# FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

***July - September 2012***

***[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)

***Harmon-Horton v. State,* 91 So. 3d 931 (Fla. 1st DCA 2012).**

The district court affirmed the trial court's denial of a motion for mistrial in a DUI case where the arresting officer testified he performed a Horizontal Gaze Nystagamus test and the prosecutor overstated the officer's testimony in closing argument. Counsel for the DUI defendant had not objected to the officer's testimony during the trial.
http://opinions.1dca.org/written/opinions2012/07-09-2012/11-0092.pdf

***Department of Highway Safety and Motor Vehicles v. Carillon,* 95 So. 3d 901 (Fla. 1st DCA 2012).**

The district court denied a petition for a writ of certiorari filed by Department of Highway Safety and Motor Vehicles (DHSMV), seeking review of an order of the circuit court, sitting in its appellate capacity, wherein the circuit court quashed a hearing officer's order that had upheld the suspension of the driving privileges of the defendant. The defendant's driver's license was suspended for failure to submit to a breath test following an officer's response to a traffic crash with a possible impaired driver. The defendant requested an administrative hearing in which the hearing officer upheld the suspension. The circuit court, in its appellate capacity, found the record was devoid of any evidence that the impairment was due to consumption of alcohol and therefore, no law enforcement officer was authorized to request defendant to submit to a breath test. The district court held, under its constrained standard of review on second-tier certiorari, that even if it agreed with DHSMV that the circuit court erred in its ruling, such error would not violate a clearly established principle of law resulting in a miscarriage of justice, and therefore the district court had no basis to intervene.
http://opinions.1dca.org/written/opinions2012/07-27-2012/11-6241.pdf

***Ferrei v. Department of Highway Safety and Motor Vehicles*, 91 So. 3d 920 (Fla. 2d DCA 2012).**

The district court granted a petition for a writ of certiorari and remanded the case for proceedings consistent with its opinion. The defendant sought certiorari review by the circuit court of an administrative order sustaining the suspension of his driving privileges. The defendant contended the circuit court departed from the essential requirements of law in ruling that the hearing officer was not required to consider the legality of the stop and arrest in reviewing the license suspension. The court, citing *Department of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1079 (Fla. 2011), noted that a hearing officer is required to make the determination of whether a breath test was administered incident to a lawful arrest, as required by section 316.1932, Florida Statutes. The district court examined four slightly different scenarios following the *Hernandez* decision: the first, where a defendant submitted to a breath test and results indicated a blood alcohol level between .129 and .136 and the defendant pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the second where the defendant refused to submit to a breath test, pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the third, where a defendant submitted to the breath test and results indicated a blood alcohol level between .129 and .137, and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop; and the fourth where a defendant refused to submit to a breath test and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop.

In the current case, defendant had submitted to a breath test, which placed his blood alcohol content above legal range. However, there is no record to suggest the defendant was ever charged with driving under the influence. The court noted the defendant never had an opportunity to challenge the lawfulness of his stop in his civil administrative proceeding. The court did not know if he ever had the opportunity in a criminal proceeding either. As such, the circuit court is permitted to consider whether a criminal proceeding had provided the defendant an adequate mechanism to challenge the lawfulness of the stop. If the lower court determines the stop was unlawful, it is still permitted to decide whether the breath test evidence is admissible. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2006,%202012/2D12-79.pdf

***Pankau v. Department of Highway Safety and Motor Vehicles*, 91 So. 3d 923 (Fla. 2d DCA 2012).**

The district court granted a petition for a writ of certiorari and remanded the case for proceedings consistent with its opinion. The defendant sought certiorari review by the circuit court of an administrative order sustaining the suspension of his driving privileges. The defendant contended the circuit court departed from essential requirements of law in ruling that the hearing officer was not required to consider the legality of the stop and arrest in reviewing the license suspension. The court, citing *Department of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1079 (Fla. 2011), noted that a hearing officer is required to make the determination of whether a breath test was administered incident to a lawful arrest, as required

by section 316.1932, Florida Statutes. The district court examined four slightly different scenarios following the *Hernandez* decision: the first, where a defendant submitted to a breath test and results indicated a blood alcohol level between .129 and .136 and the defendant pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the second where the defendant refused to submit to a breath test, pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the third, where a defendant submitted to the breath test and results indicated a blood alcohol level between .129 and .137, and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop; and the fourth where a defendant refused to submit to a breath test and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop.

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***Gonzalez v. Department of Highway Safety and Motor Vehicles,* 91 So. 3d 924 (Fla. 2d DCA 2012).**

The district court granted a petition for a writ of certiorari and remanded the case for proceedings consistent with its opinion. The defendant sought certiorari review by the circuit court of an administrative order sustaining the suspension of his driving privileges. The defendant contended the circuit court departed from the essential requirements of law in ruling that the hearing officer was not required to consider the legality of the stop and arrest in reviewing the license suspension. The court, citing *Department of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1079 (Fla. 2011), noted that a hearing officer is required to make the determination of whether a breath test was administered incident to a lawful arrest, as required by section 316.1932, Florida Statutes. The district court examined four slightly different scenarios following the *Hernandez* decision: the first, where a defendant submitted to a breath test and results indicated a blood alcohol level between .129 and .136 and the defendant pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the second where the defendant refused to submit to a breath test, pleaded guilty to reckless driving and may have had the opportunity to challenge the legality of the stop in a criminal proceeding; the third, where a defendant submitted to the breath test and results indicated a blood alcohol level between .129 and .137, and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop; and the fourth where a defendant refused to submit to a breath test and criminal charges were dropped by the state before the defendant had the opportunity to challenge the legality of the stop.

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***Leyritz v. State*, 93 So. 3d 1156 (Fla. 4th DCA 2012).**

The district court reversed the circuit court's order granting costs of prosecution, where the trial court failed to allocate specifically the costs of prosecution, and remanded for a determination consistent with its opinion. The defendant was charged with manslaughter by impairment and manslaughter based on unlawful blood alcohol content but was convicted only of the lesser included offense of driving under the influence. The state moved to tax the sum of $16,497 as costs for expert witness fees, transcripts, exhibits, and other costs for trial preparation, as well as $12,360 for testimony of toxicology experts. The defendant contended there should be an allocation of costs, since the defendant was convicted of a lesser-included misdemeanor. The trial court determined the defendant was responsible for paying the $12,360 for toxicology experts and a flat $15,000 for the other costs of prosecution. The district court held the trial court must determine that the costs sought by the state were reasonably and necessarily related to the prosecution of the crime for which the defendant was convicted and may not be vague as to whether the costs requested were reasonably and necessarily related to the prosecution of the crime of driving under the influence.
http://www.4dca.org/opinions/August%202012/08-01-12/4D11-1114.op.pdf

***State v. Salle-Green*, 93 So. 3d 1169 (Fla. 2d DCA 2012).**

The district court reversed the circuit court and granted the state's appeal from the order suppressing the defendant's legal and medical blood alcohol level test results, because the defendant failed to show that the state improperly obtained her medical blood alcohol test results. The defendant was a driver involved in a collision resulting in the death of the other driver. At the hospital, police provided the nurse on duty a "legal blood draw kit" to obtain a blood sample from the defendant. The officer did not prepare a report describing the events preceding the administration of the test. The defendant was charged with DUI manslaughter and filed a motion to suppress her blood test results. The circuit court granted this motion because the witnesses at the suppression hearing could not provide the court with a reason why the blood draw was requested and had failed to show any probable cause to justify the legal blood draw. The state then attempted to subpoena the defendant's medical records, however, the court declined to allow this, stating the court already had the evidence it was seeking to subpoena.

This district court reversed the lower court. The district court noted the police would have been authorized to request a blood sample if a doctor or nurse had notified them that the

defendant's blood alcohol level was above the legal limit. While the testifying officer or testifying nurse could not state for lack of memory that this was the reason for the blood test, this does not amount to bad faith requiring the suppression of the defendant's medical records. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/August/August%2003,%202012/2D10-5638.pdf

***Brayley v. State*, 93 So. 3d 1233 (Fla. 2d DCA 2012).**

The district court affirmed the defendant's judgments and sentences for felony DUI (third offense), refusal to submit to testing, driving while license suspended or revoked, and operating a motorcycle without a license. The court reversed the order imposing restitution because it was entered after the defendant filed his notice of appeal, divesting the trial court of jurisdiction. http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/August/August%2010,%202012/2D11-3063.pdf

***Pennington v. State*, __ So. 3d __, 2012 WL 5272927_ (Fla. 5th DCA 2012), October 25, 2012.**

The district court reversed the defendant's conviction for DUI manslaughter, remanding for an amended judgment and sentence for DUI, and affirmed a conviction for leaving the scene of an accident with death. The defendant had appealed, arguing the trial court erred in denying his motion for judgment of acquittal because his reasonable hypothesis of innocence regarding the nature of the accident was unrebutted and in denying his motion for mistrial on the basis of juror misconduct. The court held there was not evidence to show that the defendant's intoxicated driving caused or contributed to the other driver's death is required by section 316.193, Florida Statutes.
http://www.5dca.org/Opinions/Opin2012/091712/5D11-1831.op.pdf

## II. Criminal Traffic Offenses

***State v. Conley*, 98 So. 3d 108 (Fla. 2d DCA 2012).**

The district court granted the state's appeal and reversed an order granting the defendant's motion to suppress evidence seized during a traffic stop made pursuant to section 316.3045(1)(a), Florida Statutes, which provides that it is unlawful for any person operating a motor vehicle to amplify sound which is plainly audible 25 feet or more from the motor vehicle. Following the stop, the defendant was charged with possession of cocaine, possession of marijuana, and obstruction of a law enforcement officer without violence. The defendant was not charged with a violation of section 316.3045, Florida Statutes. The state argued that the evidence seized should not be suppressed because the good faith exception to the exclusionary rule applied in this case. The court noted that evidence obtained from a search should be suppressed only if the officer had knowledge that the search was unconstitutional. *Pilieci v. State*, 991 So. 2d 883, 896 n. 10 (Fla. 2d DCA 2008). The defendant argued the traffic stop was illegal based on the district court's opinion in *State v. Catalano*, 60 So. 3d 1139 (Fla. 2d DCA 2011), which held section 316.3045, Florida Statutes, to be unconstitutional. However, the court noted this decision

was not issued until after the arrest, and even after the initial filing of the defendant's motion to suppress.

The court held that the officer in this case acted in an objectively reasonable manner, as a reasonable officer would not have known the noise ordinance statute was unconstitutional because the *Catalano* opinion was not issued until after the stop. The court reversed the order granting the defendant's motion to suppress.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2018,%202012/2D11-3481.pdf

***State v. Wooden*, 92 So. 3d 886 (Fla. 3d DCA 2012).**

The district court granted the state's appeal from an order dismissing an information for the felony charge of unlawful driving as a habitual offender, which requires the defendant to have three convictions of driving with a suspended license within a five-year period. In this case, two of the underlying suspensions occurred because the defendant twice failed to pay assessed traffic fines; the third offense was a failure to appear on a traffic summons after requesting a hearing for the offenses of driving with an expired registration and failure to provide proof of insurance. The lower court held the suspension for the third "failure to appear" charge did not qualify as one of the required three suspensions because it was contained within a provision which reduced the charge to a misdemeanor when the suspension was based on the failure to comply with a civil penalty. The district court disagreed, stating that the legislature had drawn a distinction between the failure to comply with a civil penalty and the deliberate refusal to appear at a hearing, which would preclude the valid assessment of a penalty because there would be no trial in the first place. The court reversed with instructions to reinstate the information.
http://www.3dca.flcourts.org/Opinions/3D11-0972.pdf

***State v. Arrington*, 95 So. 3d 324 (Fla. 4th DCA 2012).**

The district court reversed the lower court's holding that continued enforcement of section 316.0083, Florida Statutes, renders section 316.075, Florida Statutes, unconstitutional by treating citizens differently, depending on whether a red light violation is caught by a law enforcement officer (LEO), as is defined under section 316.075, Florida Statutes, or by a red light camera, under section 316.0083, Florida Statutes. The district court disagreed, noting the penalties applied are different, specifically that points are applied to a driver's license under section 316.075, Florida Statutes. Pursuant to section 316.075, Florida Statutes, a law enforcement officer has to observe the violation. The LEO then tickets the driver of the car. Under section 316.0083, Florida Statutes, because no one observes the driver, the owner of the car is sent a notice and the state provides a rebuttable presumption that the owner was driving and allows the owner to rebut the presumption. The court notes that points are personal in nature, and it would not be reasonable to impose them based on a red light violation captured by a camera with no LEO present to determine the vehicle operator. The court held there is therefore a rational basis for differing penalties between the two statutory provisions, and section 316.075, Florida Statutes, is not unconstitutional.
http://www.4dca.org/opinions/July%202012/07-25-12/4D11-2876.op.pdf

***City of Orlando and Lasercraft, Inc. v. Udowychenko*, 98 So. 3d 589 (Fla. 5th DCA 2012).**

The district court affirmed the lower court's ruling and denied the plaintiffs' appeal of a final judgment in favor of the defendant which invalidated the City of Orlando's (City) red light camera ordinance as preempted by state law. The district court also certified conflict with the Third District Court of Appeal in *City of Aventura v. Masone*, 36 Fla. L. Weekly D2591(Fla. 3d DCA 2011). The defendant's vehicle was recorded running a red light in 2009. The defendant moved to dismiss because the City failed to establish that the vehicle in the video was owned by the defendant or under his care, custody, or control at the time of the infraction. The defendant then filed civil suit against the plaintiffs, claiming unjust enrichment, conversion, and malicious prosecution, and demanding injunctive relief. The plaintiffs argued the ordinance did not conflict with state law and the ordinance was not preempted by statute since there was no exclusive reservation of authority to the state and the legislature had only recently enacted a statute in order to expressly preempt the use of red light cameras to the state. The trial court concluded the City's ordinance intrudes in an area preempted to the state and, therefore, is invalid, which the district court affirmed.
http://www.5dca.org/Opinions/Opin2012/070212/5D11-720.op.pdf

***Rubinger v. State*, 98 So. 3d 659 (Fla. 4th DCA 2012).**

The district court reversed a sentence for culpable negligence, agreeing that the trial court erred in allowing the state to introduce irrelevant, prejudicial evidence of her behavior after the alleged crime. The defendant was involved in a two-car accident, which resulted in the death of the driver of the other vehicle. The state introduced evidence of the defendant's behavior after the accident, but at the accident scene, contending it was relevant because the behavior, in this case being distracted, talking on a cellular phone, and being in a hurry to get to a social function, was relevant. The court, however, agreed with the defendant that evidence of her mental state after the accident was not relevant to the issue of whether she operated her motor vehicle in a reckless manner. Evidence is only relevant if it "[tends] to prove or disprove a material fact." § 90.401, Fla. Stat. Here, the evidence at issue did not tend to prove that defendant was driving recklessly at the time of the accident.
http://www.4dca.org/opinions/Sept%202012/09-27-12/4D10-5043.op.pdf

## III. Arrest, Search and Seizure

***Blalock v. State*, 98 So. 3d 118 (Fla. 1st DCA 2012).**

The district court affirmed the circuit court's denial of a motion to suppress evidence of possession of marijuana discovered after a drug-dog's sniff and alert during a traffic stop. The court only examined whether the dog's alert did not give officer's probable cause for the search because the state did not establish the dog's reliability under *Harris v. State*, 71 So. 3d 756 (Fla. 2011), *cert. granted*, 132 S. Ct. 1796 (2012).

The defendant argued that, when applying the "totality of the circumstances" analysis affirmed in *Harris*, the case required reversal because the state failed to introduce evidence of the

dog's field performance, including deployment and success and failure rate. The district court disagreed, noting the testifying officer/handler for the dog testified to field performance. Moreover, the dog's records, while not admitted into evidence, which is preferable, had been made available to defense counsel, who had used them when cross-examining the officer during the initial motion to suppress hearing. The district court also disagreed with the defendant's contention that the dog's field performance revealed the dog was not sufficiently reliable to provide probable cause. The court held that based on the low standard for probable cause "([p]robable cause exists 'when there is a fair probability that contraband or evidence of a crime will be found in a particular place'". . . *Harris)*, there were grounds to search the defendant's truck when the dog's success rate was 52%, as this indicates the presence of drugs by more than a preponderance of the evidence, thus exceeding the fair probability requirement of probable cause. The court also noted that the state introduced considerable evidence regarding both the dog and the handling officer's training, which along with the evidence of successful field performance, provided the trial court adequate basis to evaluate the dog's reliability under the totality of the circumstances as required by *Harris*.
http://opinions.1dca.org/written/opinions2012/07-19-2012/11-5057.pdf

## IV. Torts/Accident Cases

***Racine v. Jean-Pierre*, 92 So. 3d 306 (Fla. 4th DCA 2012).**

The district court affirmed the lower court's ruling and dismissed the defendant's appeal from a final judgment in which the jury found him negligent in causing an accident, injuring plaintiffs. The defendant argued that the trial court erred by not offsetting the amount from both verdicts against him by the amount the plaintiffs received from the defendant's mother (the vehicle owner) and the insurance company. The court disagreed as the settlement was, in part, for the release of other claims against the insurance company and the settlement was not apportioned in any way.
http://www.4dca.org/opinions/July%202012/07-18-12/4D10-4737.op.pdf

***Moore v. Gillett*, 96 So. 3d 933 (Fla. 2d DCA 2012).**

The district court granted the defendant's motion to reverse the order for a new trial and remanded the case with an order to reinstate the jury's verdict and enter final judgment. The plaintiffs had sued for damages because of personal injuries sustained in an automobile accident. Following a verdict for the plaintiffs, the plaintiffs filed a motion for a new trial, due to alleged multiple instances of misconduct by the defendant's lead attorney. The court examined the four preserved objections. Finding none of them rose to the level of fundamental error, the district court reversed the lower court's order and remanded the case for entry of a final judgment in accordance with the jury's verdict.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2018,%202012/2D11-1235.pdf

***Costa v. Aberle*, 96 So. 3d 959 (Fla. 4th DCA 2012).**

The district court reversed the lower court's ruling and vacated the order for a new trial. The plaintiff was injured in an automobile accident. Only causation and damages were at issue. The defendant argued that the plaintiff's treating physician had intentionally caused harm to her back in order to perform surgery. The defendant requested a *Stuart* instruction, wherein all damages caused as a result of the accident would be impugned upon the defendant. *Stuart v. Hertz*, 351 So. 2d 703 (Fla. 1977). The plaintiff also requested a *Dungan* instruction, stating the question of the necessity of treatment is to be viewed from the plaintiff's perspective, as the plaintiff felt the defendant had gone too far by suggesting her treating physician was negligent in his treatment. *Dungan v. Ford*, 632 So. 2d 159 (Fla. 1st DCA 1994). The court agreed and gave these instructions.

Following a verdict for the plaintiff, the defendant moved for a new trial, arguing the special instructions were not appropriate in this case. The trial court granted a new trial. The district court disagreed, noting the defense failed to show how the instructions were appropriate in this case given defense experts' testimony that the treating physician had acted negligently in order to justify surgery as well as testimony that the surgery was unnecessary. The district court remanded with instructions for entry of a verdict consistent with the jury verdict.
http://www.4dca.org/opinions/August%202012/08-01-12/4D10-2461.op.pdf

***Rubrecht v. Cone*, 95 So. 3d 950 (Fla. 5th DCA 2012).**

The district court granted plaintiff husband's motion for a new trial and remanded the case to the lower court. This case arose out of an automobile accident, wherein plaintiffs, a husband and wife, were rear ended by an SUV, which was in turn rear ended by a distribution truck. The plaintiff husband appealed a final judgment which awarded the husband $20,000 in damages, and the wife nothing. The plaintiff husband filed a motion for additur or in the alternative a motion for new trial, asserting the damages bore no relationship to the evidence at trial and the verdict was against the manifest weight of evidence. At issue was the court's allowance of the defense to impeach the husband using contents of an offer of settlement his attorney had presented for an automobile accident occurring one month before the one at issue in the instant matter, and by publishing to the jury a portion of an appellate opinion from the divorce case of the plaintiffs' expert witness. The court determined both evidentiary rulings constituted reversible error.
http://www.5dca.org/Opinions/Opin2012/080612/5D10-1894.op.pdf

***Jiminez v. Faccone*, 98 So. 3d 621 (Fla. 2d DCA 2012).**

The district court granted the defendant's appeal and reversed the lower court's granting of two prior motions for summary judgment and remanded for a new trial. The defendant had previously been in an automobile accident with the plaintiffs. Prior to trial, the plaintiffs moved for summary judgment, as to the issue of liability, stating that because the defendant had struck their vehicle from behind, she was the "sole cause" of the accident. The trial court granted this motion. The trial court also held that the defendant was not entitled to a threshold defense. The district court reversed, holding a driver does not have to eliminate all possible negligence before

being entitled to a jury trial, citing *Sistrunk v. Douglas*, 468 So. 2d 1059 (Fla. 1st DCA 1985) and *Alford. v. Cool Cargo Carriers, Inc.*, 936 So. 2d 646 (Fla. 5th DCA 2006).
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/August/August%2010,%202012/2D10-4595rh.pdf

***Adams v. Barkman*, __ So. 3d ____ (Fla. 5th DCA 2012), 2012 WL 4208097, September 21, 2012, 5D10-2610.**

The district court affirmed a verdict awarding the plaintiffs $1.3 million in damages stemming from a motor vehicle accident in which the defendant, driving an SUV, collided with plaintiffs who were riding a motorcycle. The defendant contended that the trial court abused its discretion by: (1) granting the plaintiffs' motion for mistrial based upon the improper conduct of defense counsel, Mr. Fischer, (2) striking Adams' pleadings without considering all the *Kozel* factors in order to properly evaluate whether a lesser sanction might be appropriate, and (3) bifurcating the case between negligence and causation and damages. *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993). The district court found no error and affirmed, noting the type of conduct exhibited by defense counsel which led to the striking of pleadings was a continuing problem in this type of case.
http://www.5dca.org/Opinions/Opin2012/091712/5D10-2610.op.pdf

***Gay v. Association Casualty Insurance*, __ So. 3d ____ (Fla. 5th DCA 2012), 2012 WL 4208062, September 21, 2012, 5D10-1906.**

The district court reversed the lower court's ruling and remanded this case, finding there was a remaining issue of material fact as to whether there was uninsured motorist coverage available. The plaintiff had been in an automobile accident with an underinsured motorist. At the time, his vehicle was insured by the defendant; the policy had been purchased through an agent. The plaintiff had received a check from the other driver's insurance company, along with a release of all claims. Prior to cashing the check and signing the release, plaintiff contacted his agent and asked if it was okay to cash this check. He was advised he could cash the check, but not to sign the release as this could affect his ability to receive underinsured motorist benefits. The defendant denied the plaintiff's claim for underinsured motorist benefits on the basis he settled his claim contrary to his policy language. The court held that notice to an agent was notice to the principal, citing *Johnson v. Life Ins. Co. of Ga.*, 52 So. 2d 813 (Fla. 1951). The court remanded the case to determine if the plaintiff had indeed received the advice he claimed from his agent, as the agent disputed this statement of fact.
http://www.5dca.org/Opinions/Opin2012/091712/5D10-1906.op.pdf

***Bowen v. Taylor-Christiansen*, 98 So. 3d 136 (Fla. 5th DCA 2012).**

This district court reversed and remanded the lower court's decision to find a directed verdict for defendant, finding the defendant was vicariously liable for damages arising from an automobile collision caused by his ex-wife as he had an identifiable property interest in the case at the time of the collision, as he was an owner of the vehicle, having purchased it with his ex-wife.

http://www.5dca.org/Opinions/Opin2012/082712/5D09-3888.op.pdf

## V. Drivers' Licenses

***Stangarone v. State*, 94 So. 3d 652 (Fla. 4th DCA 2012).**

The district court denied the defendant's motion to correct an illegal sentence and affirmed the trial court, holding the sentence was neither illegal nor ambiguous. The trial court had, among other penalties, permanently revoked defendant's driver's license related to a 1995 plea to felony driving under the influence (DUI). The defendant appealed based on section 322.271(5), Florida Statutes, which states a person subject to permanent revocation for having four or more DUI's may apply for a permit after five years. The defendant alleged the Department of Motor Vehicles (DMV) was continuing to construe his sentencing documents in a way that imposed a continuing penalty on him such that he was not eligible to apply for a permit, even if he could meet the requirements for the DMV's discretionary exercise. The district court held that the defendant's claim was not properly a rule 3.800(a) challenge to an illegal sentence, citing *Auger v. State*, 725 So. 2d 1178, 1179 (Fla. 2d DCA 1998), which held a lifetime revocation could not be considered an illegal sentence.
http://www.4dca.org/opinions/August%202012/08-01-12/4D11-1953.op.pdf

***Department of Highway Safety and Motor Vehicles v. Saxlehner*, 96 So. 3d 1002 (Fla. 3d DCA 2012).**

The district court granted the Department of Highway Safety and Motor Vehicles' (DMV) petition for writ of certiorari and quashed the circuit court's decision to grant the defendant's writ of certiorari and reverse the DMV's order sustaining the suspension of the defendant's driver's license. The district court, in doing so, affirmed the DMV's suspension of the defendant's driver's license.

The defendant had demanded a formal hearing for suspension of his driver's license which resulted from a breathalyzer test revealing a blood alcohol content twice the legal limit. At his hearing, of the three officers who had responded to the incident, the only one who had seen the defendant behind the wheel of the vehicle did not appear; the other two officers did appear. Following an upheld suspension, the defendant filed a petition for a writ of certiorari, which the circuit court granted on the ground that the only evidence presented at the hearing to establish that the defendant was the driver came from the other two officers, which amounted to hearsay. The district court held the circuit court departed from the essential requirements of law and failed to apply the correct statutory and administrative proceedings governing formal review for suspension hearings. § 322.2615, Fla. Stat., and Fla. Admin. Code R. 15A-6.013. The court noted neither the statute nor the administrative regulation prohibits hearsay evidence, nor do they require non-hearsay evidence to corroborate any hearsay evidence admitted at the hearing. As such, the district court granted the DMV's petition of write of certiorari and quashed the circuit court's opinion.
http://www.3dca.flcourts.org/Opinions/3D11-3305.pdf

***Velcofski v. State*, 96 So. 3d 1069 (Fla. 4th DCA 2012).**

The district court reversed a conviction for driving while license permanently revoked pursuant to section 322.341, Florida Statutes, and remanded for a new trial. The defendant argued that the trial court erred by admitting into evidence his complete and unredacted driving record which listed twenty-one convictions, including five for driving under the influence (DUI). The court reversed for a new trial because the probative value of this evidence was substantially outweighed by the danger of unfair prejudice, and the error in admitting it was not harmless. http://www.4dca.org/opinions/Sept%202012/09-05-12/4D10-5016.op.pdf

## VI. Amendments to Florida Rules of Traffic Court

***In re: Amendments to the Florida Court Rules of Traffic Court*, 95 So. 3d 117 (Fla. 2012).**

The Florida Supreme Court issued amendments to the Florida Rules of Traffic Court pursuant to the regular cycle report filed by the Traffic Court Rules Committee, and approved by the Board of Governors of The Florida Bar.
http://www.floridasupremecourt.org/decisions/2012/sc12-38.pdf