concluded that evidence of [the defendant's] drug use was relevant to the Plaintiff's entitlement to punitive damages.

Before trial, the defendant admitted negligence and proximate causation. He also admitted gross negligence and conceded that the plaintiff was entitled to punitive damages, and sought to exclude evidence of his drug use from the compensatory phase of the trial, arguing that because the plaintiff's entitlement to punitive damages was conceded and no longer a jury issue, evidence of his drug use was not probative of any material issue of fact in the compensatory phase. He argued that evidence of drug use should be admissible only in the second phase of trial, determination of the amount of punitive damages.

The trial court ruled that evidence of the defendant's drug use was admissible during the compensatory phase "because knowing that [the defendant] had engaged in such conduct and gone unpunished increased [the plaintiff's] pain and suffering." Following trial the defendant appealed. The district court held:

> When a defendant admits liability in an automobile negligence case and the only remaining issue is the amount of compensatory damages, evidence regarding the defendant's sobriety should not be admitted into evidence. *Neering v. Johnson*, 390 So.2d 742, 744 (Fla. 4th DCA 1980). . . . When a defendant admits the entire responsibility for an accident and only the amount of damages is at issue, evidence regarding liability is irrelevant and prejudicial. *Metro. Dade Cnty. v. Cox*, 453 So.2d 1171, 1172–73 (Fla. 3d DCA 1984) (citing *Barton v. Miami Transit Co.*, 42 So.2d 849 (Fla.1949)).

Therefore, the court reversed the lower court's final judgment and remanded the case for a new bifurcated trial for compensatory and punitive damages. The court also, recognizing a split of authority among the circuits in this matter, certified the conflict in this case.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/December/December%2020,%202013/2D12-1257.pdf

***Shirey v. State Farm*, ___ So. 3d ___, 2013 WL 6182399 (Fla. 4th DCA 2013)**

The district court, on remand from the supreme court, reversed the final summary judgment in this case "on the authority of *Birge v. Charron*, 107 So.3d 350 (Fla.2012) and *Cevallos v. Rideout*, 107 So.3d 348 (Fla.2012), because the record establishes a question of comparative negligence, albeit a tenuous one, of the drivers struck by the rear driver in a rear-end collision."
http://www.4dca.org/opinions/Nov%202013/11-27-13/4D10-2489.remand.op.pdf

***Disla v. Blanco*, ___ So. 3d ___, 2013 WL 6182395 (Fla. 4th DCA 2013)**

The district court denied the plaintiff's motion for rehearing and affirmed the lower court's final judgment in a claim for injuries from a motor vehicle accident. The jury had found the plaintiff 90% negligent for failing to wear a seatbelt. The plaintiff raised multiple issues of trial court error, including error in denying a challenge for cause as to one juror and failing to make a complete *Melbourne* analysis in a peremptory challenge as to another juror, and abuse of discretion in permitting admission of irrelevant matters on cross-examination of plaintiff's treating physician, allowing presentation of undisclosed opinions by a defense expert, preventing impeachment of the defense expert on seatbelt by comparing the plaintiff's injuries to the

defendant's injuries, and denying admission of a medical record of the defendant. The court concluded that these issues either were not properly preserved for appeal or were not an abuse of discretion.
http://www.4dca.org/opinions/Nov%202013/11-27-13/4D11-2556rhg.op.pdf

***Hernandez v. Gonzalez,* 124 So. 3d 988 (Fla. 4th DCA 2013)**

The district court affirmed the lower court's denial of the plaintiffs' motions for a new trial in this automobile accident case. The plaintiffs had been rear-ended by the defendants, after which they sought medical care. At trial, while the defendants admitted to negligence, they presented evidence that one of the plaintiffs had severe pre-existing conditions and that the other plaintiff was not injured in the accident. The jury verdict was "that the defendants' negligence was not the legal cause of the loss, injury or damage to the plaintiffs." The district court found no error in the lower court's denial of a new trial and affirmed its ruling.
http://www.4dca.org/opinions/Oct%202013/10-30-13/4D12-1810.op.pdf

***Blessing Rehab Center, Inc. v. Allstate Indemnity Co.*, 20 Fla. L. Weekly Supp. 1039a (Fla. 9th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the plaintiff's petition for writ of certiorari in this case stemming from an automobile accident. The court held that the lower court did not depart from the essential requirements of law by denying the plaintiff's motion for a protective order and motion to quash a subpoena duces tecum served on the plaintiff's accountant for financial records related to the plaintiff's business operations. The court held that the accountant-client privilege applies only to communications, not documents generally (such as bank statements, wage reports, cash receipts), between an accountant and client, and the record did not show that any of the subpoenaed documents contained any privileged communications that would warrant redaction.

The court held that the defendant insurer's affirmative defense — that services performed on the defendant for which the plaintiff sought payment were not lawfully rendered because the plaintiff was not wholly owned by a chiropractic physician and was not properly licensed — allowed for the defendant insurer's inquiry through discovery as to the ownership and licensure of the provider and of other entities and persons involved in treating and billing for the insured. The court also held that because the testimony in the depositions was unclear with regard to ownership of the facility and the chiropractic equipment contained therein, as well as the relationship between the plaintiff and the persons alleged to be involved in providing the medical services billed for, the defendant insurer's inquiry was relevant and necessary.

V. Drivers' Licenses

***Department of Highway Safety and Motor Vehicles v. Bennett,* 125 So. 3d 367 (Fla. 3d DCA 2013)**

The district court granted DHSMV's petition for writ of certiorari and quashed the circuit court's order reinstating the defendant's driving privileges. The defendant had been stopped after a deputy observed him driving without tag lights. The deputy noticed an odor of alcohol on the

defendant's breath; bloodshot, watery, glassy eyes; a flushed face; and an open beer bottle in the vehicle. The defendant refused to perform the field sobriety exercises and a breath test. His driving privileges were suspended, and he requested a formal hearing and a subpoena for the deputy. DHSMV stamped "commanded to appear telephonically" on the proposed subpoena and returned it to the defendant. The defendant did not approve of the stamped language and allegedly served the deputy a separate subpoena duces tecum. At the formal hearing, the arresting deputy did not appear, and the defendant requested a continuance to enforce the subpoena duces tecum. However, the defendant failed to provide proof of service of either subpoena, and the suspension was upheld. The circuit court, however, granted the defendant's second motion for rehearing, and DHSMV appealed to the district court.

The district court held that the circuit court order conflicted with Florida Administrative Code provisions governing chapter 322, Florida Statutes (2013), and *Department of Highway Safety & Motor Vehicles v. Edenfield*, 58 So. 3d 904 (Fla. 1st DCA 2011). The court held that

> Florida Administrative Code rules 15A-6.012(6) and (7) permit hearing officers to amend, strike, or quash subpoena requests. In accordance with the Code, section 322.2615(6)(b), Florida Statutes (2013), authorizes an administrative hearing officer to issue subpoenas for police officers and witnesses, and grants the hearing officer the power to otherwise regulate and conduct the hearing. Furthermore, section 322.2615(6)(c), Florida Statutes (2013), states that "[t]he failure of a subpoenaed witness to appear at the formal review hearing is not grounds to invalidate the suspension." . . . Given that [the defendant] did not provide any evidence that he served [the arresting deputy] with a subpoena, and even if he had, [the officer's] failure to appear did not automatically invalidate the hearing officer's decision.

The court also held that a defendant cannot require an officer's live appearance at an administrative hearing regarding a license suspension. The court held that in such cases, the hearing officer may determine whether a telephonic appearance is appropriate. The court therefore quashed the circuit court's order and remanded the case.
http://www.3dca.flcourts.org/Opinions/3D12-3369.pdf

Carrizosa v. Department of Highway Safety and Motor Vehicles, 124 So. 3d 1017 (Fla. 2d DCA 2013)

The district court granted the defendant's petition for second-tier certiorari review of his driver's license suspension, holding that "the circuit court departed from the essential requirements of law in upholding the suspension without affording [the defendant] an opportunity to challenge the legality of the traffic stop." The defendant had been stopped for driving erratically, and was arrested upon a finding by the arresting officer that he was driving under the influence, following a breath test. The defendant challenged his license suspension, arguing that the stop was unlawful. "The hearing officer concluded that his scope of review was limited to whether the officer had probable cause to believe that [the defendant] was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and whether [the defendant] had an unlawful blood-alcohol level. *See* § 322.2615(6), (7)[, Fla. Stat]." The hearing officer did not determine whether the stop

was unlawful, but found probable cause for the officer to have stopped the defendant and upheld the suspension. The circuit court denied certiorari relief. The district court noted that the state dropped the DUI charges against the defendant following the license review hearings, and therefore "the circuit court denied [him] procedural due process by failing to afford him an opportunity to challenge the lawfulness of the stop." The district court, relying on *Florida Department of Highway Safety and Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011) (which it noted was decided one month before the defendant's license suspension hearing), noted that in *Arenas v. Department of Highway Safety and Motor Vehicles*, 90 So. 3d 828, 833 (Fla. 2d DCA 2012)), it had held that "someone other than a judge in a criminal or civil proceeding can determine as a matter of law the validity of a Fourth Amendment arrest requiring probable cause or an investigatory stop requiring reasonable suspicion." Therefore, the court granted the defendant's petition for writ of certiorari and remanded the case to allow the defendant an opportunity to determine the legality of the traffic stop.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/November/November%2006,%202013/2D12-5336.pdf

***Toledo v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 43a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The court held that a formal review hearing need not be completed within 30 days of an application for a hearing. Rather, the agency is merely required to schedule a hearing within 30 days. The court also held a subpoenaed witness's failure to appear is not a basis for invalidating a license suspension where the defendant failed to avail herself of an opportunity for a continuance to enforce the subpoena.

***Bruno v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 42a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The court held that a formal review hearing need not be completed within 30 days of an application for a hearing. Rather, the agency is merely required to schedule a hearing within 30 days. The court also held that a subpoenaed witness's failure to appear is not a basis for invalidating a license suspension where the defendant failed to avail herself of an opportunity for a continuance to enforce the subpoena.

***Fagu v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 40a (Fla. 15th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license suspension case and quashed the suspension. The court held that where the defendant had provided some evidence that the arresting officer's law enforcement training certificate had expired, the "hearing officer erred in admitting the results of [the defendant's] breath-alcohol test into evidence without shifting the burden to DHSMV to affirmatively prove that the arresting . . . officer had taken the necessary continuing education courses to maintain his law enforcement certification." The court remanded the case to allow DHSMV to submit evidence of the officer's valid certificate.

***Dustal v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 37a (Fla. 13th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the initial stop of his vehicle was unlawful because the officer did not have probable cause to stop him. But the court held that, as the officer saw the defendant drifting in his lane, crossing lane markers, and hitting the brakes for no reason, he had reasonable suspicion of DUI. The defendant also argued that because the criminal report affidavit and the refusal affidavit both listed the same time, there was not competent substantial evidence to support suspension because the documentation was in "hopeless contradiction" as to whether he refused the breath test, and whether the officer read the implied consent warning, after arrest rather than before. But the court noted that the times listed in those documents were not the only evidence of the sequence of events, and the officer's narrative showed proper chronological order.

***Thomas v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 36a (Fla. 13th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the police dashboard video contradicted the officer's affidavits as to a reasonable basis for the stop and probable cause to suspect DUI. However, the video was not filed with the court, and other evidence supported the hearing officer's findings; in fact, the defendant admitted she was driving the wrong way down a one-way street and drifted toward the right curb. Moreover, the hearing officer was "entitled to find the officer's affidavits more persuasive than a dash-cam video," which could not smell alcohol and observe signs of impairment.

***Vergara v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 35c (Fla. 13th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the officer misstated the implied consent warning. But the court held that when the officer's statements were viewed in the context of his initial explanation to the defendant, it could not say that the hearing officer departed from the essential requirements of law by determining that the officer did not misstate the implied consent law. The court also held there was competent substantial that the officer had probable cause to request field sobriety exercises where the officer had probable cause to believe that the defendant was driving under the influence.

***Fedrick v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 25a (Fla. 9th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license revocation case. DHSMV received information that the defendant could not drive safely because of vision problems, and asked him to submit eye exam results and a field-of-vision chart. The chart showed he did not have an adequate field of vision, and his license was revoked until minimum vision requirements were met. He argued that

DHSMV allowed the Medical Advisory Board to revoke his license in violation of due process. The court disagreed, because the defendant could have requested an administrative hearing for a record review but did not. The court also held there was competent substantial evidence to support the DHSMV's findings and decision.

***Bishop v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 23a (Fla. 9th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. A police officer responded to a hit-and-run accident that had caused injuries. A witness said the at-fault vehicle was a large white pickup truck. Another officer, who had heard the crash, saw an inoperable white pickup truck nearby and handcuffed the driver, noticed the smell of alcohol and his slurred speech, ran field sobriety exercises, and arrested him for DUI. After the implied consent warning, the defendant took a breath test, which showed excessive BAC levels. His license was suspended. The defendant argued there was not sufficient competent substantial evidence to show (1) probable cause to justify his detention and de facto arrest, and (2) reasonable suspicion to connect his vehicle to the dispatch about a vehicle that left the scene of a crash. But the court held that the officer did have a reasonable suspicion to stop and detain the defendant as there was "reason to believe that the crime of leaving the scene of a crash had been committed and that it was necessary that [the defendant] be secured pending further investigation. . . . Also, . . . it was reasonable for the Hearing Officer to find that the description of the hit-and-run vehicle as being a large white truck was sufficient in light of the timing, proximity, and condition of [the defendant's] vehicle in relation to the crash scenes."

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

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. A police officer had been dispatched to a crash scene but realized it was not in his jurisdiction. When a trooper arrived he saw a damaged light pole and a car with front damage, and the defendant was sitting without handcuffs in the police car "for his safety." The trooper noticed alcohol on the defendant's breath and that, while one of the defendant's eyes was injured and patched, his uninjured eye was red, bloodshot, and watery. The trooper finished his crash investigation and then told the defendant he was conducting a DUI investigation and read him his *Miranda* warnings. The defendant agreed to perform field sobriety exercises, which he performed poorly. The trooper arrested the defendant and took him to a DUI testing center, where, after the implied consent warning, he refused a breath test. He contested the license suspension, arguing that (1) the police officer did not have jurisdiction, probable cause, or a well-founded suspicion of criminal activity to detain him; (2) there was no competent substantial evidence that he was driving or in actual physical control of an automobile, and any statements he made were immune under the accident report privilege; and (3) there was no probable cause or reasonable suspicion for the trooper to continue to detain him, conduct a DUI investigation, and arrest him. The court disagreed, holding that (1) evidence supported the finding that the police officer was justified, under the community caretaking doctrine, in detaining the defendant in the police car because of his injuries; (2) the crash report, which the hearing officer had to consider, listed the defendant as the registered owner and sole occupant of

the only vehicle involved in the crash, so it was reasonable to conclude he was driving or in actual physical control of the car; and (3) the nature of the crash and the impairment indicia observed by the trooper supported the finding of probable cause or reasonable suspicion.

***Woolwine v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 18a (Fla. 9th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. A police officer saw the defendant driving at night without headlights and taillights on and stopped her. He smelled alcohol and noticed the defendant's eyes were bloodshot, glossy, and watery. Although the officer believed the defendant was under the influence, based on field sobriety exercises he did not believe there was sufficient evidence to arrest her for DUI. But because the defendant was under 21, the officer asked her to submit to a breath test, which showed BALs of 0.105 and 0.104. The officer issued a citation regarding the lights and a license suspension notice for driver under 21 driving with blood or breath alcohol level of 0.02 or higher. The defendant argued that properly sworn required affidavits were not in the record, but the court held that the signatures of the arresting officer and the officers who administered and attested to his oath for his statement and breath test result affidavit, along with their badge numbers and the location of their signatures and badge numbers, supported that the documents complied with statutory requirements. Therefore, the hearing officer properly denied the defendant's motions to strike the documents and invalidate the license suspension.

The defendant also argued that there was not competent substantial evidence that the officer had probable cause to believe that she was under 21. However, the record showed the arresting office had identified the defendant by her driver's license, which showed she was under 21.

The defendant also argued that the stop was not lawful as the arresting officer's statement did not include "facts indicating the vantage point from which he allegedly made the observations" about her lights. The court held the argument was misplaced as the officer's observations were that the headlights and taillights were not activated, and therefore "there would be no distance of light to measure" and no need to specify a vantage point.

***Futch v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 16b (Fla. 7th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license suspension case and quashed the suspension. The court held that although the defendant's initial detention was lawful, he was denied procedural due process when the hearing officer questioned his witness over objection, ruled that the witness would not be recognized as an expert based on his responses to the hearing officer's questions rather than allowing the defendant's attorney to set a predicate, and allowed the defendant's attorney to ask the witness only two questions.

***Ciaramella v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 16a (Fla. 7th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant's license was suspended because he refused to submit to a urine test. The court held that a formal review hearing had been properly held, and that the documents reviewed constituted competent substantial evidence, which the court could not reweigh.

***Mottas v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 12a (Fla. 7th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that, although the trooper had lawful authority to investigate his vehicle when it was stopped in a traffic lane on a highway, it became an illegal detention when he directed the defendant out of his vehicle without reasonable suspicion to detain him. But the court held the trooper was authorized to order the defendant to exit his vehicle based on the traffic violation. Moreover the officer had a reasonable articulable suspicion that the defendant was committing, or was about to commit, a crime because he was passed out behind the wheel of a vehicle in a travel lane of a highway. The court also held that the use of unpromulgated prehearing forms did not constitute a departure from the essential requirements of law or a denial of due process because, even if their use was improper, the defendant had to provide the requested information anyway, and thus the specific requests for the information in the forms did not cause him prejudice or injury. The court further held that there was no denial of due process based on the hearing officer limiting subpoenas duces tecum for the breath test operator and the Intoxylizer inspector. The court further held that the hearing officer did not violate the defendant's due process rights by entering an uncertified, unauthenticated transcript of his driving record into evidence, since the only relevance of the record was to determine the appropriate length of the suspension, and as the defendant's suspension was the shortest possible, no prejudice had occurred.

***Platte v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 9a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The officer investigating an accident noticed the defendant had bloodshot and glassy eyes, his speech was slurred, and he smelled of alcohol and mouthwash. He read the defendant his *Miranda* rights, after which, upon the advice of a person who claimed to be the defendant's attorney, the defendant refused to take a breath test or a field sobriety test, and he was arrested for DUI. The defendant argued that after the officer read him the *Miranda* warnings he was entitled to consult with his attorney, and that the denial of that right invalidated the suspension. The court disagreed, noting that no Sixth Amendment right to counsel attached at that point because the breath test is not a critical stage of the proceedings, and the results are physical, not testimonial, evidence. The defendant also argued that under the "confusion doctrine," his confusion about the right to counsel should invalidate the suspension. But the court noted that while the doctrine might apply if the confusion had been created by the officer, the officer did not misstate the law, and the defendant did not express confusion about his rights. The court also held that the officer had probable cause for a DUI arrest.

***Phelps v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 8a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed the suspension of his license for refusal to take a breath test. The defendant argued that because, on the probable cause affidavit required under section 322.2615(2), Florida Statutes, the attesting officer did not attest that the arresting officer was under oath when signing, he was deprived of due process. The court agreed, noting that an affidavit must be sworn under oath, and that a violation of the requirement "cannot be overlooked as a mere technicality or cured by good faith."

***Hamalian v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 7b (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The court held that the failure of civilian witnesses to appear at a formal review hearing was not grounds to invalidate the license suspension. The court also held that it was not an abuse of discretion to deny the defendant's request to proffer evidence about an interaction between the defendant and the officer who asked her to submit to a breath test that might have led the defendant to feel hostilely to the officer and refuse to submit to the breath test. The court noted that the hearing officer already had information about the interaction, the defendant did not testify that she was compelled to take the breath test, and there was competent substantial evidence supporting the finding that the defendant refused to take the breath test.

***Tyson v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 5b (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. At the initial hearing, the stopping officer had been subpoenaed but did not appear. Because the defendant had been unable to serve the arresting officer a subpoena because he was on vacation, she requested and was granted a continuance so she could subpoena him. At the rescheduled hearing the arresting officer appeared, but the stopping officer did not. The defendant's attorney moved to invalidate the suspension because the stopping officer was the only one who could testify that the defendant was in actual physical control of or driving the vehicle. But the court held that because the defendant did not either move to enforce the original subpoena for the stopping officer or request issuance of a new subpoena for the rescheduled hearing, the stopping officer's failure to appear at that hearing did not deprive the defendant of her due process rights. The court also held there was competent substantial evidence to support a finding that the arresting officer had probable cause to believe the defendant had been driving under the influence.

***Perkins v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 5a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. Without discussing details of the case, the

court held that there was competent substantial evidence in the record to support the hearing officer's order suspending the defendant's license for driving with an unlawful blood alcohol level.

***Rhattigan v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 4b (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the DUI offense report should have not have been introduced at the hearing because the complainant/witness/ victim portion of the Law Enforcement Oath Form was left blank, the form was incomplete and therefore the offense report was not properly sworn to. The court held the argument was without merit, noting that the oath form was properly completed and attested to, and that there were no victim statements or complaints relied on by the hearing officer.

***Hale v. Department of Highway Safety and Motor Vehicles*, 21 Fla. L. Weekly Supp. 1a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant suffered a head injury in an accident and was taken to a hospital, where the investigating officer noticed alcohol on her breath. The officer read the defendant her *Miranda* rights and asked for a blood sample. The defendant refused, even after the implied consent warnings. Three hours after the accident she was arrested, and she was booked at the jail about 4½ hours after the accident. The defendant argued that a breath or urine testing was not impractical or impossible, and thus the blood test request was not authorized. But the court held that the timeline and facts supported the hearing officer's finding that timely transportation to a breath testing facility was impractical.

***Leech v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1147a (Fla. 17th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license DUI suspension case and quashed the suspension. The defendant argued that, because of problems with the traffic citation, it was not competent substantial evidence that the request for a breath test was incident to a lawful traffic stop. The court agreed. A deputy had stopped the defendant and issued a citation for failure to drive in a single lane and for disobeying a traffic control device, although the statute cited concerned only traffic control devices. Another deputy was called to the scene to perform a DUI investigation. The defendant refused to submit to a breath test and was arrested for DUI. At the hearing, the first deputy did not appear, but the second deputy testified as to what the first one had told him about seeing the defendant drifting across lanes. However, the court held that while the fellow officer rule could be used to explain the second deputy's conduct, it could not be used to explain the first (absent) deputy's conduct in making the initial stop. As to the traffic control device portion of the citation, the court held it was "ambiguous at best" as it did not identify which device was disobeyed, where it was, or how the defendant disobeyed it. The court stated: "Quite simply, there is nothing in this record to support the propriety of the traffic stop."

***Ware v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1138a (Fla. 14th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The court affirmed the suspension because "all elements necessary to sustain the suspension of [the defendant's] license for refusal to submit to a breath test were supported by a preponderance of the evidence." The arresting officer had probable cause to believe the defendant was committing DUI, and the defendant refused to give a correct breath sample after the implied consent warning.

***Weable v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1137a (Fla. 14th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant's license was suspended because he refused to take a breath test. He argued that, because of inconsistent evidence, there was no competent substantial evidence that the arresting officer had probable cause to believe he was driving or in actual physical control of his motorcycle when it crashed, and therefore the officer did not have the authority to ask him to submit to a blood test. The defendant also argued that he was not read implied consent warnings, which was supported by the testimony of some witnesses. But the court noted that it was the hearing officer's authority and responsibility to weigh and resolve conflicts in the evidence, and that the hearing officer's findings were supported by competent and substantial evidence.

***Brooks v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1136a (Fla. 14th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The suspension was based on the defendant's refusal to take a breath test. The defendant did not request a review of the suspension within the 10-day period after the issuance of the notice of suspension, but she alleged that she was not provided with the suspension notice, as required by statute. But the court held that the DUI traffic citation and implied consent warning that the defendant had signed provided notice of the suspension, and the citation also included information on how to request a review of the suspension.

***Varnes v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1135a (Fla. 13th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued there was no competent substantial evidence of probable cause to believe he was driving or in actual physical control of a motor vehicle. The court disagreed, noting that the evidence included, but was not limited to, the report of the individual who witnessed the scene and described the driver leaving after the crash, the information given to the police officer by dispatch, and the police officer's contact with and observations of the defendant, including seeing the vehicle registration documents in the defendant's hands. The defendant also argued that the accident report privilege was violated. The

court noted that the accident report privilege no longer applies in administrative license suspension hearings, and even if it did, the defendant "did not identify any 'statement' made by him that came into evidence and was relied on by the hearing officer," and the witness's statements would not fall under the privilege because he was not involved in the crash and was not required to fill out an accident report.

***Eckert v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1134a (Fla. 13th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license suspension case and quashed his license suspension order. The defendant had been identified by a witness as the driver of the at-fault vehicle in a hit-and-run accident. The defendant argued that there was no competent substantial evidence that she was under the influence of alcohol, or that she was the driver, at the time of the accident. The court agreed, holding that although the hearing officer found that the arresting officer saw the defendant driving a vehicle, the record did not show that.

> Instead, the documents state that when the [defendant] fled the scene in a gray Hyundai, she switched cars and got into a black truck. There is no statement in evidence establishing that [she] got into the driver's seat of the black truck. The witness . . . only states that the [defendant] got into the black truck. The [defendant stated] that someone else was driving. The record evidence is silent as to who was driving at the time of the traffic stop once the defendant and the other persons in her car left the scene of the original incident and were pulled over.

And since the evidence did not establish that the defendant was driving any vehicle at the time of the traffic stop, for a DUI she would have had to have been under the influence of alcohol at the time of the initial accident, when she was driving the gray Hyundai. Yet the witness did not state he observed indicia that the defendant was under the influence.

***Fanelli v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1133a (Fla. 13th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The suspension was for refusal to submit to a breath test. Documents showed an arrest time of 1:58 a.m., the two citations showed an offense time of 3:03 a.m., and the refusal affidavit and general offense hardcopy report showed the time of reading implied consent as 2:46 a.m. The defendant argued that the time inconsistencies put in doubt the time of arrest and thus the arrest might have occurred after he was read the implied consent warning, resulting in a lack of competent substantial evidence to base the suspension on. But the court held that despite the inconsistencies, (1) the arresting officer's narrative report stated that the arrest occurred after the implied consent warning was read; (2) the citation times were offense times, not arrest times; and (3) when the defendant was taken to the central breath test facility, he was "effectively under arrest when he was again read implied consent."

***Plyant v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1125a (Fla. 8th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case for DUI. The defendant argued the arresting officer did not have probable cause to make the traffic stop. However, the court noted that "[a]n officer may stop a driver if the officer has a reasonable suspicion that the driver is under the influence of drugs or alcohol." Under the circumstances (a protracted stop at a stop sign and failure to stay in the driver's lane), the stop was justified.

***Kane v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1124a (Fla. 8th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued he was entitled to relief because DHSMV did not make sure his driver's license was submitted into the record at the administrative review hearing. The court held that, at least where the driver's identification was not an issue, such failure did not constitute a departure from the essential requirements of the law warranting certiorari relief. The court also disagreed with the defendant's claim that the record did not contain competent substantial evidence to support the hearing officer's finding that the traffic stop was lawful – "that the officer did not demonstrate the specific method by which he determined that [the defendant] was speeding" – as the citation, which was in the record, indicated that the speed was measured with a particular radar gun. The defendant's third argument – that there was not competent substantial evidence to support the hearing officer's finding that the officer had reasonable suspicion to detain the defendant for DUI – was likewise found to be without merit, because the officer observed the defendant's reckless driving and smelled alcohol coming from the car.

***Abel v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1123b (Fla. 7th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that there was no competent evidence that he was the operator of the vehicle involved in the accident, because the trooper who investigated the crash and arrested him did not observe him behind the wheel or explain how he concluded that the defendant was driving. But the court held that the trooper's statement in the charging affidavit was competent substantial evidence of vehicle operation, as the defendant presented no contrary evidence.

***Fremento v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1123a (Fla. 7th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant claimed she was denied due process because a subpoenaed witness failed to appear and she could not cross-examine the witness. She was granted a continuance but was unable to secure the witness's attendance. The court held there was no denial of due process because the witness was a nonessential witness, as there was sufficient evidence from other testimony and documentation to support the hearing officer's determination that there was cause to suspend the defendant's license.

***Gratton v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1122a (Fla. 8th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued there was not competent substantial evidence to support the hearing officer's finding that she was lawfully arrested. The court disagreed, noting that the defendant had backed into an officer's car over his repeated shouted warnings, and the officer observed that the defendant had alcohol on her breath, could not walk a straight line, stumbled when walking, and swayed when standing still.

***Zvierko v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1120a (Fla. 7th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license suspension case and quashed the suspension. The court held that where deputies suspected, and there was strong evidence, that the defendant was driving under the influence of drugs but not alcohol, there was no basis on which to request a breath test (although a urine test would have been authorized if requested). Therefore, the defendant's license could not be suspended for failure to submit to a breath test.

***Maher v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1119a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license revocation case. The defendant's license had been revoked for five years after he was convicted of two DUI charges within a five-year period. He obtained a restricted reinstatement, but violated a condition of the required DUI Special Supervision Services Program by failing to abstain from drinking alcohol, and the program administrator recommended cancellation of his enrollment in the program. The basis for the finding that the defendant failed to abstain from alcohol was statements in the arrest affidavit from the defendant's domestic battery arrest. DHSMV cancelled the defendant's participation in the DUI program and re-imposed the license revocation. The defendant appealed the program administrator's cancellation recommendation, but Pride Integrated Services, DUI Programs of Pasco County, which heard the appeal, agreed with the program administrator's decision. The defendant appealed, arguing that there was not competent substantial evidence to support that decision. However, the court held that the statements in the domestic violence arrest affidavit were sufficient.

***Showalter v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1118b (Fla. 4th Cir. Ct. 2011)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant claimed his due process rights were violated because he was unable to cross-examine the arresting officer, who failed to appear at the suspension hearing because he had moved to another state. The court held there was no violation because the stopping officer, who had observed the erratic driving and impairment indicators, did testify, and the arresting officer's testimony would only have been cumulative to

that testimony. Furthermore, the hearing officer had offered to continue the hearing in order to try to arrange for the arresting officer to appear by telephone. The court held that the defendant waived any due process claim when he declined the offer.

***Puzyrenko-Strickland v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1118a (Fla. 4th Cir. Ct. 2011)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the suspension was not supported by competent substantial evidence, and that her arrest had not been lawful. The officer who first detained the defendant was out of jurisdiction when noticing her driving at night without headlights, driving across lanes, and almost hitting another vehicle. Upon stopping the defendant, the officer noticed a strong odor of alcohol in the vehicle and that the defendant's eyes were bloodshot. That officer summoned another officer within the jurisdiction, who arrested the defendant. The court held that under those facts the initial stop was "a lawful citizen's arrest."

***Willard v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1117a (Fla. 4th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that her due process rights were violated because the hearing officer (1) would not issue her a driving permit if the hearing were continued, and (2) denied a subpoena duces tecum for a police officer. The court held there was no due process violation because (1) the defendant had sought a continuance, and (2) no basis was stated for obtaining that police officer's testimony other than that he was the first at the scene (he arrived seconds before the arresting officer) but was not listed in the arrest report.

***Quinn v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1116a (Fla. 4th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant was involved in a traffic accident. The police officer who conducted the DUI investigation arrested the defendant and took him to jail, where he was for 30-40 minutes. The nurse at the jail turned the defendant away because he had a high pulse, and the officer took him to the hospital, going through the ER to the security guard's room, where he read the defendant the implied consent form and asked for a blood test. The defendant refused and his license was suspended. The defendant argued the police officer did not have the authority to ask him to submit to a blood test because such test may be taken at a medical facility only when a breath or urine test is impracticable or impossible. But the court held that the preponderance of the evidence showed that under the circumstances it was impracticable or impossible to administer a breath or urine test. The court further stated that "[a]s a bright line rule, this Court would find that either placing a defendant in the custody of hospital guards or admitting a defendant to a hospital prima facie establishes [DHSMV's] burden to show impracticability," which can be rebutted by the defendant by, e.g., evidence that a breath

or urine test was available at the hospital, or that the defendant would have been examined and released shortly after admission.

***Winstel v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1115a (Fla. 4th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. A police officer's neighbor told him that he had seen a red Jeep Liberty strike an unidentified object and flee. The accident investigation showed that the vehicle had hit several trees and parts of the vehicle were strewn around the scene. The officer initially could not locate the vehicle, but after he left the scene a red Jeep Liberty with front-end damage passed him. He stopped the Jeep and noticed a strong odor of alcohol and confusion on the part of the driver, who said he did not know he had hit anything. The officer notified a DUI unit, and an officer from that unit arrived and conducted a DUI investigation. The issue on appeal was whether the traffic stop was lawful, that is, whether the officer had probable cause to stop the defendant. The court held that the facts of the case provided a basis for suspicion to make an investigatory stop, and the officer's observations warranted a DUI investigation.

***Boney v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1114b (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that there was no competent substantial evidence to support the finding that he refused to submit to a breath test. The defendant was given *Miranda* and implied consent warnings and did not submit to the test. But he argued that, because of the manner in which the warnings had been given to him, he was confused as to whether he had the right to speak to an attorney before deciding whether to submit to the breath test. The court held that, although it was regrettable that the hearing officer failed to make findings addressing the defendant's arguments, the hearing officer's findings that the defendant was legally arrested, received the required implied consent warnings, and then refused to take the breath test were supported by competent substantial evidence.

***Fouche v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1114a (Fla. 4th Cir. Ct. 2011)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. After a police officer witness was briefly questioned by defendant's counsel, the hearing officer told the police officer he could make an independent statement if he wished to, but did not make this offer to any other witnesses. The court held that this did not demonstrate impartiality. The issue addressed in the officer's testimony was irrelevant, and the offer to allow an independent statement was consistent with the hearing officer's right to ask clarifying questions.

***Hales v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1113a (Fla. 4th Cir. Ct. 2011)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. When the arresting officer arrived at the crash scene, an injured driver was being removed from one vehicle, and the defendant was standing near the second vehicle. There were no other civilians at the scene. The officer noticed signs that the defendant was impaired, informed him that she was going to conduct a DUI investigation, gave him *Miranda* warnings, and asked him to participate in field sobriety exercises. The defendant agreed and performed poorly. He then admitted owning the second vehicle and driving it at the time of the accident. He was arrested and taken to jail, where he agreed to take a breath alcohol test, which showed a level well above 0.08. The defendant argued that because he performed the exercises before admitting to driving, and a traffic investigation was separate from a DUI criminal investigation, the arrest was unlawful because there was no evidence that he had physical control of the vehicle. But the court held that even without the defendant's admissions, the arresting officer had reasonable suspicion to detain the defendant for a DUI investigation: "While perhaps falling short of establishing 'probable cause,' [the officer's] observations provided ample 'reasonable suspicion' for [the officer] to detain [the defendant] for further investigation, including field sobriety exercises."

***Lofton v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1112a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The court held that, although the hearing officer erred in finding that an extra-jurisdictional traffic stop was authorized by the fresh-pursuit doctrine, the police officer had the authority to make the stop under the mutual aid agreement between the city of Atlantic Beach and the Jacksonville sheriff's office. The court further held that the officer had reasonable suspicion that the defendant was driving under the influence because when she stopped the defendant she noticed a strong odor of alcohol and slurred speech, the defendant had admitted he had been drinking, he was unsteady on his feet, and he failed the field sobriety tests.

***Allen v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1111a (Fla. 4th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant's license was suspended because of his refusal to take a breath test. He argued that the arrest was illegal because the trooper asked him to exit his car without any reasonable suspicion of criminal activity or fear of danger. But the court held that where the trooper saw the defendant speeding and following too closely, both of which are traffic infractions, and he asked the driver to exit his car before issuing the citation and asking if he could search the car, the encounter was lawful.

***Kennedy v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1110a (Fla. 4th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case for refusal to provide a urine sample. The defendant argued that because the record did not show what speed he was travelling the traffic

stop was unlawful, and that there was no probable cause to require him to give a urine sample. But the court held that the officer's observation that the defendant's car was traveling at high speed while passing other vehicles provided a well-founded, articulable suspicion of a traffic offense and the stop was thus valid. The court also held that the officer had reasonable cause to ask the defendant to provide a urine sample because the officer had observed signs of impairment but the breath tests showed low levels of alcohol.

***Schweizer v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 1109a (Fla. 1st Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that there was not competent substantial evidence that he had been driving the vehicle involved in a crash. He claimed that the trooper who arrested him concluded that he was the driver based on information given to him by another trooper, who based his conclusion on information given to him by a deputy, who had seen the defendant trying to start the vehicle after the accident. But the court held that the conclusion that the defendant had been driving the vehicle was reasonable, because the defendant was seen immediately after the crash in the driver's seat of a vehicle that, unlike in cases cited by the defendant, was rendered inoperable by the crash. Furthermore, the defendant had not presented any contrary evidence.

***Brady v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 1107b (Fla. 7th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari in a driver's license suspension case and quashed the suspension. A city police officer stopped the defendant outside the city limits, after observing him drive off the road several times. A county sheriff's deputy arrived and "stood by" during the investigation. After the defendant performed poorly on the field sobriety exercises, the police officer arrested him. The defendant argued that the arrest was unlawful because the police officer did not have the authority to arrest him. DHSMV argued that, although this was not a fresh pursuit case, the arrest was lawful because of a mutual aid agreement between the city and county. But the court stated: "There can be no doubt that the presence of a stand by officer does not cloak the municipal officer with the authority to stop and arrest people outside of his jurisdiction." The court also held that the police officer could not make a citizen's arrest under color of his office.

***Graves v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 1107a (Fla. 1st Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari after DHSVM denied his request for an early reinstatement of his driver's license. The defendant's license had been permanently revoked in 1993, and he obtained an occupational driver's license from Texas in 2003, "which purported to give him the right to drive, under limited circumstances, 'throughout the United States of America.'" In 2011 the defendant was stopped and arrested in Florida for driving while his license was permanently revoked. He entered a plea to the charge and was sentenced to six months' probation. After his arrest, the defendant tried to have his Florida license reinstated. The hearing officer rejected the request,

noting that the defendant had admitted to driving in Florida while his license was still revoked, which violated one of the requirements for reinstatement (the driver must not have driven a motor vehicle without a license for at least five years before the reinstatement hearing). The court held that there was no error in the rejection of the reinstatement request, despite the Texas order granting the occupational license. Citing section 322.30, Florida Statutes, it noted that Florida "has enacted legislation which prevents an individual whose license has been revoked from obtaining a license in another jurisdiction to circumvent a suspension issued in this State."

***Nierwinski v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1049a (Fla. 20th Cir. Ct. 2013)**

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's license was suspended after he refused to submit to a urine test after a traffic accident. The trooper who responded to the accident observed that the defendant had the odor of alcohol on his breath, watery eyes, and slurred speech, and was unsteady on his feet, and the defendant performed poorly on field sobriety tests. The defendant agreed to a breath test, and because of the low breath alcohol results the trooper asked the defendant to submit to a urine test to determine whether his impairment was due to a chemical or controlled substance rather than alcohol. The court held that because of the signs of impairment of the defendant, the trooper had probable cause to request a urine test.

***Harrington v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1047a (Fla. 13th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension matter. The court held that the stop was lawful because there was competent substantial evidence of both probable cause to believe the defendant had committed a traffic infraction, and a reasonable suspicion of impaired driving. The arresting deputy saw the defendant's vehicle drifting and swerving and almost striking the median several times, which constituted a violation of section 316.089(1), Florida Statutes, even absent any danger to other drivers. Moreover, the evidence indicated the defendant was endangering himself and the occupants of another vehicle.

***Markgraff v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1046a (Fla. 12th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari and upheld the defendant's driver's license suspension. The court held that when the trooper who had investigated the accident scene went to the hospital where the defendant was admitted, observed that the defendant smelled of alcohol and his eyes were bloodshot and speech slurred, and had been advised by the defendant's doctor that the defendant's injuries would prevent him from being discharged that night, there were grounds to lawfully request a blood draw. The court also noted that under section 316.645, Florida Statutes, the trooper was authorized to arrest the defendant for DUI based on the trooper's investigation of the crash scene, even though he had not personally seen the defendant driving.

***Lurz v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1045a (Fla. 12th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license DUI-suspension matter. The defendant argued there was no competent substantial evidence that he had been driving or was in actual physical control of the vehicle, because the statements made to the arresting officer allegedly identifying him as the driver were "inadmissible hearsay and not competent substantial evidence to be considered by the hearing officer" and "not competent substantial evidence that alone can establish probable cause" (a deputy had received information from an independent witness and relayed it to the arresting officer). The defendant also alleged that "the fellow officer rule does not allow law enforcement to abrogate the rules regarding the admissibility of hearsay." The court, however, noted that hearsay evidence is admissible at an administrative license suspension hearing and does not require corroboration by non-hearsay evidence.

***Fleet v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1037a (Fla. 8th Cir. Ct. 2011)**

The circuit court dismissed the defendant's petition for writ of certiorari and upheld his driver's license suspension. The defendant argued that the record did not contain competent and substantial evidence to support the hearing officer's conclusion that the arrest was lawful. But the court held that the arresting officer had reasonable suspicion to detain the defendant and perform field sobriety exercises because he smelled alcohol when he stopped the defendant for speeding, and the defendant admitted he had been drinking. The court also held that the officer had probable cause for a DUI arrest based on the defendant's driving pattern, physical signs of impairment, and his performance on the field sobriety exercises.

The defendant also argued that the hearing officer erred in upholding his license suspension despite evidence that the breath test machine was not in substantial compliance with administrative rules. But the court held that even though there had been a reporting error on one of the test attempts, the machine was in substantial compliance with administrative rules. The monthly inspection had been made 20 days before the defendant's test, and affidavits showed that the machine had passed diagnostic checks before each of the defendant's test attempts.

The defendant further argued that the hearing officer erred in refusing to issue a subpoena for the inspector who performed the last annual inspection of the breath test machine, and then refusing to admit that inspection because the inspector was not present. But the court held that, although these actions constituted error, the error was harmless because the hearing officer allowed the defendant to proffer the inspection report, which had been performed 20 days before the defendant submitted to the breath test.

***Rice v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1036a (Fla. 8th Cir. Ct. 2012)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension case. The defendant argued that the stop was not lawful, but the court disagreed, noting that a golf cart is a vehicle to which section 316.217(1),

Florida Statutes, requiring headlights to be on from sunset to sunrise, applied. The defendant also argued that it was improper to suspend his driver's license for operating a golf cart while under the influence, because a driver's license is not required for the operation of a golf cart. The court disagreed, holding that the operator of a motor vehicle on a highway in Florida is deemed to have consented to a lawful breath test, and refusal to submit to the test will result in suspension of the driving privilege, of which license suspension is simply a part.

***Rouf v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1035a (Fla. 8th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed his driver's license suspension. The law enforcement officer did not forward the defendant's license to the DHSMV as required by statute. The department argued that such failure was harmless error because the document was irrelevant, but the court held that section 322.2615(2)(a), Florida Statutes (2012), created a due process right to inclusion of the defendant's driver's license in the record, and its inclusion in the record is mandatory, not optional. The court also held that the hearing officer's refusal to issue a subpoena for one of the officers identified as being present at the arrest, and to issue certain subpoenas duces tecum regarding the breath test operator and machine inspector, constituted denial of due process.

***Gibson v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1034a (Fla. 7th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed her driver's license suspension for DUI. The court held it was a violation of due process for the hearing officer to exclude the testimony of the defendant's expert and to not allow a proffer of his qualifications and testimony. The court held that the failure of the police department to preserve and produce the video of the defendant in the police DUI booking room, as directed by subpoena, was also a denial of due process.

***Miller v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1032a (Fla. 6th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension. Although the arresting officer, who had been dispatched to the accident scene, did not observe the crash or an infraction, he saw the defendant in his vehicle about one block away from the intersection at which the crash was reported, partly in the road and partly in a driveway, and observed signs of intoxication. After the defendant stated "that he did not want a crash report made, the officer explained that although no actual crash investigation was conducted, a separate investigation into [a DUI] was beginning." Then the officer gave the defendant *Miranda* warnings and conducted field sobriety tests, after the failure of which he arrested the defendant. The defendant argued that "the police unlawfully seized him," but the court held that the encounter was consensual. There was no evidence contradicting that the defendant gave the officer his driver's license voluntarily, and he voluntarily exited his vehicle to show the officer the damage. The court further held that there was competent substantial evidence to support the hearing officer's finding that the arrest was lawful.

***Casias v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1027a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed the final order of the defendant's driver's license suspension for DUI. The court held that the defendant's statements in the accident report were not protected by the accident report privilege, which applies to civil and criminal trials but not to administrative hearings. Moreover, the court found that even without the defendant's statements in the accident report, there was enough competent evidence that the defendant was in actual control of the vehicle at the time of the accident based on statements from other witnesses. However, the court found that the hearing officer violated the defendant's due process rights by not granting his initial request for subpoenas duces tecum for the breath test operator's permits, certificates, and dates of renewal courses. Therefore, the circuit court granted the defendant's petition for writ of certiorari and quashed his driver's license suspension.

***Aprile v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1025a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed his driver's license suspension for DUI. The court held that an officer who arrested the defendant, whom he had observed asleep in his vehicle blocking a busy road, had reasonable suspicion to detain the defendant. Further, the fact that the officer cited the defendant for violating section 316.194, Florida Statutes (2012), which relates to "any highway outside of a municipality," while the defendant argued the stop did not occur "outside the municipality," did not warrant reversing the hearing officer's final order. The court also held that placing the defendant in the patrol car and moving the defendant and his car to a safer location did not constitute a de facto arrest. The court further held that the hearing officer's use of unpromulgated forms did not establish a violation of due process rights because the defendant did not establish that use of the forms resulted in his material injury. However, the court held that the hearing officer violated the defendant's due process rights by denying his requests for subpoenas duces tecum for the breath test operator's permits, certificates, and dates of renewal course, and therefore granted the writ and quashed the license suspension.

***Barry v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1024b (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension for DUI. The court held that where an arresting law enforcement officer properly asked the defendant to submit to a breath test, the fact that the defendant was advised of the consequences of refusal by a correctional officer, who was not a law enforcement officer, was irrelevant. The court also held that the use of a new prehearing statement form did not violate the defendant's due process rights. The form is not a rule and "does not require promulgation in the same manner that a rule does." And if the form were considered a rule, a petition for writ of certiorari would not be the proper way to challenge it.

***Henrici v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1024a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari in a driver's license suspension matter. The defendant's license had been suspended because he had refused a breath test after his DUI arrest. The hearing officer had considered an unsworn traffic citation the defendant had been issued for speeding, and the defendant argued this was not sufficient evidence to prove he had been lawfully stopped by the arresting officer. But the court held that the hearing officer could rely on the unsworn citation to establish that the defendant had been stopped for speeding.

***Salmon v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1023a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari and upheld her driver's license suspension for DUI. The court held that despite inconsistencies between the arresting officer's testimony and the video of the incident, it could not substitute its judgment for that of the hearing officer when there was competent and substantial evidence to support the hearing officer's finding of probable cause for arrest. The court also held that it was not a denial of due process for the hearing officer, after offering to continue the hearing to allow the defendant to complete her presentation of evidence and testimony from the arresting officer who had not been subpoenaed, to refuse to grant an extension of the defendant's temporary driving permit. Even if the denial of the extension were a due process violation, the claim was moot because the defendant's attorney rejected the offer to continue and agreed to end the hearing.

***Detlefsen v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1022a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and vacated his driver's license suspension. The hearing officer's order included a finding that the defendant had an unlawful blood or breath alcohol level, despite the fact that the suspension was based on the defendant's refusal to submit to a blood or breath alcohol level test. The court therefore held that the order was not supported by competent substantial evidence. While DHSMV argued that the discrepancy was a typographical error, the court stated that the best interpretation of that argument was the conclusion that the hearing officer signed the order without reading it. The court also held that the tipsy coachman rule, as stated in *In re Estate of Yohn*, 238 So. 2d 290 (Fla. 1970) (appellate court may affirm lower court's order or ruling that applied incorrect law but arrived at correct ruling), did not apply. The court found that the hearing officer did not apply the wrong law, but rather made a factual finding with no evidence to support it.

***Dixon v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1021b (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension matter. The defendant argued that the suspension order was not supported by competent substantial evidence because the implied consent warning was given after a refusal to submit to the test occurred. However, the court noted that at least one of the refusals occurred after the warnings were given. The defendant also argued that the arrest

and refusal to take the breath test occurred two days later than the date stated on the computer-generated printout. The court called the alleged inconsistency in dates "a red herring" that in any case did not undermine the reliability of the documentary evidence.

***Waite v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1021a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari and affirmed the hearing officer's report in a driver's license suspension case. The court held that there was competent substantial evidence to support the finding that the defendant was lawfully detained and arrested. The court further held that any errors regarding forms and uncertified driving records were harmless.

***Sanchez v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1019a (Fla. 4th Cir. Ct. 2011)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension. The defendant argued that "her arrest was unlawful because the police officers did not personally observe her driving or in actual physical control of her vehicle while under the influence of alcohol." But the court held that a lawful citizen's arrest had occurred, which transferred custody of the defendant to the police officers when they arrived. Another driver had observed the defendant driving in such an erratic manner as to constitute a breach of the peace, and he made a citizen's arrest by driving his vehicle in front of hers, moving her to the passenger seat, and taking her keys, thereby depriving her of the right to leave. The defendant also argued that there was not sufficient evidence on which to base the finding that the police had probable cause to believe she was driving or in actual physical control of her vehicle. However, the court noted that in a civil license suspension hearing, there was no statutory requirement that a probable cause finding be based on events that occurred in the actual presence of the police.

***Behr v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1018a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari on a driver's license suspension. The defendant argued that the hearing officer erred in failing to consider the lawfulness of the defendant's arrest and relying instead on a memorandum from the bureau chief of administrative reviews instructing that hearing officers do not need to determine the lawfulness of the arrest in DUBAL cases, but rather only in refusal of breath test cases. The court held that, although reliance on the memorandum did not constitute failure of the hearing officer to be fair and impartial, the failure to consider the lawfulness of the arrest constituted grounds to quash the license suspension as this did not comply with the essential requirements of the law as stated in section 322.2615(7)(a), Florida Statutes. The defendant also argued that the evidence did not support the hearing officer's finding that the breath test complied with administrative rules, because of a discrepancy in times listed on the implied consent form and the arrest and booking report. However, the court stated that "minor technical defects in an affidavit do not render it a nullity."

***Northcutt v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 1015a (Fla. 4th Cir. Ct. 2013)**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari on a driver's license suspension. The defendant argued that his refusal to submit to a breath test was not obtained in compliance with the implied consent law, section 322.2615(7)(b), Florida Statutes (2010), because he was asked to submit to both breath and urine tests, when only the breath test was required. The court held that there was no merit to this argument. Moreover, the court found that both the refusal affidavit and the arrest and booking report indicated that the defendant "was asked and refused to submit to a breath test." The court also disagreed with the defendant's claim that discrepancies in the forms regarding times of events showed that he was given the implied consent warning after he had refused the breath test.

The court also held it was not a violation of due process for the hearing officer to refuse to issue a subpoena duces tecum for documents to confirm the accuracy and reliability of the arresting trooper's speedometer. Because the underlying issue in the case was unrelated to speed, the trooper's pacing of the defendant's vehicle and other observations during pursuit were enough "to create a reasonable suspicion justifying a traffic stop." The court held that even if there had been a determination that the trooper's speedometer was malfunctioning and providing inflated speeds, it would not undermine the finding that the trooper had a reasonable suspicion to believe that the defendant was speeding.

VI. County Court Orders

***State v. Wardell*, 20 Fla. L. Weekly Supp. 1245a (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress, because the traffic stop was lawful. The police officer had probable cause to believe the defendant committed a traffic infraction when she saw him driving southbound in the northbound traffic turning lane.

***State v. Posada*, 20 Fla. L. Weekly Supp. 1244b (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress, because the traffic stop was lawful. The police officer observed the defendant failing to maintain a single lane (FMSL) and crossing over the center line by half a car's width four times in one half mile. The court noted that while the FMSL statute recognizes that it is not always practicable for a driver to maintain a single lane, the defendant deviated from his lane "by more than what was practicable," and it was therefore irrelevant whether anyone was endangered.

***State v. Africano et al.*, 20 Fla. L. Weekly Supp. 1242b (Brevard County Ct. 2013)**

The court consolidated many cases and granted the defendants' motions for production of an Intoxilyzer 8000 for inspection and testing and their motions to enforce orders requiring production of the machine. The court found that different county judges had entered conflicting orders, and it "wished[d] to consolidate its ruling in this division to maintain uniformity." It held that the motions were made in good faith and that testing and inspection of the machine was reasonably calculated to lead to admissible evidence.

***State v. Tucker*, 20 Fla. L. Weekly Supp. 1220a (Flagler County Ct. 2013)**

The court dismissed a citation for a red light camera infraction. The court found there was insufficient evidence as to the maintenance of the camera, as the person testifying for American Traffic Solutions did not know by whom, how, and when the camera had been maintained. Also, the city's procedure for handling red light camera violation citations did not comply with section 316.650(3)(c), Florida Statutes, which requires traffic infraction officers – not third party vendors – to provide certain information to the clerk of court. There was no testimony of participation by the city "beyond the Traffic Infraction Enforcement Officer hitting the accept button in response to the query sent by American Traffic Solutions." The court stated that "the improper entity, the third party vendor Questmark, at the direction of American Traffic Solutions, is invoking the jurisdiction of the Court, contrary to Florida law. The municipality, who is the entity required to invoke the jurisdiction of the Court, is two steps removed from the actual preparation, transmission, and delivery of the citation."

***State v. Sury*, 20 Fla. L. Weekly Supp. 1218c (Flagler County Ct. 2013)**

The court dismissed a citation for a red light camera infraction. The court found there was insufficient evidence as to the maintenance of the camera, as the person testifying for American Traffic Solutions did not know by whom, how, and when the camera had been maintained. Also, the city's procedure for handling red light camera violation citations did not comply with section 316.650(3)(c), Florida Statutes, which requires traffic infraction officers – not third party vendors – to provide certain information to the clerk of court. There was no testimony of participation by the city "beyond the Traffic Infraction Enforcement Officer hitting the accept button in response to the query sent by American Traffic Solutions." The court stated that "the improper entity, the third party vendor Questmark, at the direction of American Traffic Solutions, is invoking the jurisdiction of the Court, contrary to Florida law. The municipality, who is the entity required to invoke the jurisdiction of the Court, is two steps removed from the actual preparation, transmission, and delivery of the citation."

***State v. Usaga*, 20 Fla. L. Weekly Supp. 1194a (Miami-Dade County Ct. 2013)**

The court denied the defendant's motion to suppress blood alcohol test results. The court recognized that under *Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013), a blood draw without a warrant or consent is unconstitutional except under exigent circumstances, which were not shown to exist in this case. However, that case was decided after the blood draw in this case, and therefore to suppress the blood draw in this case would have no deterrent effect on officers drawing blood without a warrant or consent.

***State v. Burklew*, 20 Fla. L. Weekly Supp. 1100a (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress field sobriety exercises and results of a blood test. The defendant argued that the officer did not have reasonable suspicion to administer the field sobriety tests because the defendant was "suffering from the effects of her accident." But the court noted that the effects at issue were also indications of alcohol use, and the police officer had a reasonable suspicion of DUI. The defendant also argued that the blood test results should be suppressed because a breath test could have been administered instead, but

the court disagreed. The officer was not able to administer a breath test because the defendant passed out and appeared in need of medical attention. Once the defendant was at the hospital, there was no breath test machine, and the officer did not know how long the defendant would be there. Further, a urine test would not have tested for alcohol.

***State v. Anderson*, 20 Fla. L. Weekly Supp. 1099a (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress an unlawful seizure. The court stated that "[p]robable cause for a traffic stop does not exist where a vehicle fails to maintain a single lane but does not create any reasonable safety concern. . . . However, a police officer may initiate a traffic stop if he or she observes a vehicle driving in an unusual manner and has a reasonable suspicion that the driver is ill, tired, or driving under the influence." The court held that the officer had such reasonable suspicion because she saw the defendant, within a short distance, cross the center line several times, slow down at a green light, and follow the vehicle in front of her too closely.

***State v. Folstein*, 20 Fla. L. Weekly Supp. 1098a (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress findings of facts. A citizen pulled up next to the police officer and alerted him to the defendant's driving, and the officer followed and eventually arrested the defendant. The defendant argued that the officer did not have authority to stop her, reasonable suspicion of DUI, or probable cause to arrest her for DUI based on field sobriety exercises. The court held the officer had reasonable suspicion that the defendant was speeding, based on his visual estimation and pacing of her vehicle, and on the fact that she passed him while speeding, swerving, and crossing the center line; therefore, the stop was valid. Further, because the officer smelled alcohol on the defendant and noticed her eyes were glassy and red, he had reasonable suspicion that she was under the influence of alcohol and he had authority to request the field sobriety exercise, which she performed poorly.

***State v. Presha*, 20 Fla. L. Weekly Supp. 1089a (Manatee County Ct. 2013)**

The court denied the defendant's motion to suppress. The deputy ran a routine license tag check on a truck and discovered that the registered owner had a suspended license and active arrest warrant. Through the truck's tinted windows, the defendant, who was driving the truck, fit the description of the owner, and the deputy stopped the truck. When the deputy approached, the defendant lowered his window and the deputy noticed a strong odor of marijuana. He asked the defendant for his driver's license, and the defendant stated he had never had a Florida license, but his Florida ID card showed that he was not the person who owned the truck. When the deputy asked the defendant if there was anything in the truck the deputy needed to be concerned about, the defendant produced a marijuana cigar and the deputy arrested him for possession of marijuana. The defendant argued the deputy did not have reasonable cause to stop or continue detaining him before the deputy smelled marijuana, because the deputy knew or should have known the defendant was not the same person as the truck owner, based on their physical differences. However, the court stated that the deputy could not tell that the defendant was not the owner "until he completed his approach, smelled the marijuana and obtained the Defendant's identification. At that point, even though the deputy became aware the defendant was not the

truck owner, he had reasonable cause to continue detaining the defendant because of the marijuana."

***State v. Slayton*, 20 Fla. L. Weekly Supp. 1077a (Alachua County Ct. 2013)**

The court granted the defendant's motion to suppress all evidence resulting from his stop and arrest. The defendant argued the deputy did not have probable cause of a traffic violation or reasonable suspicion of DUI to stop him, and the court agreed. The deputy saw the defendant's vehicle weaving within its lane eight or nine times, but it did not leave its lane until after about three miles, at which point the deputy stopped the defendant. The court held the stop was not valid, as (1) the deputy testified that the sole basis for the stop was the defendant's failure to maintain a single lane, and that he did not stop him because he believed him to be ill, tired, or impaired; and (2) no other traffic was affected.

***State v. Perkins*, 20 Fla. L. Weekly Supp. 1074a (Volusia County Ct. 2013)**

The court granted the defendant's motion to suppress unlawfully obtained evidence and warrantless misdemeanor arrest. The police officer saw the defendant come to a "jerky" stop at a stop sign, make a wide turn into another lane, and make a second "jerky" stop at a stop sign. He followed the truck for seven more blocks and saw no driving problems. Then the defendant turned wide onto another road and the truck's wheels went into a yard. The officer testified that he then stopped the defendant out of a concern that he was ill, tired, or impaired, or was having mechanical issues. The stop led to a DUI investigation and arrest. The court noted that absent a traffic violation, an officer can stop a driver if there was a driving pattern that would lead to a reasonable suspicion of criminal activity or concern for the safety of the driver or others. But under the circumstances the defendant's driving pattern did not justify the stop.

***State v. Jiminez*, 20 Fla. L. Weekly Supp. 1010a (Brevard County Ct. 2013)**

The court denied the defendant's motion to suppress unlawful seizure. The arresting police officer was told by a drive-through employee that two females in the restaurant had arrived in a black SUV and "appeared to be so intoxicated that they could barely walk." The officer waited in the parking lot and soon saw two females get into the SUV. He observed speed fluctuations and weaving and stopped the SUV because he was concerned the driver might be ill, injured, or impaired. The court held that the restaurant employee was a readily identifiable citizen informant whose information was enough to create a reasonable suspicion of criminal conduct, and as the officer observed signs of impairment as well, the stop was "more than justified."

***State v. Cordero-Juarez*, 20 Fla. L. Weekly Supp. 1009a (Brevard County Ct. 2013)**

The court granted the defendant's motion to suppress all evidence relating to a traffic stop. The deputy testified that the defendant's vehicle crossed over the fog line, nearly hit a curb, came to a stop at a green arrow, and overcorrected after crossing into the center lane. However, the video from the camera on the deputy's car was inconsistent with that testimony. The court noted that "a stop is permitted even without a traffic violation, so long as the stop is supported by a reasonable suspicion of impairment, unfitness or vehicle defects. But the failure to maintain a

single lane does not create strict liability for the driver nor does it establish probable cause that the driver has committed a traffic violation."

VII. Amendments to the Rules of Court

***In re Amendments to the Florida Rules of Traffic Court,* ___ So. 3d ___, 2013 WL 6223149 (Fla. 2013)**

The Traffic Court Rules Committee and the Traffic Court Rules Committee of the Conference of County Court Judges filed a joint out-of-cycle report, which includes a minority report, proposing amendments to the Florida Rules of Traffic Court. Florida Rule of Traffic Court 6.630 was amended as follows:

RULE 6.630. CIVIL TRAFFIC INFRACTION HEARING OFFICER PROGRAM; TRAFFIC HEARING OFFICERS

Under the authority of sections 318.30–318.38, Florida Statutes, and article V, section 2, Florida Constitution, this court adopts the following rules and procedure for the Civil Traffic Infraction Hearing Officer Program:

(a) – (f) [No Change]

(g) Training. Traffic hearing officers must complete 40 hours of standardized training that has been approved by the supreme court. Instructors must be county court judges, hearing officers, and persons with expertise or knowledge with regard to specific traffic violations or traffic court. Curriculum and materials must be submitted to the Office of the State Courts Administrator. The standardized training must contain, at a minimum, all of the following:

(1) 28 hours of lecture sessions including 2.5 hours of ethics, 5 hours of courtroom procedure and control (which must include handling of situations in which a defendant's constitutional right against self-incrimination may be implicated), 11 hours of basic traffic court law and evidence, 3 hours of clerk's office/DMV training, 2 hours of participant perspective sessions/demonstrations, 3 hours of dispositions/penalties, and 1.5 hours of civil infractions/jurisdiction

(2) – (5) [No Change]

(h) – (n) [No Change]

http://www.floridasupremecourt.org/decisions/2013/sc12-2424.pdf