FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

July - September 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
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I. Driving Under the Influence (DUI)

***Green v. State*, 20 Fla. L. Weekly Supp. 745a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's conviction of the defendant for driving under the influence, holding that officers who observed the defendant standing beside a parked vehicle with vehicle keys did not observe the defendant in actual physical control of the vehicle for the purpose of satisfying the requirement that every element of an offense be committed in the presence of an officer making a warrantless arrest for a misdemeanor. The court went on to hold that a community service officer who observed the defendant driving was not a law enforcement officer whose observations may be imputed to the arresting officers under the fellow officer rule.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/745a.htm

***State v. Hoover*, 20 Fla. L. Weekly Supp. 776a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's granting of the defendant's motion to suppress evidence related to breathalyzer testing in this driving under the influence case, holding that it was not an abuse of discretion to suppress breath test results based on a lack of substantial compliance with the rules governing Intoxilyzer 8000 (the breathalyzer testing machine used) inspections, where the rules require that inspectors rinse their own mouths with alcohol before blowing into the machine. In this case, the inspector rubbed alcohol on her own lips and gums before testing the machine, and did not rinse with the solution; this was the only inspector known to use this technique.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/776a.htm

***State v. Brink*, 20 Fla. L. Weekly Supp. 772a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower this granting of the defendant's motion to suppress evidence related to breathalyzer testing in this driving under the influence case, holding that there was no error in granting the motion to suppress where the trial court, after hearing conflicting evidence regarding inspection of Intoxilyzers, found that fraudulent practices and intentional systematic destruction of evidence occurred when "plug pulls" (a loss of power to the machine, causing it to lose data) erased data from failed inspections, and holding that the finding was supported by competent, substantial evidence. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/772a.htm

***State v. Ikramelahai*, 20 Fla. L. Weekly Supp. 772b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower this granting of the defendant's motion to suppress evidence related to breathalyzer testing in driving under the influence case, holding that there was no error in granting the motion to suppress where the trial court, after hearing conflicting evidence regarding inspection of Intoxilyzers, found that fraudulent practices and intentional systematic destruction of evidence occurred when "plug pulls" (a loss of power to the machine, causing it to lose data) erased data from failed inspections, and holding that the finding was supported by competent, substantial evidence. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/772b.htm

***State v. Viera,* 20 Fla. L. Weekly Supp. 773a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's granting of the defendant's motion to suppress evidence related to breathalyzer testing in driving under the influence case, holding that there was no error in granting the motion to suppress where the trial court, after hearing conflicting evidence regarding inspection of Intoxilyzers, found that fraudulent practices and intentional systematic destruction of evidence occurred when "plug pulls" (a loss of power to the machine, causing it to lose data) erased data from failed inspections, and holding that the finding was supported by competent, substantial evidence. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/773a.htm

***State v. Cumpton*, 20 Fla. L. Weekly Supp. 779b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to dismiss, holding that it was error to dismiss the information based on a lack of probable cause for an arrest due to the suppression of blood test results. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/779b.htm

***Hurtado v. State*, 20 Fla. L. Weekly Supp. 763a (Fla. 11th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's verdict in a driving under the influence (DUI) case, and remanded for a new trial, holding that the state's argument that the defendant did not submit to a breath test because she knew she was guilty of a DUI was a permissible argument about the defendant's consciousness of guilt. However, the state improperly shifted the burden to the defendant to prove her innocence when the state argued that the defendant had a chance to prove her innocence when she was offered a breath test but refused the test. The court held that where the state had not proven that such an error was harmless beyond a reasonable doubt, a new trial was required.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/763a.htm

***Blackledge v. State*, __ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D1845, August 28, 2013, 4D12-2138.**

The district court reversed the circuit court's summary denial of the defendant's motion for post-conviction relief from his sentence for multiple counts of vehicular homicide, imposed after a violation of probation on his original sentence. The district court reversed based on the allegation that the defendant's counsel was ineffective in failing to object to the state admitting evidence of his DUI arrest while on probation, which he claimed violated his plea agreement. As the state failed to conclusively refute this allegation, the district court reversed.
http://www.4dca.org/opinions/August%202013/08-28-13/4D12-2138rhg.op.pdf.

***Brooks v. State*, __ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 5225190, September 18, 2013, 2D11-2586.**

The district court affirmed the lower court's judgment and sentence for the defendant's felony DUI conviction, but wrote to discuss the trial court's denial of the defendant's request for a jury instruction on the defense of necessity. The defendant's defense was that his friend's cat was sick, and the defendant was the only person available who could transport the cat to an all night veterinary clinic for treatment. The court noted that although the defendant's defense was unusual, he presented some evidence to support it. He was transporting a cat, and the cat was very ill. There was a veterinary clinic near the highway exit where the deputy stopped the defendant. The cat's owner and two of his acquaintances were passengers in the defendant's car. One of these persons was apparently giving the defendant directions to the clinic when the deputy stopped the defendant's vehicle. While the defendant explained the unusual circumstances of his errand to the deputy, the cat's owner pleaded, "My cat is fixing to die!" In fact, the cat did die, during or shortly after the vehicle stop that resulted in the defendant's arrest. The trial court, in denying the defense of necessity noted that the first of the five elements of the necessity defense requires that the defendant reasonably believe that his action was necessary to avoid an imminent threat of danger or serious bodily injury to himself or others. The district court held that the phrase "or others" does not apply to animals. The court held that the elements of the defense and the plain language of the jury instruction compelled it to conclude that a claim of necessity was not available as a defense to a DUI charge in Florida when the asserted emergency involves the threat of harm to an animal instead of a person. *Mickell v. State*, 41 So. 3d 960, 961 (Fla. 4th DCA 2010) (noting in that case that the defendant's invocation of the defense of necessity to a charge of driving while license revoked as a habitual offender where the

defendant was transporting to a hospital a woman who was suffering from an asthma attack). As such, the district court affirmed the lower court's judgment and sentence.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/September/September%2018,%202013/2D11-2586.pdf

***State v. Alfieri*, 20 Fla. L. Weekly Supp. 963a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that it was error to grant the defendant's motion to suppress, based on lack of probable cause for an arrest, where a DUI investigation unit had been called prior to the defendant being handcuffed and placed in patrol car to stop her repeated attempts to reenter her vehicle or walk into a traffic lane, and the evidence which the defendant sought to suppress would have been discovered even if the defendant had not been restrained. The court held that the inevitable discovery rule rendered such evidence admissible.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/963a.htm

***Stewart v. State*, 20 Fla. L. Weekly Supp. 970b (Fla. 19th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that the trial court did not err in admitting an audio portion of an in-car video that recorded statements made by the defendant when he was alone in a patrol car where the deputy who placed the defendant in the patrol car and remained within view of the patrol car throughout defendant's rant testified that the recording was accurate. The court went on to hold that any error in admitting the video was harmless where there was overwhelming evidence to show that defendant was impaired. The court also held that the fact that the defendant's breath test was administered 4 hours and 39 minutes after his arrest due to the need to take the defendant to the hospital for treatment of injuries sustained in a struggle with deputies went to the weight of the evidence, which was within the purview of the jury. There was no error in denying the defendant's motion for judgment of acquittal where the state presented plenty of evidence from which the jury could conclude that the defendant was guilty.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/970b.htm

***State v. Ibarra*, 20 Fla. L. Weekly Supp. 961a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that the trial court erred in dismissing an amended information on grounds that the police report was not properly notarized. The court held that a notarized police report was not required for filing a misdemeanor information.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/961a.htm

***State v. Poteet*, 20 Fla. L. Weekly Supp. 971a (Fla. 18th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that it was error to grant the defendant's motion for discharge of criminal charges after the defendant's motion for mistrial was granted where the prosecutor did not deliberately goad the defense counsel into seeking a mistrial, and there was no evidence that a mistrial would have provided any advantage to the state.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/971a.htm

***McGrath v. State*, 20 Fla. L. Weekly Supp. 957b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's denial of the defendant's motion to suppress evidence of a DUI where officers who were present inside a private community on an unrelated cause, observed the defendant driving his vehicle in early morning hours at a high rate of speed, which was maintained even where roads were winding and there were speed bumps. The officers testified that the vehicle would have hit an officer standing outside his police vehicle had the officer not moved out of the way. The officers also testified that the defendant sped by even where an officer's patrol vehicle had its emergency lights activated. The court held that the officers lawfully stopped the defendant, regardless of whether there existed a written agreement between the private community and the city authorizing police to enforce traffic control laws within the community. The court held that there are no jurisdictional impediments when police initiate a stop based on reasonable suspicion of a DUI.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/957b.htm

***State v. Watson*, 20 Fla. L. Weekly Supp. 964a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that it was error to grant the defendant's motion to suppress evidence of a DUI where the officer who lawfully stopped the defendant's vehicle for speeding observed, during the traffic stop, that the defendant had glassy eyes, smelled of alcohol, and had poor balance. The court held this officer had a reasonable suspicion upon which to detain the defendant for a DUI investigation.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/964a.htm

II. Criminal Traffic Offenses

***Holmes v. State*, 117 So. 3d 447 (Fla. 2d DCA 2013).**

The district court affirmed the circuit court's conviction of the defendant for DUI manslaughter, but reversed the imposed restitution, as the defendant did not have proper notice of his restitution hearing. The defendant pleaded guilty to DUI manslaughter. His plea form stated that he agreed to restitution in the amount of "$ T.B.D." The form also provided that if the amount of restitution was not decided on the day of his plea, the defendant "waive[s] any right to notice [and hearing] which I may have before such restitution may be imposed." The plea form, as it relates to restitution, was not signed or initialed by the defendant. The plea colloquy did not

address the provision in any respect. At the plea hearing, the defendant's counsel noted that he would likely file an objection to the restitution amounts. Indeed, several days later, counsel filed a written objection and requested a restitution hearing. On October 10, 2011, the trial court held a "restitution status check" and entered a restitution order of over $60,000. The defendant was not noticed of this hearing. The court held that as it was error for the trial court to conduct the hearing in the defendant's absence, the restitution order was reversed. The court also ordered that at a new restitution hearing, the defendant must either be present or the state must present evidence that the defendant has knowingly and voluntarily waived his presence. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/July/July%2010,%202013/2D11-5296.pdf

***State v. Aiden*, 118 So. 3d 264 (Fla. 3d DCA 2013).**

The district court affirmed the circuit court's granting of the defendant's motion to withdraw his plea and vacate his conviction. The defendant had pled guilty to driving as a habitual traffic offender in violation of section 322.34(5), Florida Statutes (2010), pursuant to advice from the public defender. The trial court accepted his plea of guilty, adjudicated him, and sentenced him to credit for time served. One year later, the defendant made an oral in-court motion to withdraw his plea, asserting that as a result of the 2010 plea, he had been unable to get a driver's license. The circuit court granted this motion, and the state appealed. The district court upheld the circuit court, citing rule 3.172(c), Florida Rules of Criminal Procedure, which requires, pursuant to subdivision (10), that the trial judge determine whether the defendant understands that if the defendant pleads guilty or nolo contendere and the offense to which the defendant is pleading is one for which automatic, mandatory driver's license suspension or revocation is required by law to be imposed (either by the court or by a separate agency), the plea will provide the basis for the suspension or revocation of the defendant's driver's license. The record in the defendant's case was devoid of any showing that the trial court so advised the defendant of the potential suspension during his plea colloquy, as required by the rule in effect at the time of his plea. http://www.3dca.flcourts.org/Opinions/3D11-1780.pdf

***State v. Cooper*, 118 So. 3d 270 (Fla. 3d DCA 2013).**

The district court reversed the lower court's order granting the defendant's Motion to Reduce the Charge to a Misdemeanor. The defendant was charged with Unlawful Driving as a Habitual Traffic Offender as defined in section 322.264, Florida Statutes (2012), in violation of section 322.34(5), Florida Statutes (2012), a third degree felony. Thereafter, the defendant filed a Motion to Reduce the Charge to a Misdemeanor, arguing that because her license suspensions related to failures to appear for civil traffic infractions and she had never been convicted of a forcible felony, the offense must be punished as a misdemeanor under section 322.34(10), not as a felony under section 322.34(5). The trial court granted the motion to reduce, and ordered the state to file a misdemeanor information within thirty days, after which the state appealed. The court reversed, citing *State v. Wooden*, 92 So. 3d 886, 888 (Fla. 3d DCA 2012). http://www.3dca.flcourts.org/Opinions/3D12-1701.pdf

***O.S. v. State* __ So. 3d ___ (Fla. 3d DCA 2013), 38 Fla. L. Weekly D1727, August 14, 2013, 3D13-310.**

The district court reversed the lower court's denial on the defendant's motion for judgment of dismissal and subsequent withhold of adjudication of delinquency and order of probation on the delinquent act of carrying a concealed weapon. The defendant had been stopped by an officer for failing to have a functioning tag light. The officer asked the driver to step out of the vehicle. The officer noticed a pair of brass knuckles sitting in the pocket of the driver's door when the door was opened; the object was not covered in any way. The defendant admitted to having the brass knuckles. At the close of the state's case, the defendant moved for a judgment of dismissal, asserting that the state failed to establish the required element that the weapon was concealed; the trial court denied this motion and adjudicated the defendant delinquent. The district court disagreed with the trial court and reversed because the weapon was not concealed under the factors set forth by the Florida Supreme Court in *Dorelus v. State*, 747 So. 2d 368 (Fla. 1999). These factors include (1) "the location of the weapon within the vehicle;" (2) "whether, and to what extent, the weapon was covered by another object;" and (3) "testimony that the defendant utilized his body in such a way as to conceal a weapon." *Id*. As these factors were not met, this case was reversed and remanded, with an order to discharge the defendant.
http://www.3dca.flcourts.org/Opinions/3D13-0310.pdf

***Achury v. State of Florida, City of Aventura*, 20 Fla. L. Weekly Supp. 765a (Fla. 11th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, confirmed the lower court's ruling in a red light camera case, holding that the lower court correctly took judicial notice of an evidentiary ruling by a county court judge, who hears red light camera infractions, denying challenges to photographic and video evidence after a full evidentiary hearing with extensive testimony about the procedures employed by red light camera program operators and citation print vendors. The court also held that the contract between the red light camera program operator and the city, which contained a flexible payment system that makes the operator's full payment dependent on the issuance of sufficient number of citations, violated statutory prohibitions on a vendor receiving remuneration based on the number of violations detected. However, the court decided that the dismissal of a traffic infraction was not an appropriate remedy for such an illegal contract.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/765a.htm

***Pennington v. State* __ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D1907, September 6, 2013, 5D13-175.**

The district court reversed the lower court's imposition of sentence on the defendant for his conviction for leaving the scene of an accident with death, determining that the trial court erred in increasing the defendant's sentence after it had been earlier affirmed on direct appeal. The case was remanded for imposition of the original sentence.
http://www.5dca.org/Opinions/Opin2013/090213/5D13-175.op.pdf

III. Arrest, Search and Seizure

***State v. Kirer*, __ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D1595, July 24, 2013, 4D12-3324.**

The district court reversed the circuit court's granting of the defendant's motion to suppress finding that the deputy in this case had probable cause to stop the defendant for the offense of fleeing or attempting to elude a law enforcement officer where the defendant failed to stop in response to the deputy's siren, lights, and multiple orders to stop communicated over the deputy's P.A. system.

In this case, a deputy sheriff was called to an address based on an anonymous call reporting a "suspicious incident" regarding people inside a vacant house. When the deputy arrived, he noticed the defendant standing in or near a vehicle in the vacant house's driveway. The deputy activated his overhead lights and aimed his spotlight on defendant's vehicle. The deputy's vehicle was not blocking the defendant's vehicle, and at this point the defendant backed out and started to drive. The deputy followed the defendant. The deputy switched on his siren, kept his police vehicle's lights on, and on multiple occasions ordered the defendant to stop over his vehicle's P.A. system. Meanwhile, despite the siren, lights, and orders, the defendant kept driving and made five turns while the deputy followed one or two car lengths behind. Neither the defendant nor the deputy went over approximately "10 miles an hour." The defendant moved to suppress his identification, arguing that the post-stop observation of the defendant was the result of an improper stop. The state argued that the defendant's conduct, although not constituting reasonable suspicion for a burglary, did constitute the crime of fleeing or attempting to elude. The trial court granted the defendant's motion to suppress. The district court, citing *Henderson v. State*, 88 So. 3d 1060 (Fla. 1st DCA 2012), found that had defendant remained in the driveway or pulled over after the deputy had activated his lights and siren and utilized the P.A. system, there would have been "insufficient evidence in the record to justify the stop." In this case, however, the district court found that the trial court erred in suppressing the post-stop identification where the deputy had probable cause that the defendant committed the crime of fleeing or attempting to elude in violation of section 316.1935(1), regardless of whether probable cause initially justified the stop of the defendant. The district court held that "[t]o accept the trial court's view in this case would mean that any vehicle signaled to stop by the police, where the vehicle's driver believes, rightfully or wrongfully, that the stop is improper, would feel justified in not stopping despite the command of law enforcement." *Citing United States v. Orisnord*, 483 F.3d 1169, 1182-83 (11th Cir. 2007), explaining the potential for danger involved in vehicular fleeing situations. The district court reversed and remanded the case for proceedings consistent with its opinion. http://www.4dca.org/opinions/July%202013/07-24-13/4D12-3324.op.pdf

***Lightsey v. State*, 20 Fla. L. Weekly Supp. 774a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's denial of the defendant's motion to suppress, holding that where a detective who was responding to an anonymous tip regarding a vehicle following and harassing the tipster observed the defendant speed off and run two stop signs, a stop was justified by these traffic infractions, irrespective of whether a stop based on the tip would have been justified.

http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/774a.htm

***State v. Dar*, 20 Fla. L. Weekly Supp. 886b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress, holding that an officer who approached a legally parked vehicle in a parking lot and asked the defendant what he was doing in the area initiated a consensual encounter where the officer did not restrain the defendant's liberty by means of force or a show of authority. The court also held that a request for identification did not constitute detention or seizure.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/886b.htm

***State v. Murray*, 20 Fla. L. Weekly Supp. 879a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's granting of the defendant's motion to suppress, holding that a passenger had standing to contest both a traffic stop and a vehicle search where he had a possessory interest in a backpack in backseat of vehicle. The court held that since the traffic stop, which initiated this case, for a broken tail light was lawful, and neither the defendant nor the driver of a vehicle was subject to custodial interrogation, the officer who made the stop was not required to advise them of their *Miranda* rights before asking to search the vehicle and backpack. The court held that the defendant's voluntary statement that the officer could "go ahead and search" his backpack gave consent for the search.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/879a.htm

***Rossi v. State*, 20 Fla. L. Weekly Supp. 876a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, held that it was error to deny the defendant's motion to suppress evidence emanating from a traffic stop for an improper right turn where the arresting deputy admitted that the defendant made the right turn in question from a designated right turn lane without affecting any other traffic.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/876a.htm

***Findley v. State*, 20 Fla. L. Weekly Supp. 959a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's order denying the defendant's motion to suppress evidence of possessing illegal substances. The court held that the officer's interaction with the defendant, whom the officer observed slouched in a lawfully parked vehicle with the motor running and the lights on, was a consensual encounter. The court went on to hold that the officer's act of gesturing for the defendant to roll down his window was a continuation of the welfare check where the officer's concern for the defendant's safety was not alleviated until the window was rolled down.

http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/959a.htm

IV. Torts/Accident Cases

***Jackson v. Albright*, __ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D1584, July 24, 2013, 4D10-5142.**

The district court affirmed the circuit court's ruling that the defendants could question the plaintiff on an unrelated litigation settlement in a motor vehicle accident case when the plaintiff stated she had stopped medical treatment in the case at bar due to a lack of funds, as the plaintiff had opened the door to this line of questioning. http://www.4dca.org/opinions/July%202013/07-24-13/4D10-5142.op.pdf

***Disla v. Blanco*, __ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D1584, July 24, 2013, 4D11-2556.**

The district court affirmed the lower court's final judgment in a claim for injuries suffered in a motor vehicle accident case, where the jury found the plaintiff 90% negligent for failing to wear a seatbelt. The plaintiff raised multiple issues of trial court error, including the error in denying a challenge for cause in conducting a *Melbourne* challenge, abuse of discretion in permitting admission of irrelevant matters on cross-examination of plaintiff's treating physician, abuse of discretion in allowing presentation of undisclosed opinions by a defense expert, abuse of discretion in preventing impeachment of the defense expert on seatbelt by comparing the plaintiff's injuries to the defendant's injuries, and abuse of discretion in denying defendant's medical records from being admitted. *Melbourne v. State*, 679 So. 2d 759 (Fla. 1996). 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/July%202013/07-24-13/4D11-2556.op.pdf

***Rivers v. Hertz*, __ So. 3d ___ (Fla. 3d DCA 2013), 38 Fla. L. Weekly D1653, July 31, 2013, 3D12-1818.**

The district court affirmed the lower court's order denying the plaintiffs' motion to vacate the order granting defendant's motion to dismiss the second amended complaint with prejudice. This case arises out of an accident fatality, wherein the plaintiff decedent was killed while riding in a vehicle owned by the defendant, a rental car company. The plaintiffs, in their second amended complaint, claimed the defendant had an affirmative duty to investigate and discover that the driver of the vehicle had a suspended driver's license. The court held that, pursuant to 49 U.S.C. 30106, if there is no negligence or criminal wrongdoing on the part of the owner of rental vehicles, the owner shall not be liable by reason of being the titleholder of the vehicle. *See Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037, 1041–1042 (Fla. 2011), *cert. denied*, 132 S. Ct. 769 (2011). As the court found no proximate cause or duty, the lower court's decision was affirmed. http://www.3dca.flcourts.org/Opinions/3D12-1818.pdf

***Choy v. Faraldo*, __ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D1682, August 7, 2013, 4D12-877 and 4D12-878.**

The district court affirmed in part and reversed in part the circuit court's ruling on the defendants' motion for a new trial on both liability and damages, reversing the holding for a new trial on liability, but upholding the ruling granting a new trial on damages. This case arose out of a motor vehicle accident, wherein plaintiff was struck by the defendant and brought suit under negligence. The plaintiff also sued the defendant's employer, and alleged that it was vicariously liable for the defendant's actions because the defendant was acting within the scope of his employment as a pizza delivery driver at the time of the accident. This defendant filed an answer denying liability for the accident. Said defendant's employer filed a separate answer denying liability for the accident and denying that the driver was acting within the scope of his employment at the time of the collision. The jury returned a verdict finding that the defendant driver was 100% liable for the accident because he was not acting within the scope of his employment at the time of the accident. The jury awarded damages to the plaintiff, but in an amount far less than she sought. The plaintiff moved for a new trial arguing, among other things, that a portion of the defendant employer's counsel's closing argument was sufficiently prejudicial and inflammatory to require a new trial. The circuit court granted this motion. The district court reversed the order granting a new trial on liability, but upheld the order granting a new trial on damages, citing *Werneck v. Worrall*, 918 So. 2d 383, 388 (Fla. 5th DCA 2006) ("Although a trial court has considerable discretion on motions for mistrial or new trial, when reasonable [persons] cannot differ as to the propriety of the action taken by the trial court, the trial court cannot be affirmed.") The district court noted that the jury returned a verdict finding the defendant driver solely liable for the accident, and the improper argument of the defendant employer's counsel could not possibly be construed as affecting any issue related to liability or whether the defendant driver was acting within the scope of his employment when the accident occurred. The court also held that the argument could not reasonably be interpreted as an attempt to somehow shift liability from the employer to the driver.
http://www.4dca.org/opinions/August%202013/08-07-13/4D12-877.878.op.pdf

***Coddington v. Nunez*, __ So. 3d ___ (Fla. 2d DCA 2013), 38 Fla. L. Weekly D1888, September 4, 2013, 2D12-1152.**

The district court reversed the final judgment of the circuit court, holding that the trial court had erred by precluding certain testimony by the defendants' expert witness. In this case, the defendants' vehicle struck the plaintiff's vehicle when defendants were making a left hand turn, causing the plaintiff's vehicle to spin around and hit a tree. Plaintiff was thrown from the vehicle. At trial, the defendants raised two defenses. First, they argued that the cause of the accident was the plaintiff traveling at a speed that exceeded the posted thirty-five-mile per hour speed limit. The defendants also argued that the plaintiff failed to wear his seat belt and that this failure contributed to his injuries. Defendants' expert witness was not allowed to testify on these issues. The district court held this was in error, reversed the trial court's final judgment, and remanded for a new trial.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/September/September%2004,%202013/2D12-1152.pdf

***Lopez v. Wink Stucco*, __ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 5224902, September 18, 2013, 2D10-5181.**

The district court affirmed the final judgment for the defense from in an automobile accident case. The court only addressed the issue of admissibility of evidence that one of the defendants, and the driver of the vehicle in which plaintiff was riding, had never obtained a driver's license. The court held that the admissibility of evidence of a violation of a licensing statute was a question of law that turns on the relevancy of that evidence as it pertains to the facts of a particular case. *Brackin v. Boles*, 452 So. 2d 540, 545 (Fla. 1984). The court held that in order for such evidence to be admissible, there must be "a causal connection between that violation and the injuries incurred." *Id*. at 544. To establish this causal connection the driver's competence and experience must be placed at issue in the case. *Id*. at 545. In this case, the primary defendant's theory of defense was that the unlicensed defendant (in whose car the plaintiff was seated) was an unlicensed driver without sufficient experience to safely judge whether he had enough time to make the left turn in front of their vehicle. In support of this theory, the primary defendant presented testimony that this secondary defendant followed other cars into the intersection after the green arrow went off and made a left turn directly in the path of the their vehicle. The secondary defendant was eighteen years old and had only driven occasionally since he was fifteen or sixteen because his parents did not like for him to drive their car. The court held that this theory of defense established the requisite causal connection to support the admission of evidence that this defendant was an unlicensed driver, and therefore evidence that he did not, and had never, obtained a driver's license was admissible. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/September/September%2018,%202013/2D10-5181.pdf

V. Drivers' Licenses

***Futch v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 742a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari arising from a final order of license suspension entered by the Department of Highway Safety and Motor Vehicles sustaining the administrative suspension of the defendant's driver's license. The court held that the statute that prohibits a hearing officer from extending a temporary driving permit during a continuance requested by the defendant does not allow an exception for a continuance necessitated by the arresting officer's failure to comply with a subpoena served upon the officer requiring the production of the arrest video. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/742a.htm

***Tucker v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 767b, (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed the defendant's driver's license suspension The court held that where the Department of Highway Safety and Motor Vehicles set a formal review hearing to be held

within 30 days of a request for a hearing but did not send notice of the hearing to the defendant's attorney, the department did not satisfy the statutory requirement, under section 322.2615, Florida Statutes (2012), to schedule a hearing within 30 days.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/767b.htm

***Bermudez v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 781a (Fla. 17th 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, finding that where the defendant failed to avail himself of an offered continuance to enforce a subpoena for an officer who failed to appear at a hearing, the defendant cannot later seek to invalidate a license suspension on due process grounds based on the failure of that officer to appear.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/781a.htm

***Campbell v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 778 (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari and dismissed it with prejudice, finding that where the defendant failed to file his petition for writ of certiorari within 30 days of the order of license revocation, therefore a dismissal of his petition was required. The court found that there was no merit to the claim that the final order of the Department of Highway Safety and Motor Vehicles sustaining his revocation following a records review was a final order reviewable by filing a petition for writ of certiorari 30 days after issuance of that order. Furthermore, the court held that there was no statutory provision authorizing an administrative records review of a revocation order. The circuit court held that it only had authority to raise timeliness and jurisdictional issues irrespective of the department's failure to raise those issues. As such, the petition for writ of certiorari was dismissed.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/778a.htm

***Patterson v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 758a (Fla. 9th Cir. Ct. 2013).**

The circuit court denied and dismissed the defendant's petition for writ of certiorari, holding that a defendant's counsel who mistakenly filed a notice of appeal with Department of Highway Safety and Motor Vehicles rather than petition for writ of certiorari with the circuit court had not demonstrated good cause for failing to timely file a petition.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/758a.htm

***Deokisingh v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 779c (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, dismissed the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a deputy who observed the defendant's vehicle stopped in the middle of a road, obstructing traffic, and then observed the defendant drive away slowly with damage to his wheel and a flat tire had probable cause for a traffic stop. The court also held that failure to include a date in the attestation clause of an affidavit did not invalidate a probable cause affidavit where the date appeared in the top portion of the affidavit and at the bottom of every page.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/779c.htm

***Spears v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 744a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, dismissed the defendant's petition for a writ of certiorari on a driver's license suspension, holding that an error to grant a motion to strike all statements made by the defendant before *Miranda* warnings were given made accident report privilege inapplicable to administrative license suspension review proceedings. Notwithstanding the incorrectness of the ruling on the motion to strike, the circuit court held that it could not consider the defendant's pre-*Miranda* admission to driving where his statement was not part of the record before the hearing officer. The court held that competent, substantial evidence supported a finding that the defendant was in actual physical control of the vehicle where there was no other person present at accident scene, the defendant had not told the officers who responded to the scene that any other person had been in the vehicle, and the defendant had cuts on his legs that an officer related to a broken driver's side window that had blood on it and appeared to have been kicked out from within vehicle.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/744a.htm

***Paul v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 756a (Fla. 11th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for a writ of certiorari and quashed his driver's license suspension, holding that where the attestation portion of an arrest affidavit was blank except for the date and a notation, reading "KAZ LPD 715," and no clarifying testimony was given, it was impossible to determine whether the affidavit was notarized and, if notarized, whether it was notarized by a person authorized to do so. Moreover, the hearing officer's finding that the affidavit was notarized by a police officer was not supported by competent, substantial evidence.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/756a.htm

***Worley v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 758b (Fla. 9th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, dismissed the defendant's petition for a writ of certiorari on a driver's license suspension, holding that observations that the defendant's

vehicle swayed within her lane and drove on lane markers provided reasonable suspicion to conduct a traffic stop for failure to maintain a single lane. Further, erratic driving justified a stop to determine if the defendant was ill, tired, or driving under the influence. The court also held that erratic driving patterns combined with multiple physical indicia of impairment and the defendant's admission to having one drink provided probable cause for a DUI arrest. The court went on to hold that a hearing officer, in determining existence of probable cause for an arrest, may have erred in considering HGN test results where there was no evidence of an officer's qualifications to administer this test, but the error was harmless in view of other signs of impairment. Furthermore, there was no error in considering the defendant's refusal to perform field sobriety exercises in determining whether an officer had probable cause for an arrest where the officer advised the defendant of the consequences of refusing these tests.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/758b.htm

***Pizio v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 750a (Fla. 9th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the defendant's vehicle was stopped 50 - 75 yards from an intersection, and the vehicle then began moving forward, stopped at green light, and hit a curb when making u-turn, such erratic and careless driving justified a traffic stop. The court also held that detention of the defendant for a DUI investigation was lawful where the officer observed the erratic driving and, after the stop, observed that the defendant had multiple indicia of impairment.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/750a.htm

***Altman v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 741a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that an officer had probable cause to arrest the defendant for driving under the influence where the officer observed the defendant speeding in a construction zone with workers present and crossing double yellow center lines. The court noted that after the stop, the officer observed that the defendant had the odor of alcohol, watery bloodshot eyes, and a combative and belligerent demeanor. Furthermore, the defendant admitted to the officer that he had consumed two beers and was coming from a bar.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/741a.htm

***Calvino v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 777a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that, despite a discrepancy in the times of the defendant's arrest and the breath test refusal noted in the defendant's implied consent form

and the affidavit of refusal, documentary evidence was not so hopelessly in conflict as to preclude a hearing officer from finding that the defendant's arrest preceded his refusal to submit to a breath test where there existed documents containing two sworn statements that confirmed the sequence of events.
http://www.floridalawweekly.com/flwonline/?page=showfile&fromsearch=1&file=../supfiles/issues/vol20/777a.htm&query=%2220+Fla.+L.+Weekly+Supp.+777a%22&altdoc=true&fromeh=true#first_hit

***Beutler v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 840a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a probable cause affidavit was not deficient for containing information not personally known to an affiant, in this case a police officer, but recounted to the affiant by fellow officers who observed the defendant asleep in a running vehicle, pursued the defendant when he awoke and drove away, saw the defendant almost strike another vehicle, and observed physical indicia of impairment after stopping the defendant. The court also held that a hearing officer's error in denying a request to issue a subpoena duces tecum for a breath test operator's certification and renewal records was harmless where the alcohol testing profile sheet and application for breath testing renewal program, which were obtained by the defendant through a public records request and proffered at his hearing, confirmed the test operator's testimony that he was certified at the time of the defendant's breath test. The court also noted that the fact that the hearing officer in this case asked questions to clarify the record and made rulings adverse to the defendant did not establish departure from neutrality.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/840a.htm

***Thompson v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 837a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for a writ of certiorari and quashed the final order denying early reinstatement of the defendant's driver's license, holding that a hearing officer, in deciding whether to allow early reinstatement of the defendant's driver's license, erred in considering frequency and seriousness of prior offenses on the defendant's driving record. These included the defendant's history of committing repeated similar serious violations with no sign of improvement, and the defendant's disregard of laws and statutes. The court held that these factors were not among the statutory criteria for early reinstatement. The court also held that it was an abuse of discretion to deny the defendant's request to reopen his hearing to correct an obvious mistake as to the date of his last consumption of alcoholic beverages where it is undisputed that the defendant was incarcerated on the date he mistakenly gave as the last date he consumed alcohol. The court remanded the case for a new hearing consistent with its rulings.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/837a.htm

***Stocker v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 876b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the failure of a subpoenaed arresting officer to appear at a hearing or comply with an administrative rule requiring submission of a written statement showing just cause for the officer's failure to appear did not require invalidation of a license suspension. Moreover, the court held that documents submitted by law enforcement were self-authenticating and sufficient to sustain a driver's license suspension. The court also held that the accident report privilege did not apply in administrative license suspension proceedings and did not shield statements made by persons other than the defendant.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/876b.htm

***Moorhead v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 835a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the officers responding to a report by identified citizen informants that the defendant was driving erratically and crashed into drainage ditch, and upon arriving at the scene observed the defendant's vehicle nose-first in drainage ditch, those officers had reasonable suspicion for an investigatory stop. The court went on to hold that when the defendant did not object at her hearing to the use of an uncertified and unauthenticated version of her driving record, the defendant could not raise the issue in her petition for writ of certiorari.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/835a.htm

***Conover v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 850b (Fla. 8th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the defendant's right to due process was not violated when subpoenaed deputies' failure to appear at a hearing when the defendant was provided an opportunity to enforce the subpoenas but chose instead to contact the deputies to ascertain whether they would agree to voluntarily appear at a continued hearing. The court also held that where a deputy testified that a witness identified the defendant as the driver, a motorcycle registered to the defendant was involved in a single-vehicle crash, and the defendant was at the crash scene, the hearing officer's finding that the defendant was in actual physical control of his vehicle while impaired was supported by competent, substantial evidence.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/850b.htm

***Perez v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 863b (Fla. 11th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a defendant's right to due process was not violated by subpoenaed officers' repeated failures to appear at a suspension hearing where the defendant was provided an opportunity to enforce the subpoenas but chose not to do so.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/863b.htm

***Grim v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 901a (Fla. 20th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a defendant's right to due process was not violated by subpoenaed officers' repeated failures to appear at a suspension hearing when the defendant was provided an opportunity to enforce the subpoenas but chose not to do so. The court also held that the hearing officer was not obligated to accept the defendant's testimony of non-impairment in face of an officer's sworn report recounting observations that the defendant admitted to drinking alcohol, had odor of alcohol, and had glassy, bloodshot eyes.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/901a.htm

***Albright v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 871a (Fla. 13th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that there was no merit to a claim that the defendant was not accorded a meaningful hearing on his application for an early reinstatement of his driver's license where the transcript revealed that the defendant gave testimony, presented evidence, challenged evidence, and did not seek to present the testimony of any witnesses.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/871a.htm

***Stockwell v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 848a (Fla. 7th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the failure of the notarizing officer to write his identification number on a jurat of arrest affidavit did not invalidate the affidavit. Moreover, the court held that there was no legal requirement that each and every page of an affidavit be notarized or that notarization appear on the last page, finding that notarization of first page of an affidavit was sufficient. Additionally, the court held that a single obvious error in the date on a refusal affidavit (showing the defendant's refusal to take a breath test) was not fatal where the date was not material to the charge, and the defendant was not prejudiced by the error.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/848a.htm

***Wojciechowski v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 903a (Fla. 20th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the defendant did not indicate to law enforcement that she was confused about the applicability of her *Miranda* rights to her decision of whether or not to submit to a breath test, refusal to take the test is not excused by the confusion doctrine.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/903a.htm

***Creighton v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 869b (Fla. 13th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the defendant's right to due process was not violated by a subpoenaed officer's failure to appear at a hearing where the hearing officer gave the defendant a reasonable period of eight days to enforce the subpoena, but the defendant failed to avail himself of the opportunity to do so.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/869b.htm

***Quinones v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 838a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that there was no merit to an argument that the defendant, who was on the side of the road sitting in the driver's seat of a running vehicle with a blown tire at time of the stop, could not be found to be in actual physical control of vehicle where there was evidence in the defendant's admissions and a report of a reckless driver with a blown tire to support the finding that the defendant was driving minutes prior to stop. The court noted that fact that the defendant's vehicle had a flat tire did not render it inoperable for the purpose of determining that the defendant was in actual physical control of vehicle. The court also held that there was no merit to the argument that there was no competent, substantial evidence to support a finding that the defendant was under the influence prior to pulling her vehicle over to the side of the road where the only evidence to suggest that the defendant may have consumed alcohol after pulling over was the fact that she poured out the contents of a cup when she exited the vehicle. The court went on to hold that sheriff's deputies had probable cause to believe the defendant was driving under the influence due to the defendant pouring out a cup of liquid when she exited her vehicle. The court noted that the deputies also observed physical indicia of impairment, and the deputies found a cup containing liquid that smelled of alcohol in the vehicle.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/838a.htm

***Hickey v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 874a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a deputy had probable cause for a DUI arrest where the defendant, who was stopped for running a stop sign, admitted to consuming several beers. Additionally, the deputy observed that the defendant had a strong odor of alcohol, bloodshot and glassy eyes, slurred speech and lethargic movements, and that he was unsteady on his feet. The court held that there was no merit to the claim that the deputy's failure to provide the defendant with a citation and notice of suspension rendered evidence insufficient to support a finding that the defendant refused a breath test where the refusal affidavit constituted evidence that the defendant refused a breath test after being advised that his license would automatically be suspended if he refused. Moreover, the claim that the defendant had no notice of his license suspension or reason for its suspension was refuted by evidence that the defendant twice attempted to request an administrative review hearing within five days of his arrest. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/874a.htm

***Morgan v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 849a (Fla. 7th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the record showed that the defendant was lawfully stopped for a failure to maintain a single lane after an officer observed the defendant repeatedly leave his lane and nearly strike a mailbox, and the defendant refused to submit to a breath test after being advised of implied consent, there were not grounds to show the hearing officer improperly ruled on the defendant's driver's license suspension. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/849a.htm

***Stanton v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 866a (Fla. 12th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where a probable cause affidavit stated that the defendant's vehicle did not have an operational tag light, the hearing officer's finding that the police officer had reasonable suspicion to stop the defendant for driving without a tag light was supported by competent, substantial evidence notwithstanding the evidence that an auto repair shop found the tag light to be fully functional. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/866a.htm

***Kupp v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 854a (Fla. 9th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that where the charging affidavit stated that a trooper noticed the defendant's truck because its load was protruding more than six inches from the side of the vehicle and, as he came closer to the truck, the trooper observed a stop sign and street signs in the bed of the truck, competent, substantial evidence supported the hearing officer's determination that the trooper had reasonable suspicion to stop the defendant for possible violations of the statute prohibiting passenger vehicles from carrying a load extending more than six inches beyond its fenders or of the statute prohibiting the theft of stop signs.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/854a.htm

***Schuster v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 867a (Fla. 12th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the hearing officer was not obliged to accept the defendant's claim that he was willing to submit to a breath test but was prevented from doing so by a medical condition in light of a deputy's sworn affidavit that the defendant attempted to manipulate the breath testing instrument and never had any difficulty breathing. The court noted that *Larmer v. State of Florida Department of Highway Safety and Motor Vehicles*, 552 So. 2d 941 (Fla. 4th DCA 1988), which holds that a subsequent request to take breath test cures a prior refusal, was inapplicable where the defendant did not initially refuse to take the test, but rather agreed to take the test and attempted to manipulate the instrument to avoid submission of valid breath sample.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/867a.htm

***State v. Smith*, 20 Fla. L. Weekly Supp. 884a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the county court's granting of the defendant's motion to vacate a plea in a DUI case, holding that the revocation of a driver's license was a collateral consequence about which neither defense counsel nor the trial court was required to advise defendant. The court held that the amendment to rule 3.172(c)(10), Florida Rules of Criminal Procedure requiring the trial court to inform defendants of license suspension or revocation consequences, did not apply retroactively to a defendant who entered a plea prior to the amendment.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/884a.htm

***Chaney v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 939b (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the defendant's driver's license suspension, holding that where an officer observed the defendant passed out behind the wheel of vehicle blocking an intersection, and attempts to wake the defendant were unsuccessful, along

with the odor of alcohol and combative behavior on the part of the defendant, the arrest was lawful. The court also noted that the defendant voluntarily performed field sobriety exercises after being read his *Miranda* rights. However, the court also held that where the breath test operator did not successfully complete a renewal course in the required time frame and did not complete the basic breath test operator course as required to then reinstate the operator's permit, there was not substantial compliance with the administrative rules governing the administration of breath tests. As such, the final suspension of the defendant's driver's license was quashed.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/939b.htm

***June v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 941b (Fla. 6th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the defendant's due process rights were violated by the arresting officer's unjustified failure to appear at an administrative review hearing. The court also held that the defendant's due process rights were violated by the police department liaison's rejection of service of a subpoena for a second officer. The court went on to hold, that there was no merit to a claim that the defendant, who provided two breath samples that were unreliable due to equipment malfunction and thereafter refused to provide additional samples, did not refuse to submit to breath test.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/941b.htm

***Gordon v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 966b, (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the defendant's right to due process was not violated by a subpoenaed breath test operator's failure to appear at a hearing where the defendant was provided the opportunity to enforce the subpoena but chose not to seek enforcement.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/966b.htm

***Curn v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 939a (Fla. 4th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, vacated the final order affirming the defendant's license suspension, holding that where there was no competent, substantial evidence to establish that the defendant, found by the police in the vicinity of a crashed vehicle, was the driver of the vehicle or that the crashed vehicle was the same vehicle that the police had been pursuing for a speeding violation. The court held that probable cause did not exist to believe that the defendant was driving under the influence at time the defendant was handcuffed and placed under de facto arrest.

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***Leach v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 945b (Fla. 9th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that the Intoxilyzer (the machine used to breath test blood alcohol content) was compliant with administrative rules where the machine failed the test due to the inspector hitting a wrong key, and a retest showed the machine to be compliant. Moreover, the court held that a single error on the charging affidavit as to the year of the incident and arrest did not negate substantial evidence of the date on which the incident and arrest occurred. The court went on to hold that a single error stating that a two-minute observation period was conducted did not negate other substantial evidence consistently showing that twenty-minute observation period of the defendant occurred.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/945b.htm

***Wilkenson v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 955a (Fla. 13th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the defendant's driver's license suspension, holding that where a police department inspection of a breath testing machine sent to a repair facility occurred at the repair facility, not after its return from the facility as required by administrative rule, the order upholding the defendant's license suspension was quashed.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/955a.htm

***Pasternak v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 971b (Fla. 20th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that because the accident report privilege did not preclude consideration of statements made by persons not involved in a crash, the hearing officer did not err in considering statements made by a driver who observed the defendant drive his motorcycle through a stop sign and lay his motorcycle down on ground. The court went on to hold that where a deputy not only observed that the defendant had the strong odor of alcohol, but also observed that he had slurred speech and was unsteady on his feet, the deputy had probable cause for an arrest for driving under the influence (DUI).
http://www.floridalawweekly.com/flwonline/?page=showfile&fromsearch=1&file=../supfiles/issues/vol20/971b.htm&query=%2220+Fla.+L.+Weekly+Supp.+971b%22&altdoc=true&fromeh=true#first_hit

***Bordwell v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 957a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the defendant's driver's license suspension, holding that the document entitled "DUI Probable Cause Affidavit" was a separate document from the "Roadside Tasks" document, and each required its own jurat. The court went on to hold that because the defective probable cause affidavit was the only evidence before the hearing officer that could support a finding of probable cause, such a finding is not supported by competent, substantial evidence. The court therefore quashed the defendant's license suspension. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/957a.htm

***Fasel v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 956a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for a writ of certiorari on a driver's license suspension for the limited purpose of remanding the case to the hearing officer to correct a scrivener's error in the date of the traffic stop. The court held that the defendant waived his argument regarding the alleged deficiency of the refusal affidavit by failing to raise the issue before the hearing officer. Moreover, the court held that the affidavit was not deficient and was not the only evidence supporting a finding that the defendant refused to submit to a breath test, as there was additional competent, substantial evidence presented. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/956a.htm

***Dorn v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 972a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the defendant's driver's license suspension, holding that a traffic report that merely indicated that an officer observed a vehicle with front-end damage, vaguely characterized as "heavy," without any additional evidence that the nature and extent of the damage gave rise to a public safety concern, or any evidence that the officer made the subsequent stop to carry out an accident investigation, was insufficient to establish that the defendant's vehicle was lawfully stopped. As such, the court held that the finding that the defendant's arrest was lawful was not supported by competent, substantial evidence.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/972a.htm

***City of Treasure Island v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 943a (Fla. 6th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the city's petition for writ of certiorari. The city raised a single argument, that the hearing officer's decision, setting aside the defendant driver's suspension of a driver's license, constituted a failure to observe the essential requirements of law, and was not supported by competent, substantial evidence. The court agreed, holding that the hearing officer's decision setting aside the defendant driver's suspension of a driver's license was not supported by competent, substantial evidence where the only evidence presented at the hearing were documents describing the defendant driver as having no

odor of alcohol, but having glassy, dilated eyes, needing assistance to exit his vehicle, and swaying and falling when he attempted to stand. The court remanded the case to the Department of Highway Safety and Motor Vehicles to reinstate the administrative suspension of the defendant driver's license for refusal to submit to a blood-alcohol test. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/943a.htm

***Edgell-Gallowhur v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 949b (Fla. 11th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for a writ of certiorari on a driver's license suspension, holding that a speeding citation admitted into evidence was sufficient to establish that stopping the defendant for speeding was lawful. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/949b.htm