FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

April - June 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)

***Hurly v. State*, 112 So. 3d 114 (Fla. 1st DCA 2013).**

The district dismissed the defendant's petition for writ of certiorari. The defendant was charged in the county court with driving under the influence with property damage. The Florida Department of Law Enforcement (FDLE) analyst who tested the defendant's blood sample and prepared the lab report would be unavailable to testify at trial. The state moved the county court to permit another FDLE employee who peer reviewed the analysis to testify based on the lab report. The county court granted that motion, and the defendant sought review by the circuit court. The circuit court concluded that the defendant had failed to establish that the county court's ruling resulted in a harm that could not be remedied on direct appeal, and therefore dismissed the petition. Finding no error in the circuit court's conclusion, the district court dismissed the petition for writ of certiorari. http://opinions.1dca.org/written/opinions2013/04-16-2013/13-1343.pdf

***Murray v. State*, 20 Fla. L. Weekly Supp. 650a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed and remanded the lower court's decision which found the defendant guilty of Driving Under the Influence (DUI). The defendant, prior to trial, filed a motion in limine in which she requested the Criminal Standard Jury Instruction 28.1, which sets forth the standards for the presumption of impairment where a breath reading is 0.05 or less, in excess of 0.05 but less than 0.08, or is 0.08 or higher. In this case, the defendant had readings of .104 and .094. This included the following instruction:

> **1.** If you find from the evidence that while driving or in actual physical control of a motor vehicle, the defendant had a blood or breath-alcohol level of .08 or more, that evidence would be sufficient by itself to establish that the defendant was

> under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. But this evidence may be contradicted or rebutted by other evidence demonstrating that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

The state argued that it was going forward on a .08 blood alcohol content theory and requested to keep presumptions out of the jury instructions. The court then denied the defendant's request for standard jury instructions. The circuit court ruled, however, that since the state brought impairment into issue during the trial, failure to give the requested standard instructions was not harmless error. As such, the case was reversed and remanded to the trial court for a new trial. http://15thcircuit.co.palm-beach.fl.us:8080/c/document_library/get_file?uuid=31ec3607-ad40-44b9-b47f-4e9445afe998&groupId=233555

***Crosby v. State*, 20 Fla. L. Weekly Supp. 545a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, affirmed the lower court's decision in a DUI trial to allow testimony by an officer, who had not been trained in accident reconstruction, to testify regarding his opinion that only the defendant's vehicle was involved in an accident based on tire tracks and damage to the vehicle. While a review of the trial reflected that the trial court appeared to help the prosecutor during direct examination of the police officer, any error that resulted was rendered harmless by the defendant's admission that she drove her vehicle into a guardrail. http://15thcircuit.co.palm-beach.fl.us:8080/c/document_library/get_file?uuid=a2a6716e-4d32-43ed-a437-cbc026331c2b&groupId=233555

***Baker v. State*, __ So. 3d ___ (Fla. 5th DCA 2013), 2013 WL 3099940, June 21, 2013, 5D12-4908.**

The district court granted the defendant's motion and reversed the lower court's denial of his rule 3.850 motion in a felony driving under the influence ("DUI") case for a third DUI violation within ten years after a prior DUI conviction. The defendant had entered a plea of nolo contendere to the lesser-included offense of misdemeanor DUI, in violation of section 316.193(2)(a), Florida Statutes, and was sentenced to twelve months' probation. In negotiating the plea, the state and the defendant agreed that the defendant's driver's license would be revoked for one year. After the defendant was sentenced, he discovered that he was, in fact, subject to a ten-year license revocation. Upon learning this, the defendant moved to withdraw his plea pursuant to rule 3.170(l), Florida Rules of Criminal Procedure, arguing that the state failed to honor the plea agreement. The state claimed there was no manifest injustice because the defendant was advised of the consequences of his decision, as well as the immediate impact to his driver's license. The state further submitted that the defendant's plea was voluntary and the driver's license revocation was a collateral consequence of the plea. The trial court denied the defendant's motion, finding that the license revocation was not a punishment but a collateral consequence. The defendant then filed a motion alleging trial counsel was ineffective for misadvising him about the consequences of accepting the state's plea agreement and claiming trial counsel advised him that as a result of the plea, he would be sentenced to ten days in jail,

have his license revoked for one year, and be put on misdemeanor probation. Trial counsel also allegedly advised that the Department of Highway Safety and Motor Vehicles ("DHSMV") would permit the defendant to immediately receive a license restricted to business purposes only. The defendant asserted that when he went to DHSMV to obtain said license, he was informed he was not eligible to receive it for two years or to receive a standard driver's license for ten years. The defendant argued he would not have entered the plea had counsel correctly advised him. The district court held that "[a]ffirmative misadvice about even a collateral consequence of a plea constitutes ineffective assistance of counsel and provides a basis on which to withdraw the plea." Citing *Roberti v. State*, 782 So. 2d 919, 920 (Fla. 2d DCA 2001). Therefore, the defendant's ineffective assistance of counsel claim was not procedurally barred. The district court reversed the trial court and remanded the case for further proceedings, including evidentiary hearings. http://www.5dca.org/Opinions/Opin2013/061713/5D12-4908.op.pdf

***Florida v. Hastings*, 20 Fla. L. Weekly Supp. 530a (Fla. 6th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the state's motion to appeal, finding the lower court erred in granting a motion to suppress horizontal gaze nystagmus (HGN) test results based on finding that the policy of the sheriff's office not to videotape HGN tests amounted to concealment of material and/or possibly exculpatory evidence, in violation of the defendant's constitutional rights. The court held that law enforcement did not have a constitutional duty to perform any particular tests or record a criminal transaction. Moreover, the court held that the case did not involve bad faith by law enforcement or loss or destruction of evidence, and defendant was not precluded from cross-examining the officer concerning the HGN test.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/530a.htm

***Burch v. Florida*, 20 Fla. L. Weekly Supp. 654a (Fla. 18th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's motion to suppress evidence. In this case, an informant observed the defendant weaving within his lane after leaving a bar, called 911, followed the defendant to his residence, and then drove off. The police officers who found the defendant asleep on the lawn without possession of a vehicle or vehicle keys detained the defendant and called the informant back to the scene to make a citizen's arrest. The court held that the citizen's arrest was not valid since the informant did nothing to restrain the defendant at the time of the alleged DUI offense and it was officers who actually detained the defendant. The court went on to hold that where the officers did not observe the defendant driving and there was no crash, the officers could not make a valid DUI arrest.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/654a.htm

II. Criminal Traffic Offenses

***State v. Kremer*, __ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D1197, May 31, 2013, 5D12-3490.**

The district court granted the state's appeal of the downward departure sentence imposed on the defendant following a guilty plea to driving under the influence manslaughter. The court determined that the sentence was illegal as it did not include the mandatory minimum term required by statute. It reversed and remanded the case to the circuit court. http://www.5dca.org/Opinions/Opin2013/052713/5D12-3490.op.pdf

***Kidder v. State*, __ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 2494704, June 12, 2013, 2D12-3535.**

The district court denied the defendant's petition for a writ of certiorari that sought to quash a discovery order that required her to disclose the results of a blood alcohol test in a DUI manslaughter case. The court held that because she was required to disclose the results of this scientific test pursuant to rule 3.220(d)(1)(B)(ii), Florida Rules of Criminal Procedure, the discovery order did not depart from the essential requirements of law and therefore denied the petition. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/June/June%2012,%202013/2D12-3535.pdf

***Baron v. State*, __ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 3014151, June 19, 2013, 4D11-1076.**

The district court granted the defendant's petition for ineffective assistance of counsel because appellate counsel should have raised, on direct appeal, a double jeopardy challenge to the defendant's dual convictions and sentences for leaving the scene of an accident with death and DUI manslaughter-leaving the scene of an accident. The court noted that in *Ivey v. State*, 47 So. 3d 908 (Fla. 3d DCA 2010), the Third District held that while there was no double jeopardy violation by dual convictions for DUI manslaughter and leaving the scene of a fatal accident, there was such a violation when the defendant's DUI manslaughter conviction is enhanced from a second degree felony to a first degree felony because he left the scene of a fatal accident, and then was separately convicted of leaving the scene of a fatal accident. *See also Colon v. State*, 53 So. 3d 376 (Fla. 5th DCA 2011); *Goldman v. State*, 918 So. 2d 442 (Fla. 4th DCA 2006); *Pierce v. State*, 744 So. 2d 1193 (Fla. 4th DCA 1999). The court noted that enhancement took place here as well, evidenced by the judgment of conviction and its citation to section 316.193(3)(c)3.b., Florida Statutes (2006). The judgment identified the conviction as a first degree felony. The case was remanded for proceedings consistent with the court's opinion as to the defendant's dual convictions and sentences on the two aforementioned counts, and the district court also ordered the trial court to vacate the defendant's conviction and sentence on either of those two counts. http://www.4dca.org/opinions/June%202013/06-19-13/4D11-1076.op.pdf

***Pappas v. Florida*, 20 Fla. L. Weekly Supp. 554c (Fla. 20th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's appeal on his motion to suppress evidence, finding where the defendant, who was driving in the center lane of a six-lane highway, drifted toward lane markers three times and only crossed the lane marker by less than width of tire, the officer did not have reasonable suspicion of DUI to justify stopping the defendant. The court reversed the lower court's ruling and granted the motion to suppress evidence.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/554c.htm

***Jacobs v. State*, __ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 3240091, June 28, 2013, 2D12-2536.**

The district court affirmed in part and reversed in part the defendant's appeal of his judgments and sentences for two felony counts of driving under the influence (DUI) involving serious bodily injury and one count of misdemeanor driving while license was suspended. The only issue raised by the defendant on appeal was whether the trial court erred by entering a restitution order after he filed his notice of appeal. The state conceded that the filing of the notice of appeal divested the trial court of jurisdiction; therefore, the court reversed the restitution order that was entered after the defendant filed his notice of appeal. *See Brayley v. State*, 93 So. 3d 1233, 1234 (Fla. 2d DCA 2012); *Renfroe v. State*, 20 So. 3d 1027, 1027 (Fla. 2d DCA 2009). The court affirmed the rest of the judgments and sentences but "remand[ed] for the trial court to have the opportunity to conduct another hearing and reimpose restitution." *See Renfroe*, 20 So. 3d at 1027.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/June/June%2028,%202013/2D12-2536.pdf

***Mudge v. State*, 20 Fla. L. Weekly Supp. 652a (Fla. 18th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, reversed the lower court's conviction of the defendant for violating section 322.271(c)2, Florida Statutes (2011), for driving with a suspended license that had been restored for employment purposes only, while not engaged in employment activities. The court held that the defendant, charged with violating the employment-only license restriction, was not obligated to prove he was legitimately engaged in employment. The court held that the state failed to carry its burden to prove that the unemployed defendant who was stopped while driving around a residential neighborhood and claimed to be collecting scrap material to sell was not engaged in employment.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/652a.htm

III. Arrest, Search and Seizure

***Dermio v. State*, 112 So. 3d 551 (Fla. 2d DCA 2013).**

The district court affirmed the lower court's ruling, denying the defendant's motion to suppress evidence. The defendant had been approached by a sheriff's deputy while in his parked vehicle with the motor running. The deputy noticed that the defendant appeared to be asleep.

The deputy asked the defendant to roll down his window, but he did not respond. After the deputy made a third request to roll down the window with no response and because the defendant appeared to be incoherent, the deputy opened the door to the car because she was concerned for the defendant's safety. Upon opening the door, the deputy smelled marijuana and observed a metal pipe on the center console. Eventually, the defendant's car was searched, and in addition to the pipe, a firearm, marijuana, and varying types and amounts of other drugs were found.

In the motion to suppress, the defendant stated that a detective told him that if he provided truthful statements, the detective could help the defendant. This detective later testified that she told the defendant that "depending on what information he gave, . . . I might be able to talk to the judge" and that she might be able to "help [him] out with something." The detective testified that the sheriff's department policy was to "let [defendants] know if there's anything that we can do that comes of the information [they] give us, then we will talk at a sentencing hearing." However, the detective clarified that she did not make any promises to defendant and specifically told him there were "[n]o promises." The detective testified she did not make any representations to the defendant about what type of sentence he could receive. The trial court denied the motion to suppress. The district court agreed, and affirmed the trial court's denial of the motion to suppress.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/April/April%2005,%202013/2D12-647.pdf

***Philpott v. State*, 20 Fla. L. Weekly Supp. 653a (Fla. 18th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's motion to overturn the lower court's denial of his motion to suppress. In this case, a deputy conducted an investigatory stop where the deputy approached a parked vehicle that had allegedly been involved in hit-and-run accident, activated blue lights, and ordered the defendant, who had started to exit vehicle, to get back in the vehicle. The court held that, as the stop was based solely on an unverified tip from an anonymous source rather than a tip from a citizen-informant, the stop was not lawful.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/653a.htm

IV. Torts/Accident Cases

***Duclos v. Richardson*, __ So. 3d ___ (Fla. 1st DCA 2013), 38 Fla. L. Weekly D878, April 22, 2013, 1D12-0217.**

The district court granted the defendant's appeal of the trial court's post-verdict order granting the plaintiff's motion for a new trial and directed verdict or JNOV as to permanent injury. The plaintiff sought monetary damages for injury to her neck resulting from an automobile accident with the defendant, under section 627.737(2), Florida Statutes. Under the statute, the plaintiff could recover damages in tort from the defendant "arising out of the . . . operation, or use of [defendant's insured] motor vehicle only in the event that the injury . . . consists in whole or in part of: . . . (b) Permanent injury within a reasonable degree of medical probability." The plaintiff called upon three expert witnesses to confirm her injuries were permanent; the defendant called his own expert who disagreed, finding the injuries temporary.

The court noted that if a jury rejects expert medical testimony that an injury caused by an auto accident is permanent without any contrary evidence on the record, a JNOV or directed verdict is warranted. *Wald v. Grainger*, 64 So. 3d 1201 (Fla. 2011); *State Farm Mut. Auto. Ins. Co. v. Orr*, 660 So. 2d 1061 (Fla. 4th DCA 1995). The court went on to note that even if contrary expert evidence is presented, a directed verdict is justified "[w]here an expert's testimony is so equivocal, confusing, and internally contradictory and irreconcilable as utterly to lack any probative value." *Simmons-Russ v. Emko*, 928 So. 3d 397, 398 (Fla. 1st DCA 2006). However, the court also noted, "the trial court may not weigh the evidence or assess a witness's credibility" and must deny a directed verdict "if the evidence is conflicting or if different conclusions and inferences can be drawn from it." *Moisan v. Frank K. Kriz, Jr., M.D., P.A.*, 531 So. 2d 398, 399 (Fla. 2d DCA 1988). If an expert opinion is sufficient to raise a fact question for the jury and the jury makes a determination supported by that expert opinion, a motion for JNOV should be denied. *Hancock v. Schorr*, 941 So. 2d 409 (Fla. 4th DCA 2006). The district court held that because the reasons given for the JNOV were insufficient grounds upon which to disregard the jury's verdict, the directed verdict or JNOV of permanency was reversed and remanded for entry of judgment in accordance with the verdict. http://opinions.1dca.org/written/opinions2013/04-22-2013/12-0217.pdf

***Ford v. Stimpson*, __ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D869, April 19, 2013, 5D11-2787.**

The district court reversed the lower court's granting of relief to the plaintiffs and reinstated the judgment. The case arose out of a products liability lawsuit against the defendant based on an October 2003 automobile accident during which the plaintiffs' van allegedly suddenly accelerated from a standstill position. One plaintiff was seriously injured in the accident. The plaintiffs' theory of liability was that their van's cruise control system was defectively designed/manufactured because (1) the system was susceptible to allowing electromagnetic interference (EMI) to cause a malfunction that would unexpectedly open the throttle without driver input (pressure on the gas pedal), causing sudden acceleration (SA) from a standstill position, and (2) the defendant was aware of, but did nothing to address, the defect. The plaintiffs filed a pretrial motion seeking to strike defendant's answer and affirmative defenses,

alleging the defendant committed fraud on the court by concealing, from both government regulators and the public, its knowledge that its vehicles could suddenly accelerate, and by promoting the erroneous defense theory that the instant accident was caused by one of the plaintiff's pedal misapplication (stepping on the gas pedal instead of the brake pedal). The trial court reserved ruling on the motion.

At trial, the jury returned a special verdict in favor of the defendant, finding that (1) Ford did not place the 1991 Ford Aerostar on the market with a defect that was the legal cause of the plaintiff's injury, and (2) there was no negligence on the part of Ford that was a legal cause of the plaintiff's injury. The plaintiffs filed motions seeking alternative forms of post-judgment relief, including rule 1.540(b)(3) relief from judgment and a new trial. The court thereafter granted the plaintiffs' rule 1.540(b)(3) relief based on its finding that the defendant committed fraud on the court. The district court held that the trial court abused its discretion in so ruling.

The district court noted that conflicting testimony was presented during the plaintiffs' case-in-chief. Also, there was conflicting evidence concerning the plaintiff's pedal misapplication. The district court held that the trial court erred in concluding that the only reasonable inference from the evidence was that the cruise control system was negligently designed. Additionally, "[a] jury's verdict is generally not against the manifest weight of evidence if the record shows conflicting testimony from two or more witnesses." *Lindon v. Dalton Hotel Corp.*, 113 So. 3d 985 (Fla. 5th DCA 2013). The district court reversed the trial court and reinstated the judgment in favor of the defendant.
http://www.5dca.org/Opinions/Opin2013/041513/5D11-2787.op.pdf

***Casteel v. Maddalena*, 109 So. 3d 1252 (Fla. 2d DCA 2013).**

The trial court reversed the lower court's ruling wherein it granted the defendant a new trial pursuant to rule 1.540(b)(3), Florida Rules of Civil Procedure, a ground upon which the defendant had not asked for a new trial. This motor vehicle accident case centers on the exact location of the accident. After a bifurcated trial was held, and the jury determined that the plaintiff was 55% liable while defendant was 45% liable. The defendant then filed her motion for relief from judgment based on new evidence discovered after trial. However, despite the defendant's filing of the motion pursuant to rule 1.540(b)(2) on the basis of newly discovered evidence, the trial court, sua sponte, ruled that the motion was considered a motion filed pursuant to rule 1.540(b)(3) which deals with misconduct by an adverse party. The district court held that rule 1.540(b)(3) was not applicable in this case, as there were no allegations of fraud by a party or their counsel. The district court reversed the lower court's ruling and remanded for proceedings in conformance with their opinion.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/April/April%2003,%202013/2D11-4455.pdf

***Gomez v. Rendon*, __ So. 3d ___ (Fla. 3d DCA 2013), 38 Fla. L. Weekly D727, April 3, 2013, 3D12-1105.**

The district court granted the defendant's petition for writ of certiorari and quashed the lower court's ruling which had denied the defendant's motion for a post-surgical examination of

the plaintiff. This case arose out of a motor vehicle accident wherein the defendant's vehicle had struck the plaintiff, fracturing his ankle. The defendant had conducted one post-surgery examination following initial surgery on the plaintiff. The plaintiff later informed the defendant he was going to have a second surgery. The plaintiff provided the defendant with medical records of the second surgery.

At deposition of the defense expert, which followed the second surgery, the defense expert stated that based on his examination after the first surgery, the plaintiff did not have a permanent injury, but he did not know if the plaintiff had one following the second surgery. The defendant then filed a motion for post-surgery defense examination. The trial court denied this motion, stating that the defendant had been on notice of the second surgery and should have conducted this examination prior to deposition. The district court disagreed, citing *Royal Caribbean Cruises, Ltd. v. Cox*, 974 So. 2d 462 (Fla. 3d DCA 2008). The court held that the plaintiff's injury was in controversy and his second operation "caused a substantial change in that physical condition," leading to a showing of good cause for the request. *Id*. The district court granted the writ of certiorari and quashed the lower court's order.
http://www.3dca.flcourts.org/Opinions/3D12-1105.pdf

***Forest v. Sutherland*, 110 So. 3d 525 (Fla. 4th DCA 2013).**

The district court reversed the final judgment in favor of the defendant finding error in the trial court's failure to offset any collateral source reduction by the amount of premiums paid by the plaintiff in obtaining PIP coverage. The plaintiff was injured in a car accident and sued the defendant in a negligence action, where the defendant was determined to be liable.

The defendant filed a motion for collateral source setoff for PIP benefits paid or payable, arguing that any award for past medical expenses should be reduced by $10,000 for PIP benefits paid or payable. The trial court agreed and entered a final judgment in favor of the defendant, and the plaintiff filed a motion to vacate the final judgment. At the hearing on the motion to vacate, the plaintiff admitted that "PIP paid out $10,000." The plaintiff also argued that the set-off should be reduced by the amount of premiums paid by the plaintiff to obtain PIP coverage. The trial court denied the plaintiff's motion to vacate.

The district court noted that section 768.76(1) provides that any collateral source reduction of damages shall be offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury. § 768.76(1), Fla. Stat. (1999). When an award of damages is reduced according to the amount of PIP benefits paid to the plaintiff, section 768.76(1) "allow[s] a reduction from the setoffs for the plaintiff's cost of obtaining PIP coverage . . . ." *McKenna v. Carlson*, 771 So. 2d 555, 558 (Fla. 5th DCA 2000). The district court reversed the lower court ruling and remanded the case because the court failed to consider reducing the collateral source set-off by the amount paid by the plaintiff in obtaining those collateral source benefits. http://www.4dca.org/opinions/April%202013/04-03-13/4D12-1048.op.pdf

***Rolon v. Burke*, 112 So. 3d 118 (Fla. 2d DCA 2013).**

The district court affirmed the lower court's decision to grant a new trial and reversed the lower court's order, on cross-appeal, as related to categories of damages not included in the motion for new trial. The plaintiff was injured when a truck owned by the defendants rear-ended her car. At trial, the plaintiff was awarded some, but not all of the damages she sought. She moved for a new trial, which the court granted. On appeal, the defendants sought review of the order granting the new trial; on cross-appeal, the plaintiff challenged the court's decision to grant a new trial on issues she did not raise in her motion.

The district court noted that the lower court's order did not limit the new trial to the damages categories addressed in the plaintiff's motion. Instead, it granted a new trial on all damages, including past pain and suffering, and on the question of whether the plaintiff had suffered a permanent injury. The district court held that in doing so, the court erred. The district court reversed the order granting a new trial on issues not raised in the plaintiff's motion. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/May/May%2001,%202013/2D10-5086.pdf

***Rosado v. Daimlerchrysler*, 112 So. 3d 1165 (Fla. 2013).**

The Florida Supreme Court affirmed the district court's ruling that the defendant, who had been assigned a lease, was not liable for damages caused by the lessee of a vehicle owned by it. The court held that a federal law known as the Graves Amendment, 49 U.S.C. § 30106 (2006), provides that the owner of a motor vehicle who leases the vehicle shall not be vicariously liable for harm that results from the use, operation, or possession of the vehicle during the lease.

The Florida Supreme Court affirmed the appellate court's holding that the Graves Amendment preempts section 324.021(9)(b)(1), Florida Statutes, which defines when a long-term lessor remains the owner of a leased motor vehicle and thereby subject to vicarious liability for damages caused by the vehicle under Florida's dangerous instrumentality doctrine. The court held that section 324.021(9)(b)(1), Florida Statutes, is not a law that imposes "financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle" or "liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law." 49 U.S.C. § 30106(b). Rather than imposing financial responsibility or insurance standards, the statute creates a process by which long-term lessors can avoid the default financial responsibility imposed upon them by Florida's dangerous instrumentality doctrine. http://www.floridasupremecourt.org/decisions/2013/sc09-390.pdf

***Poston v. Wiggins*, 112 So. 3d 783 (Fla. 1st DCA 2013).**

The district court granted in part and dismissed in part the defendant's writ of certiorari to quash the trial court's order overruling her objection to discovery of two groups of her medical records in a motor vehicle accident case: (1) the defendant's pharmacy records for the one-year period preceding the date of the subject automobile accident, and (2) medical records from the defendant's treating physician from the date of the accident "until the present." The district court

dismissed the petition regarding the first group of records stating the defendant failed to satisfy the jurisdictional requirement of irreparable harm. However, the district court granted the petition with regard to the second group of records.

The court held that the pre-accident pharmacy records appeared to be relevant to the issue of negligence in the case and were potentially discoverable, as the defendant was elderly and taking several different prescription medications at the time of the accident. The court also noted that the defendant's alleged irreparable harm with regard to this group of records was premature and speculative. *See Holden Cove, Inc. v. 4 Mac Holdings, Inc.*, 948 So. 2d 1041, 1042 (Fla. 5th DCA 2007) (rejecting an irreparable harm argument as being premature and speculative). The court held that as the defendant could ultimately appeal the denial of the protective order and the trial court could still perform an in camera review and receive argument to determine the relevancy of the pre-accident pharmacy records, the petitioner had failed to demonstrate irreparable harm to warrant certiorari relief. *See Cape Canaveral Hosp., Inc. v. Leal*, 917 So. 2d 336 (Fla. 5th DCA 2005).

The court, however, found that the post-accident medical records were irrelevant to the issues in the case and the trial court erred in ordering these documents to be produced. The court noted that discovery must be relevant to the subject matter of the pending action. *See* Fla. R. Civ. P. 1.280(b)(1). The defendant had not put her post-accident medical condition at issue in the case, and therefore these records were irrelevant.
http://opinions.1dca.org/written/opinions2013/05-17-2013/12-5183.pdf

***Maggolc, Inc. v. Roberson*, __ So. 3d ___ (Fla. 3d DCA 2013), 2013 WL 3015473, June 19, 2013, 3D12-2001.**

The district court denied the defendant's motions for judgment in accordance with motion for directed verdict, remittitur, and new trial, all directed to the plaintiff's jury awards for past earnings and lost earning capacity. The plaintiff was riding his motor scooter at around 9:00 p.m. in Miami Beach, at which time he traversed an area of pavement being resurfaced by the defendant, struck a projecting manhole pipe, was thrown from his scooter, and was injured on the jagged surface of the roadway. On appeal, the defendant did not challenge liability or the damage awards in three of the five categories. The defendant sought a directed verdict, remittitur, or a new trial only as to the awards of past lost earnings and future lost earning capacity. The defendant contended that the plaintiff's "skimpy testimony" regarding past earnings and future earning capacity, unsupported by financial records of any kind, must have impermissibly pinned his claims for those losses on sympathy and speculation The court noted that no Florida court has determined that a claim for an individual's lost past earnings must be supported by documentary evidence, or that the failure to file income tax returns for those earnings (at an annual level that clearly requires a return) precludes recovery. The court held that these issues were for the jury to weigh in their assessment of the plaintiff's credibility, and affirmed the lower court's ruling.
http://www.3dca.flcourts.org/Opinions/3D12-2001.pdf

V. Drivers' Licenses

***Dodson v. Department of Highway Safety and Motor Vehicles*, 111 So. 3d 266 (Fla. 1st DCA 2013).**

The district court quashed the lower court's decision and granted the defendant's writ of certiorari. The lower court had affirmed an administrative hearing officer's decision that sustained the suspension of the petitioner's driver's license. The Department of Highway Safety and Motor Vehicles (DHSMV) suspended the petitioner's driver's license after a breath test revealed he had been driving under the influence of an alcoholic beverage. During the administrative hearing on the petitioner's suspended driver's license, the administrative hearing officer refused to consider the lawfulness of arrest as part of the scope of review. However, the Florida Supreme Court concluded in *Florida Department of Highway Safety and Motor Vehicles v. Hernandez*, 74 So. 3d 1070 (Fla. 2011), that an administrative hearing officer is allowed to make the determination of whether a breath test was administered incident to a lawful arrest. ("[A]driver is on notice that he or she must consent to a breath test or else face suspension of his or her driver's license only if the test is administered incident to a lawful arrest."). The court held that the hearing officer's refusal to consider the lawfulness of the arrest departed from the essential requirements of the law and granted the defendant's writ of certiorari. http://opinions.1dca.org/written/opinions2013/04-16-2013/12-5321.pdf

***Glor v. Department of Highway Safety and Motor Vehicles*, 110 So. 3d 542 (Fla. 1st DCA 2013).**

The district court granted the defendant's petition for writ of certiorari and quashed the circuit court's decision. *See Dodson v. Dep't of Highway Safety & Motor Vehicles*, 111 So. 3d 266 (Fla. 1st DCA 2013). http://opinions.1dca.org/written/opinions2013/04-16-2013/12-5322.pdf

***Department of Highway Safety and Motor Vehicles v. Fernandez*, __ So. 3d ___ (Fla. 3d DCA 2013), 38 Fla. L. Weekly D729, April 3, 2013, 3D12-581.**

The district court granted the Department of Highway Safety and Motor Vehicles' (DHSMV) petition for writ of certiorari and quashed the circuit court appellate division's order, which had quashed the order suspending the defendant's driver's license for his refusal to submit to breath, blood, or urine tests incident to a DUI arrest. The defendant was arrested for a DUI and requested a formal hearing of his driver's license suspension. In advance of the hearing, the defendant submitted to the police department four subpoenas directed to certain officers. The department issued the subpoenas, but modified their form by adding stamped language requiring the officers to appear telephonically from their duty stations. Rather than serve the modified subpoenas, the defendant drafted new subpoenas for his own signature that required the officers to appear in person. The defendant's subpoenas were returned nonserved after the Key West Police Department's patrol liaison refused to accept service, explaining that she was not authorized to accept service of subpoenas other than those approved by the bureau. Following a formal hearing, the hearing officer, who appeared telephonically, entered an order affirming the DHSMV's suspension of the defendant's driving license.

The defendant appealed to the circuit court. The circuit court appellate division granted certiorari and quashed the hearing officer's order, reasoning that the hearing officer failed to convene the formal review hearing "in Monroe County" by appearing telephonically from an office in Miami in contravention of section 322.2615(6)(b), Florida Statutes (2011) (requiring that a formal hearing be "held before a hearing officer"), and rule 15A-6.009, Florida Administrative Code (providing that, absent driver's consent, venue for formal review hearing is in the judicial circuit where the notice of suspension was issued). The appellate division concluded that the hearing officer's failure to appear in person in Monroe County deprived the defendant of the right "to be physically present before the hearing officer" and thereby violated procedural due process. The district court disagreed, and quashed the lower court's order, holding that the appellate division misconstrued the words "before a hearing officer" to mean "in the physical presence of a hearing officer" in section 322.2615(6)(b), Florida Statutes.
http://www.3dca.flcourts.org/Opinions/3D12-0581.pdf

***Department of Highway Safety and Motor Vehicles v. Edgell-Gallowhur*, __ So. 3d ___ (Fla. 3d DCA 2013), 2013 WL 2494701, May 1, 2013, 3D12-2313, *rehearing denied*, 2013 WL 2494701, June 12, 2013.**

The district court granted DHSMV's petition for writ of certiorari and quashed the lower court's decision, which reversed the administrative suspension of the defendant's driving privileges. The defendant was arrested for driving under the influence following a police stop. At the station, the defendant refused to submit to a breath or urine test, having signed an implied consent form indicating he was made aware his driver's license would be suspended for his refusal to submit. Thereafter, an administrative suspension of the defendant's driving privileges was imposed for twelve months. The defendant requested a formal hearing, wherein the suspension was upheld. The defendant then petitioned for a writ of certiorari to the circuit court appellate division, asserting, the administrative order departed from the essential requirements of law because the evidence was insufficient to establish the initial stop was lawful; and the findings of the hearing officer were not supported by the record. The circuit court issued a decision, reversing suspension of the defendant's driver's license. The circuit court determined that the hearing officer's decision to sustain the defendant's driver's license suspension departed from the essential requirements of law because there was not sufficient competent evidence that the initial stop for speeding was lawful.

DHSMV appealed, contending that the circuit court appellate division conducted an unauthorized de novo review of the evidence, reweighed the evidence, and failed to apply the correct law, resulting in manifest injustice which is likely to be repeated in every driver's license suspension where the officer pace clocks a vehicle to establish reasonable suspicion of speeding. The district court reversed the circuit court, finding that the circuit court failed to apply the correct law by ignoring the speeding citation and its contents.
http://www.3dca.flcourts.org/Opinions/3D12-2313.pdf and
http://www.3dca.flcourts.org/Opinions/3D12-2313.rh.pdf

***Walker v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 549a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the hearing officer's suspension of the defendant's drivers license, finding that the hearing officer erred in admitting the defendant's breath-alcohol test into evidence without shifting the burden to the department to prove that the breath test operator and agency inspector had valid permits. *See Boivin v. DHSMV*, 19 Fla. L. Weekly Supp. 1004a (Fla. 15th Cir. Ct. 2012). The case was remanded to allow the department the opportunity to submit evidence that the agency inspector and breath test operator possessed valid permits when they inspected and operated the equipment used to determine the defendant's breath-alcohol content. http://15thcircuit.co.palm-beach.fl.us:8080/c/document_library/get_file?uuid=986e7dc1-15a5-4ca6-93d2-f01db8815a1e&groupId=233555

***Pasa v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 544b (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, quashed the hearing officer's suspension of the defendant's driver's license, finding that the hearing officer erred in admitting the defendant's breath-alcohol test into evidence without shifting the burden to the department to prove that the breath test operator and agency inspector had valid permits. *See Boivin v. DHSMV*, 19 Fla. L. Weekly Supp. 1004a (Fla. 15th Cir. Ct. 2012). The case was remanded to allow the department the opportunity to submit evidence that the agency inspector and breath test operator possessed valid permits when they inspected and operated the equipment used to determine the defendant's breath-alcohol content. http://15thcircuit.co.palm-beach.fl.us:8080/c/document_library/get_file?uuid=cc7dd1c7-c71e-40d4-8512-99f89071ca20&groupId=233555

***Tucker v. Department of Highway Safety and Motor Vehicles*, __ Fla. L. Weekly Supp. ___ (Fla. 15th Cir. Ct. 2013), May 6, 2013, 502013CA001846XXXXMB.**

The circuit court, sitting in its appellate capacity, granted the defendant's writ of certiorari and quashed the department's suspension of the defendant's driver's license, finding that due process had not occurred. The defendant had sought a review of his driver's license suspension, and had timely requested this review. While a review was scheduled within the 30 day required time frame, the defendant never received notice of this hearing, and the department was unable to show that it had provided notice to the defendant. The court, citing *Morales v. DHSMV*, 20 Fla. L. Weekly Supp. 24b (Fla. 11th Cir. Ct. 2012), held that there was a violation of the driver's due process and a departure from the essential requirements of law when a hearing is merely scheduled but a driver has received no notice. The writ of certiorari was granted and the order of suspension quashed. http://15thcircuit.co.palm-beach.fl.us:8080/c/document_library/get_file?uuid=db38b06f-b28c-4d95-a6c5-8c98db6b99c5&groupId=233555

***Klinker v. Department of Highway Safety and Motor Vehicles*, __ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D1195, May 31, 2013, 5D12-3896.**

The district court denied the defendant's petition for writ of certiorari, which asked the court to quash the circuit court's opinion affirming a hearing officer's determination that the defendant's driver's license suspension should be sustained, finding it meritless to the extent that it challenged whether there was probable cause for the state trooper's traffic stop. The court also denied the remaining claims challenging the hearing officer's refusal to issues subpoenas to Florida Department of Law Enforcement (FDLE) employees, the hearing officer's refusal to set aside the suspension based on the defendant's claim that the breath test machine (an Intoxilyzer 8000) had never been properly approved for evidentiary use in Florida, and the defendant's claim that the record before the hearing officer failed to include a copy of the most recent FDLE inspection report (FDLE/ATP form 41) for the breathalyzer machine used to test him. The court determined that FDLE/ATP Form 41 is not a document which is contemplated in section 322.2615(2). The court held that the language in subsection (2) clearly refers to documentation, such as the breath alcohol test affidavit, which is designed to provide the "results" of a driver's breath alcohol level as determined on the date that the driver actually took the breath alcohol test. The court also concluded that challenges to the approval process of the Intoxilyzer machine were simply beyond the scope of a formal driver's license review proceeding, and there were no grounds to bring forth this claim. The petition for writ of certiorari was denied.
http://www.5dca.org/Opinions/Opin2013/052713/5D12-3896.op.pdf

***Koning v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 552a (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's writ of certiorari, finding where a subpoenaed officer provided notice of his nonappearance prior to start of the first hearing, administrative rule provides that nonappearance is not deemed a failure to appear at hearing. Consequently, the administrative rule providing that no hearing shall be continued for a second failure to appear did not prohibit a hearing officer from continuing the second hearing when an officer again failed to appear or from affirming suspension when the defendant chose not to enforce a subpoena for the officer.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/552a.htm

***Donohue v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 551b (Fla. 17th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's motion for rehearing on a driver's license suspension, finding that although the hearing officer violated the applicable administrative rule by continuing formal administrative hearings when a subpoenaed officer failed to appear for a second time, noncompliance with rule did not require invalidation of a license suspension. Although the law requires that a hearing be scheduled within thirty days of a request, there is no requirement that the proceeding be completed within thirty-day period.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/551b.htm

***Foley v. Florida Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 533a (Fla. 8th Cir. Ct. 2013).**

The circuit court quashed the hearing officer's suspension of the defendant's driver's license, finding that the Department of Highway Safety and Motor Vehicles failed to follow administrative rules where a hearing to review a license suspension was not held in the judicial circuit where the notice of suspension was issued, as required. The hearing did not take place in the required venue, and the hearing officer was not physically present in the venue but conducted a formal review hearing telephonically from another circuit over the defendant's objection. http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/533a.htm

***Finney, v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 539a (Fla. 12th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for certiorari, holding that no error occurred in finding that the defendant, who merely submitted short puffs of breath, shook her head, and stated "I hate you" during the breath test, refused to submit to the test. The court also found that the defendant, who did not exercise her option to enforce a subpoena for the arresting officer waived her claim that she was not afforded due process by the officer's nonappearance. In addition, the court found that where a hearing officer's finding that an officer had probable cause for an arrest is supported by evidence that the officer observed physical indicia of impairment and noted deficiencies in the defendant's performance of field sobriety exercises, and that existence of contradictory evidence indicating that the officer stated that the defendant performed well on the exercises was immaterial to appellate review.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/539a.htm

***Page v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 558a (Fla. 9th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for certiorari, concluding there was competent substantial evidence to support the hearing officer's finding that the stop was lawful, the investigative detention was reasonable, and the arrest was based on sufficient probable cause. *See State, Dept, of Highway Safety & Motor Vehicles, Div. of Driver Licenses v. Possati*, 866 So. 2d 737 (Fla. 3d DCA 2004), *Boston v. Dept. of Highway Safety & Motor Vehicles, Div. of Driver Licenses*, 12 Fla. L. Weekly Supp. 1109a (Fla. 4th Cir. Ct. 2005). The court held that this was supported by competent substantial evidence where the arresting officer testified that she stopped the defendant for driving without headlights at 3:19 a.m. and, after the stop, observed that the defendant had odor of alcohol and red glassy eyes, stammered and was unable to recall where he had been that evening.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/558a.htm

***Butler v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 543a (Fla. 13th Cir Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari. The defendant was arrested for driving under the influence of alcohol and his license was suspended after he refused to submit to a lawful breath-alcohol test. At the formal review hearing, exhibits were admitted into evidence; no testimony was presented. In the final order, the hearing officer made findings of fact and concluded that the arresting officer had probable cause to believe the defendant was driving or in actual physical control of a motor vehicle while under the influence of alcohol or a chemical or controlled substance; The defendant refused to submit to a breath, blood, or urine test after being asked to do so by law enforcement; and the petitioner was told that if he refused to submit to such test his driving privilege would be suspended for a period of one year, or in the case of a second refusal, for a period of eighteen months. Having found the elements of section 322.2615(7)(b), Florida Statutes, were supported by a preponderance of the evidence, the hearing officer upheld the suspension of the defendant's driver's license. The defendant appealed on two grounds: (1) that the hearing officer erred because the discrepancies in the documents prevented a finding that the defendant was read the implied consent warning subsequent to a lawful arrest, and (2) that the hearing officer erred because the discrepancies in the documents prevented a finding that the defendant refused to submit to a lawful breath test after being read the implied consent warning. The circuit court found that that despite discrepancies in submitted documents, the narrative in the DUI report provided competent substantial evidence that the defendant was arrested prior to being read the implied consent warning and was read implied the consent warning prior to refusal. Additionally, although some documents refer to one citation number and others refer to a different citation number, there was competent substantial evidence from which the hearing officer could determine that all documents refer to same DUI incident.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/543a.htm

***Gaputis v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 527b (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 lower court's decision, holding that the defendant was denied fair notice and opportunity to be heard in a meaningful manner where the Department of Highway Safety and Motor Vehicles failed to produce a videotape of field sobriety exercises, which the defendant planned to submit as evidence to contradict an officer's testimony that the defendant was impaired during field sobriety exercises, and the defendant was not afforded an opportunity to investigate the circumstances surrounding the non-production of the requested tape.
http://www.floridalawweekly.com/flwonline/?page=showfile&fromsearch=1&file=../supfiles/issues/vol20/527b.htm&query=%2220+Fla.+L.+Weekly+Supp.+527b%22&altdoc=true&fromeh=true#first_hit

***Smith v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 547a (Fla. 15th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's petition for writ of certiorari, finding that the hearing officer in a license suspension matter did not err in refusing to give collateral estoppel or res judicata effect to the county court's finding in a criminal DUI case that the defendant was subject of illegal stop and arrest.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/547a.htm

***Klassen v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 532a (Fla. 7th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, granted the defendant's petition for writ of certiorari and quashed his license suspension, finding that the hearing officer departed from the essential requirements of the law by finding that the arresting officer had probable cause to believe the defendant was in physical control of his vehicle where that finding was supported only by the arresting officer's statement in the probable cause affidavit that the stopping deputy informed the arresting officer that licensee was the driver. The court held that this vague conclusory statement in the affidavit did not demonstrate that the stopping deputy provided sufficient facts and a legitimate determination as to identity of the driver of the vehicle.
http://www.floridalawweekly.com/flwonline/index.php?altdoc=true&page=showfile&file=../supfiles/issues/vol20/532a.htm

***Sterrett v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 381a (Fla. 14th Cir. Ct. 2013).**

The circuit court, sitting in its appellate capacity, denied the defendant's writ for certiorari on a driver's license suspension, finding that the defendant's identity as a person who was stopped by officer and refused to submit to a breath test was adequately established at her administrative hearing, both through documentation and the defendant identifying herself for the record. The court also held that the defendant was not denied her Sixth Amendment right to counsel by the hearing officer's refusal to allow an attorney-observer who had not filed notice of appearance in the case to initiate questioning or provide legal argument at the hearing. The court also held that the failure of an officer to bring videotape to the hearing did not deny the defendant due process or amount to departure from the essential requirements of the law. Furthermore, the court held that accident report privilege does not apply to administrative hearings involving revocation or suspension of driving privileges. The court also held that the defendant's contention that her refusal to submit to breath test was inadmissible because the investigating officer failed to inform her that the officer was ending the crash investigation and commencing a DUI investigation was without merit given the officer's testimony that there was no crash and absence of facts in record showing that the defendant was told by the officer that she was required to answer questions for purposes of a crash investigation. Competent substantial evidence supported a finding that the defendant was read implied consent warnings and refused to take a breath test, and the defendant's contention that she was suffering a panic attack was refuted by the officers' testimony that the defendant did not appear to be having panic

attack and seemed capable of understanding the circumstances when the implied consent warning was read.
http://www.floridalawweekly.com/flwonline/?page=showfile&fromsearch=1&file=../supfiles/issues/vol20/381a.htm&query=%2220+Fla.+L.+Weekly+Supp.+381a%22&altdoc=true&fromeh=true#first_hit

***Natrillo v. Department of Highway Safety and Motor Vehicles,* 20 Fla. L. Weekly Supp. 388a, (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 hearing, holding that a hearing officer's determination that the defendant refused to submit to a breath test was supported by breath test results affidavits showing that the defendant provided three breath samples, none of which were reliable for purposes of determining breath alcohol level because, in each sample, the defendant failed to supply the minimum required volume of breath. The court noted that competent substantial evidence supported a finding that the defendant deliberately avoided submitting valid breath samples, notwithstanding the defendant's claim that he was unable to provide adequate breath samples due to a medical condition.
http://www.floridalawweekly.com/flwonline/?page=showfile&fromsearch=1&file=../supfiles/issues/vol20/388a.htm&query=%2220+Fla.+L.+Weekly+Supp.+388a%22&altdoc=true&fromeh=true#first_hit

***Allen v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 638a (Fla. 9th 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 hearing, holding that the defendant's right to due process was not violated by a subpoenaed officer's repeated failure to appear at hearing where the defendant was provided an opportunity to enforce a subpoena but chose not to complete the enforcement procedure. In this case, an officer who observed that the defendant appeared to have fallen asleep while waiting to exit a parking garage saw the defendant's vehicle roll forward and almost hit another vehicle. The court held that the officer was justified in making a stop based on legitimate concern for safety of the defendant and others. The court also held that detention for a DUI investigation was lawful where the officer observed that the defendant had the odor of alcohol, bloodshot eyes, and slow speech. Moreover, the defendant admitted to consuming alcohol and was unsteady when exiting the vehicle. In the defendant's appeal regarding destruction of recorded materials, the court held that competent substantial evidence supported the hearing officer's finding that video of roadside exercises was not destroyed, but rather, was not recorded due to malfunctioning equipment. Finally, notwithstanding the defendant's testimony regarding his condition and his performance of field sobriety exercises, the hearing officer's finding that defendant demonstrated indicia of impairment was supported by the law enforcement officers' contrary testimony and charging affidavit.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/638a.htm

***Rhoads v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 648a (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 hearing, holding that there was no merit to an argument that the hearing officer erred in upholding the defendant's license suspension despite the failure of the subpoenaed arresting officer to appear at the hearing, where the hearing officer advised the defendant of his right to seek enforcement of a subpoena to compel the officer to appear and the defendant chose not to do so.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/648a.htm

***Oliver v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 643a (Fla. 9th 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 reinstatement hearing, holding that there was no abuse of discretion in denying a petition to reinstate a driver's license that was permanently revoked due to a fourth DUI conviction where the applicable statute restricts reinstatement to employment purposes, and the defendant testified that he was retired and not seeking employment.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/643a.htm

***Hancock v. Department of Highway Safety and Motor Vehicles*. 20 Fla. L. Weekly Supp. 646a (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 hearing, holding that the rule requiring that breath testing instruments be inspected at least once each calendar month does not require inspection of instruments every thirty days. The court held that an inspection of an Intoxilyzer on July 6 and again on August 11 was in compliance with the rule, and that a breath test was admissible despite the fact that the July inspection was 33 days prior to the defendant's August 8 breath test.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/646a.htm

***Hubert v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 651a (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 hearing, holding that there was no merit to a claim that the implied consent warning was given in a confusing and incomplete manner because it was not read from a printed card. The court held that there is no requirement that the warning be read from a card, and the transcript of the hearing shows that the defendant was properly informed of the consequences of refusal before she refused a breath test. Moreover, the court held that the defendant was not entitled to consult with counsel before deciding whether to submit to a breath test.

http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/651a.htm

***Robinson v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 641a (Fla. 9th 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 hearing, holding that refusal and arrest affidavits that indicate they were sworn to under oath before a notary were not required also to contain a written declaration stating that the facts stated were true under penalty of perjury. In this case, an officer observed the defendant making an illegal turn traveling against posted one-way signs. The court held that he therefore had had reasonable suspicion that the defendant had committed several traffic infractions, justifying the stop. The court went on to hold that where the officer observed that the defendant had the odor of alcohol, slurred speech, and glassy eyes, and admitted to drinking three beers, the officer had reasonable suspicion to request performance of field sobriety exercises and to arrest the defendant when she refused to perform exercises. http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/641a.htm

***Menikheim v. Department of Highway Safety and Motor Vehicles*, 20 Fla. L. Weekly Supp. 634a (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 hearing, holding that where an officer observed the defendant brake abruptly and skid as he approached a stationary vehicle at an intersection, requiring the other vehicle to take evasive action to avoid the collision, the officer had an objectively reasonable basis for an investigatory stop. The court also held that despite asserted contradictions in the timing of events reported in certain documents, the narrative in the offense report and other documents provided competent substantial evidence to support a finding that the defendant was under arrest at the time he refused to submit to breath test and was read the implied consent warning prior to refusing the test.
http://www.floridalawweekly.com/flwonline/?altdoc=true&page=showfile&file=../supfiles/issues/vol20/634a.htm