FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

October– December 2017

[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)

Keene v. State, 227 So. 3d 1283 (Fla. 5th DCA 2017)

The defendant was convicted of felony DUI and filed a rule 3.800(a) motion for postconviction relief. The trial court denied the motion, and the appellate court affirmed, holding that his first argument – "that the trial court erred by failing to give him a downward departure sentence" – was meritless. The defendant's second claim, "that his conviction for felony DUI was illegal because his prior DUI conviction was too far removed in time, constitutes an attack on the sufficiency of the evidence" and "should have been raised on direct appeal and is not cognizable under rule 3.800(a)." The defendant's third claim was that "he was sentenced above the limit contemplated by the plea offer; however, . . . [g]iven its conclusory nature, this claim is also meritless.

As to the defendant's fourth claim – that "the postconviction court lacked jurisdiction to revoke his original term of community control and probation imposed for Count I, because he had already completed the requisite terms under that count" – the court stated that, while the defendant was still serving probation for Count II,

> it appears that he may have completed his sentence as to Count I at the time the lower court ordered his community control and probation revoked as to both Counts I and II. This claim cannot be adjudicated based upon the records presented. However, we affirm without prejudice for [the defendant] to raise this jurisdictional claim in a timely motion

> pursuant to rule 3.850 if he can argue in good faith that the sentence imposed for violation of probation was more severe because the lower court's order of revocation was as to both Counts I and II, rather than only revoking as to Count II.

http://www.5dca.org/Opinions/Opin2017/101617/5D17-2455.op.pdf

***Goodman v. State*, 229 So. 3d 366 (Fla. 4th DCA 2017)**

The defendant filed a motion for rehearing, arguing that his vehicle "should have been considered as 'possess[ing] an exculpatory value that was apparent before [the evidence] was destroyed,' in that his expert had already developed opinions regarding the malfunction of the vehicle to which he testified in the first trial," but that the court instead "addressed the [vehicle] as only potentially exculpatory evidence if subject to additional tests which could exonerate the defendant." But the court denied the motion, stating:

> Even if [the vehicle] had exculpatory value before it was destroyed, it was not of "such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." . . . The useful evidence . . . had already been obtained from the vehicle and used by the expert as the foundation of his opinion regarding the malfunction of the vehicle. He was able to give his opinion in the second trial, just as he did in the first trial. Thus, it was the expert's opinion, not the presence of the [vehicle], which furnished the materially exculpatory evidence.

https://edca.4dca.org/DCADocs/2014/4479/144479_NOND_10252017_090620_i.pdf

***Moreno v. State*, 25 Fla. L. Weekly Supp. 582a (Fla. 11th Cir. Ct. 2017)**

At his DUI trial the defendant claimed a toothache (which turned out to be a fracture) was responsible for his behavior, but the prosecutor stated: "Does a toothache mean that you are not going to blow into a machine, show the officer that, hey, you're wrong; everything you have seen, everything you have done, so far . . . No. Knowing you're guilty of DUI . . . that's why you don't have evidence in front of you showing his alcohol level." The prosecutor also said in closing argument that the defendant "was conscious that he was inebriated, that he was under the influence of alcohol, and he kept that from you." The defendant was convicted of DUI and appealed, arguing that the comments were statements "from which (1) the jury may have erroneously concluded that field sobriety exercise (FSE) results are scientific proof of impairment; and (2) from which the jury may have been confused as to who bears the burden of proving guilt in DUI proceedings." The circuit court, in its appellate capacity, agreed and vacated the conviction and remanded for new proceedings.

II. Criminal Traffic Offenses

***Hutto v. State*, __ So. 3d __, 2017 WL 6624098 (Fla. 1st DCA 2017)**

The defendant pled guilty to driving with a permanently revoked license. At sentencing he and the state disagreed as to whether two DUIs should have been included on the scoresheet the state proposed, and the court granted a postponement so his attorney could research a

transcript regarding one of the DUIs. The sentencing hearing was postponed a second time, but before that date the trial court, without the defendant being present, entered an order declaring the state's scoresheet to be proper and sentenced the defendant to five years in prison. The appellate court reversed, stating that "by entering the sentencing order before concluding the sentencing hearing process, the trial court failed to orally pronounce the sentence and to provide [the defendant] the opportunity to be heard."
https://edca.1dca.org/DCADocs/2016/0908/160908_1287_12292017_08512101_i.pdf

***Kemp v. State*, __ So. 3d __, 2017 WL 6371164 (Fla. 4th DCA 2017)**

After exiting a highway ramp at over 128 mph and crashing into a car, the defendant was convicted on five counts of vehicular manslaughter. He had argued that he had lost consciousness before the collision, but over his objection the trial court admitted the accident re-constructionist's testimony that the defendant had braked before the crash. The defendant argued that the trial court erred in admitting the testimony and that "he was procedurally prejudiced by the late disclosure of an expert opinion." But the appellate court affirmed, stating: "As the Court declared in *Daubert*, the trial judge is assigned 'the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.' . . . Here, the trial court did just that."
https://edca.4dca.org/DCADocs/2015/3472/153472_1257_12132017_08431126_i.pdf

***Hillary v. State*, __ So. __, 2017 WL 6368623 (Fla. 4th DCA 2017)**

The defendant was convicted of possession of cocaine and driving without a license. He appealed his sentence, and the appellate court reversed because "the trial court considered a subsequent arrest without conviction when sentencing" the defendant.
https://edca.4dca.org/DCADocs/2016/2991/162991_1709_12132017_09143161_i.pdf

***McCullough v. State*, __ So. 3d __, 2017 WL 5162045 (Fla. 4th DCA 2017)**

The defendant stole a car, led police on a high-speed chase, and struck and killed a bicyclist. She entered an open plea of no contest to leaving the scene of a crash with death, fleeing or eluding a law enforcement officer causing serious bodily injury or death, vehicular homicide (the three "homicide offenses"), grand theft of a motor vehicle, resisting an officer without violence, and driving with a suspended license, and was sentenced to 30 years. She appealed, arguing that her sentences for all three homicide offenses violated double jeopardy; i.e., "that she can be punished for only one of the homicide offenses because they all related to a single homicide—that of the bicyclist." The appellate court reversed, stating that the defendant's argument "invokes what we will refer to as the 'single homicide rule'—a judicially created extension of the constitutional and statutory double jeopardy bar. It provides that although a defendant can be charged and convicted under multiple criminal statutes for conduct causing another's death during one criminal episode, that criminal defendant can only be punished once for that death." The court remanded with instructions for the trial court to vacate the vehicular homicide conviction and corresponding 15-year sentence.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/November/November%2008,%202017/2D16-31.pdf

***Cohen v. State*, __ So. 3d __, 2017 WL 5171352 (Fla. 4th DCA 2017)**

The defendant was initially charged with third degree felony fleeing, but before trial the state amended the charge to second degree. The defendant was convicted of second degree felony fleeing and misdemeanor reckless driving. He appealed, arguing insufficiency of the evidence and ineffective assistance of counsel – his attorney didn't realize the charge had been elevated until conferencing on final jury instructions. The appellate court affirmed, noting that when the defendant's attorney realized his oversight, "[h]e argued that he did not defend on the added element of wanton disregard while fleeing. . . . When the State pointed out that the reckless driving charge had the same wanton disregard language, . . . defense counsel stated he did not care about that charge and that he practically conceded wanton disregard. In an attempt to remedy the failure, the trial court instructed the jury on both second and third degree felony fleeing. The jury found [the defendant] guilty of second degree felony fleeing." The court held that the evidence was sufficient to support the jury's finding of wanton disregard. It held further that "[g]enerally, ineffective assistance claims may not be raised on direct appeal. . . . A rare exception exists when the ineffectiveness is obvious on the face of the record, the prejudice is indisputable, and tactical explanation is inconceivable." But the narrow exception did not apply.
https://edca.4dca.org/DCADocs/2016/1342/161342_1257_11082017_08554077_i.pdf

***Hurd v. State*, 229 So. 3d 876 (Fla. 5th DCA 2017)**

The defendant appealed the denial of his motion to correct illegal sentence, arguing that "the trial court illegally reclassified his convictions for attempted voluntary manslaughter and resisting an officer with violence pursuant to section 775.087(1), Florida Statutes (2010), based on his use of an automobile as a weapon." The appellate court affirmed the denial of the motion, finding that there was no controlling precedent on the issue, and that an automobile could be used as a "weapon" under the plain and ordinary meaning of the term. It certified conflict with *Gonzalez v. State*, 197 So. 3d 84 (Fla. 2d DCA 2016).
http://www.5dca.org/Opinions/Opin2017/102317/5D17-1802.op.pdf

***Shepard v. State*, 227 So. 3d 746 (Fla. 1st DCA 2017)**

The defendant was convicted of manslaughter with a weapon and leaving the scene of a crash involving death. He appealed, challenging (1) "the reclassification of his manslaughter conviction from a second-degree felony to a first-degree felony based on his use of a 'weapon,' when the 'weapon' was an automobile," and (2) the trial court's consideration of his lack of remorse in sentencing him. The appellate court affirmed the manslaughter conviction, "acknowledging and certifying conflict with the Second District Court of Appeal's definition of a 'weapon' as to section 775.087(1), Florida Statutes." But it vacated the sentence and remanded with instructions that the defendant be resentenced on both convictions before a different judge because the trial court improperly considered his lack of remorse while sentencing him.
https://edca.1dca.org/DCADocs/2015/3836/153836_DC08_10052017_081711_i.pdf

***Williams v. State*, 25 Fla. L. Weekly Supp. 579a (Fla. 5th Cir. Ct. 2017)**

The defendant entered a plea to leaving the scene of an accident and driving without a license, and over her objection the court conducted a restitution hearing regarding damage to the

victim's vehicle. The trial court found that there were two separate accidents – a rear-end collision and a scraping of the side of the victim's vehicle – and that the side scrape was caused when the defendant was leaving the scene, and it entered a restitution order against the defendant. The defendant challenged the restitution award, the state conceded error, and the circuit court, in its appellate capacity, reversed. It stated: "Restitution can only be ordered for damages that are directly or indirectly caused by the criminal offense. There must be a significant relationship between the offense and the damages. In the context of leaving the scene of an accident, appellate courts have consistently held that damages resulting from the accident itself do not provide a basis for restitution, as those damages precede the crime."

***McFarlane v. State*, 25 Fla. L. Weekly Supp. 500a (Fla. 15th Cir. Ct. 2017)**

The defendant was charged with driving at an unlawful speed. She filed a motion to disqualify the traffic hearing officer based on, among other things, the officer referring her attorney to the local county bar association's professionalism committee. The hearing officer denied the motion, and the defendant filed a second motion, arguing the hearing officer had improperly commented on the first motion. The hearing officer denied the second motion and the defendant sought review, which the circuit court, in its appellate capacity, granted, stating that

> the Hearing Officer exceeded her scope of review upon remarking both that an officer of the court "has an obligation to show that the presiding judicial officer has given an impression of bias" before moving to disqualify and that disqualification should not be used "as a tool for 'judge shopping.'" These comments plainly are not relevant to whether [the defendant] had a well-founded fear she would not receive a fair trial, thereby making them irrelevant to the legal sufficiency of the First Motion. In making these comments, then, the Hearing Officer passed on matters *besides* the First Motion's legal sufficiency. This is grounds for a writ of prohibition. . . . Moreover, the Hearing Officer's comments implicate [the defendant's] counsel's motivations in filing the First Motion at all, as she has intimated that it was an attempt at "judge shopping." This in and of itself is grounds for recusal.

III. Civil Traffic Infractions

***Connell v. State*, 25 Fla. L. Weekly Supp. 692a (Fla. 8th Cir. Ct. 2017)**

The trial court found the defendant guilty of failing to drive in a single lane. He appealed, and the circuit court, in its appellate capacity, reversed, stating that a violation of section 316.09, Florida Statutes, "requires evidence that the driver's conduct created a reasonable safety concern," and in this case the defendant had crossed into another lane to avoid an obstruction in the road. Although he lost control of his vehicle after returning to his lane, resulting in a collision, "failure to maintain control of a vehicle was not contemplated by the citation issued."

IV. Arrest, Search and Seizure

***Florida v. Worsham*, 138 S.Ct. 264 (2017)**

In *State v. Worsham*, 227 So. 3d 602 (Fla. 4th DCA 2017), the defendant had been charged with DUI manslaughter and vehicular homicide. The trial court granted his motion to suppress data the police had downloaded from his vehicle's black box because no warrant had been issued and there were no exigent circumstances. The Fourth District Court of Appeal affirmed, and the state filed a petition for writ of certiorari. The United States Supreme Court denied the petition.

Johnson v. State, __ So. 3d __, 2017 WL 6764869 (Fla. 2d DCA 2017)

The defendant was stopped by police after failing to stop at a stop sign. He was convicted of driving while license suspended, fleeing or attempting to elude a police officer, depriving an officer of means of protection or communication, resisting an officer with violence, felony battery, criminal mischief, and resisting an officer without violence. He appealed the convictions, arguing that "his convictions and sentences for both resisting an officer with violence and resisting an officer without violence violate double jeopardy principles." The state conceded the issue, and the appellate court reversed the conviction for resisting arrest without violence and remanded for resentencing.
https://edca.2dca.org/DCADocs/2016/3816/163816_DC08_12222017_081038_i.pdf

Weaver v. State, __ So. 3d __, 2017 WL 6502414 (Fla. 2d DCA 2017)

The defendant was stopped and arrested because the license plate on the vehicle she was driving did not match the vehicle. A search revealed amphetamine, and she was charged with possession of a controlled substance and operating an unregistered vehicle. She filed a motion to suppress, arguing the officer lacked probable cause to arrest her because the officer did not see her attach the license plate to the vehicle, so the arrest was an illegal warrantless arrest for a misdemeanor committee outside the officer's presence. The trial court denied her motion, but the appellate court agreed with the defendant and reversed and remanded.
https://edca.2dca.org/DCADocs/2016/4461/164461_DC13_12202017_082123_i.pdf

A.M. v. State, __ So. 3d __, 2017 WL 6542677 (Fla. 5th DCA 2017)

The trial court denied the defendant's motion to suppress a pistol the police found "during a warrantless arrest incidental to the theft of a 'bait vehicle.'" The defendant appealed, and the appellate court reversed "because the investigating officer had insufficient evidence to order a patrol unit to stop a different 'non-bait' vehicle in which [the defendant] was riding as a passenger."
http://www.5dca.org/Opinions/Opin2017/121817/5D17-1062.op.pdf

Scott v. State, __ So. 3d __, 2017 WL 5503826 (Fla. 5th DCA 2017)

The defendant was convicted of robbery with a firearm, fleeing or attempting to elude a law enforcement officer at high speed or with wanton disregard, and resisting an officer without violence. He filed a motion for mistrial "based on the State's alleged discovery violation in failing to disclose to the defense its fingerprint expert's oral statement revealed during rebuttal." The trial court denied the motion, and the defendant appealed. The appellate court affirmed "because, first, there was no discovery violation, and second, even if the State's failure to disclose was a discovery violation, the record establishes that the violation was harmless."

http://www.5dca.org/Opinions/Opin2017/111317/5D16-3843.op.pdf

***Deno v. State*, __ So. 3d __, 2017 WL 5503750 (Fla. 2d DCA 2017)**

The defendant was a passenger in a vehicle that was stopped for having a defective taillight and no rear bumper. She gave the officer false identification because she had an outstanding arrest warrant, and she was arrested on the outstanding warrant and for providing a false name to a law enforcement officer. At the jail, a deputy saw a bag of crack cocaine fall from the defendant's pants, so she was also charged with introducing contraband into a county detention facility. She moved to suppress all the evidence, arguing the arrest for providing false information was illegal because she was not under arrest or lawfully detained when she gave the false name. The trial court denied her motion and she appealed, but the appellate court affirmed, stating: "Although both [the defendant] and the State assert that [the stopping officer's] request for [the defendant's] identification occurred during a consensual encounter (with their arguments, of course, diverging from there), [the defendant], as the passenger in a vehicle subject to a valid traffic stop, was lawfully detained at that point."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/November/November%2017,%202017/2D16-567.pdf

***State v. Lee*, __ So. 3d __, 2017 WL 547446 (Fla. 4th DCA 2017)**

Police saw the defendant park his car and saw a man enter the car for a few minutes and then leave. They stopped the defendant's car and found a small rock of crack cocaine under his seat, and he was convicted of possession of cocaine. He filed a motion for judgment of acquittal, which the trial court granted, stating that "[t]he only evidence in this case was he was driving the vehicle." The state appealed, and the appellate court reversed, stating:

> Constructive possession can be proven by showing that the defendant had knowledge of the presence of the contraband and that he exercised control over it. . . . The [defendant] was in possession and control of the car when the rock of cocaine was discovered. This alone is sufficient to establish a prima facie case of guilt. . . . The defense failed to introduce any evidence rebutting the presumption of knowledge that arose from [the defendant's] control and possession of the car. The fact that another person had briefly been in the car, without more, does not negate the inference of constructive possession.

https://edca.4dca.org/DCADocs/2016/2269/162269_1709_11152017_09203823_i.pdf

***Farr v. State*, __ So. 3d __, 2017 WL 5171365 (Fla. 4th DCA 2017)**

After a traffic stop, the defendant refused consent for officers to search his vehicle. A K-9 unit was called in and alerted to crack cocaine on the floorboard. At trial the court allowed the state to ask the defendant about his four prior felony convictions and denied the motion for new trial that the defendant filed on that ground. The jury found the defendant guilty, and he appealed. The appellate court reversed, stating that generally the state may not inquire into the nature of a defendant's prior convictions. While "[a]n exception exists when the defendant attempts to mislead the jury about the prior convictions," in this case the defendant's referral to the prior felonies as having occurred in 2010, rather than in 2010 and 2013, if misleading, "was

misleading only insofar as it created the false impression that appellant had not been in trouble with the law in six years. . . . By testifying as to the date of the offenses, appellant opened the door only as to the dates of convictions in the prior offenses. Eliciting testimony as to the nature of the crimes . . . did nothing to dispel the misleading impression created on direct examination as to the timing of those offenses. Simply put, the nature of [the defendant's] prior convictions was not necessary to negate or dispel any false or misleading impression." The appellate court further found the trial court's error was not harmless.
https://edca.4dca.org/DCADocs/2016/3814/163814_1709_11082017_09063105_i.pdf

***State v. Battle*, __ So. 3d __, 2017 WL 4798387 (Fla. 2d DCA 2017)**

A deputy saw the defendant by a car parked on the wrong side of the road, handling a shotgun in the presence of persons the deputy knew to be convicted felons. The deputy saw the defendant put the shotgun in the car's trunk and get into the driver's seat, and he called in other units. A deputy responding to the call stopped the defendant after seeing him make a U-turn into the flow of traffic. A computer check showed the defendant was a convicted felon, and after a search the defendant was charged with possession of a firearm by a convicted felon and possession of cocaine. The trial court granted the defendant's motion to suppress, and the state appealed. The appellate court reversed, stating: "The circuit court's finding that [the deputy] was not credible concerning her subjective motivation for why she stopped the car was simply irrelevant to the issue at hand. The car was parked illegally. The deputy had probable cause to stop the car to issue a citation to [the defendant]. [The defendant's] Fourth Amendment rights were not violated when she did so."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/October/October%2025,%202017/2D16-640.pdf

***State v. Benjamin*, __ So. 3d __, 2017 WL 4700123 (Fla. 5th DCA 2017)**

Officers saw the defendant driving a car with illegally tinted windows, approached him when he stopped, requested a K-9 unit to search the car, and ordered the defendant to get out of his car. An officer saw a firearm under the driver's seat, and the defendant was arrested and charged with possession of a firearm by a convicted felon. The defendant filed a motion to suppress, which the trial court granted, finding that the officer's order for the defendant to get out of his car "was not based on a valid safety concern." The appellate court reversed, stating that since the defendant was lawfully detained, "the police officer could properly order [him] to exit his vehicle, even if the officer did not have a particularized basis to believe that [he] was a threat to the officer's safety."
http://www.5dca.org/Opinions/Opin2017/101617/5D16-4152.op.pdf

V. Torts/Accident Cases

***Sewell v. Racetrac Petroleum, Inc.*, __ So. 3d __, 2017 WL 6598586 (Fla. 3d DCA 2017)**

Sewell hit a tree after allegedly being cut off by a vehicle that had turned left out of a gas station and went through an opening in the concrete median into Sewell's lane. She sued Racetrac, which owned, developed, and operated the gas station, alleging that it had "created a dangerous condition when it lobbied the local county government to create the cut in the median

to promote access to its property," and that "Racetrac painted driveway markings that encouraged customers to turn left out of its property when it knew or should have known that such turns presented an unreasonable danger." The trial court dismissed the negligence action, finding that Racetrac did not owe a legal duty to Sewell. The appellate court affirmed in part and reversed in part. It held that "a person who petitions the government for a road improvement outside of his or her property has no legal duty to guard against the government making a decision that will create an allegedly unreasonably dangerous road condition. Therefore, we find no legal error in the trial court's decision to dismiss that portion of the complaint."

But the court stated further: "Sewell's second theory of liability concerns Racetrac's duty to manage signs and pavement markings on its own property to protect its customers and the public from the danger of cars exiting the property by turning left and using the existing cut in the median. . . . The complaint alleges that Racetrac knew or should have known that its conduct in this regard presented an unreasonable danger. This theory is viable under the existing case law. . . . In this regard, the court erred in dismissing that part of the complaint."
http://www.3dca.flcourts.org/Opinions/3D16-1218.pdf

Vickers v. Thomas, __ So. 3d __, 2017 WL 6542601 (Fla. 5th DCA 2017)

After an automobile accident, Thomas sued Vickers. Vickers admitted responsibility for the accident but disputed that it was the cause of Thomas's permanent injuries. The jury awarded Thomas compensatory damages, including future medical expenses and future loss of earning capacity. Vickers appealed, arguing that "the trial court abused its discretion in certain evidentiary rulings, in denying his motions for remittitur, and in denying his motion for new trial based on Thomas's counsel's improper closing argument." The appellate court affirmed in part, reversed in part, and remanded for a new trial or remittitur as to damages for Thomas's future loss of earning capacity.
http://5dca.org/Opinions/Opin2017/121817/5D15-3610.op.pdf

21st Century Centennial Insurance Co. v. Thynge, __ So. 3d __, 2017 WL 6541770 (Fla. 5th DCA 2017)

After an accident, the Thynges made a claim for uninsured/underinsured motorist coverage against 21st Century. The trial court struck 21st Century's experts related to causation and permanent injury, and the case went to trial with only Ms. Thynge and her neurosurgeon testifying as to causation and permanency. The Thynges moved for a directed verdict on the issues of causation and permanency, arguing that 21st Century failed to rebut their doctor's testimony. The trial court reserved ruling on the motion and the case went to the jury, which found that the accident caused loss, injury, or damage but did not find that Ms. Thynge sustained permanent injury, and the jury awarded only $7,000 for lost wages. The Thynges moved for judgment in accordance with their motion for directed verdict and for a new trial, which the trial court granted. 21st Century appealed, and the appellate court reversed and remanded for reinstatement of the jury verdict, stating that because Ms. Thynge's doctor "was not given complete information regarding [her] prior medical history, his opinions regarding causation and permanency were called into question, and the jury could properly reject them. . . . In addition, Mrs. Thynge's inconsistent testimony about what occurred at the accident scene provides sufficient conflicting evidence upon which a jury could have based its decision."

The appellate court also reversed the order granting a new trial, stating that because the Thynges "failed to notify the trial court of any challenge to the purported limitation of their voir dire, they could not subsequently seek a new trial on this ground."
http://5dca.org/Opinions/Opin2017/121817/5D16-1575.op.pdf

Willie-Koonce v. Miami Sunshine Transfer & Tours Corp., __ So. 3d __, 2017 WL 6503190 (Fla. 3d DCA 2017)

Willie-Koonce sued Miami Sunshine after its driver backed up over her and caused serious injuries. Based on discrepancies between Willie-Koonce's sworn discovery responses and surveillance videotapes, the trial court granted Miami Sunshine's motion to dismiss the case for fraud on the court., Willie-Koonce appealed, arguing that "the dismissal of the entire case goes too far, as there is no genuine dispute regarding the past medical costs and loss of income as a result of the accident" and that "the surveillance videotape only calls into question the extent of damages for future lost wages and for pain and suffering." But the appellate court affirmed, stating: "Although the result in this case may seem rough justice, the courts must deal firmly and publicly with a litigant's fraud on the very judicial system the litigant asks to render justice."
http://3dca.flcourts.org/opinions/3D16-2607.pdf

Rodriguez v. Thompson, __ So. 3d __, 2017 WL 6502462 (Fla. 2d DCA 2017)

Thompson sued Rodriguez and Hernandez for injuries he suffered in an auto accident. The defendants were served with the complaint, and Thompson was granted a default on liability. The court then set a trial on the issue of damages. A jury trial was held, at which neither defendant was present, and the trial court entered a judgment against them for $1,190,000. The defendants filed a motion to set aside the default and resulting judgment, arguing that the judgment was void because they had not been served with the order setting the damages trial. The trial court denied the motion, but the appellate court reversed as to the damages judgment, stating that it was "void because there is no evidence in this record that [the defendants] were provided with notice of the damages trial. Even when a default on liability has been entered against a litigant, the defaulting party remains entitled to a trial on damages where, as here, the damages are unliquidated." It noted that the record contained "ample evidence" of the defendants' failure to respond to earlier pleadings and orders and doubted that they would have appeared at a damages trial even if they had notice. "But the law is settled that they were entitled to that notice. And this record contains no evidence that it was given to them. On the contrary, the evidence points in the opposite direction."
https://edca.2dca.org/DCADocs/2017/0128/170128_DC08_12202017_082236_i.pdf

TT of Indian River, Inc. v. Fortson, __ So. 3d __, 2017 WL 6390381 (Fla. 5th DCA 2017)

In an accident case, final judgment was rendered in favor of Fortson against TT of Indian River, Inc. (d/b/a Mercedes-Benz of Melbourne) and Dorman, who appealed, arguing that the trial court erred when it allowed Fortson to question Mercedes-Benz's corporate representative about the accident although liability was not at issue. The appellate court agreed and reversed, noting that Mercedes-Benz had admitted liability and the only issue was the amount of damages; therefore evidence about liability was irrelevant and prejudicial. It also stated that it could not agree with Fortson that the error was harmless.

http://5dca.org/Opinions/Opin2017/121117/5D16-2001.op.pdf

***Lentini v. American Southern Home Insurance Co.*, __ So. 3d __, 2017 WL 6390376 (Fla. 5th DCA 2017)**

Lentini had a collector vehicle insurance policy from American Southern for his Corvette. He was killed in an accident while riding his motorcycle, and his estate sought UM coverage under the collector vehicle policy. American Southern denied the claim because Lentini was not occupying the insured collector vehicle when the accident happened, and the estate sued. The trial court entered a summary judgment in favor of American Southern, noting that the court in *Martin v. St. Paul Fire & Marine Insurance Co.*, 670 So. 2d 997 (Fla. 2d DCA 1996), "held that section 627.727, Florida Statutes (1992), does 'not require a specialty insurance policy covering only an antique automobile with restricted highway usage to provide uninsured motorist coverage for accidents not involving the antique.'" The estate had argued that "*Martin* was wrongly decided, in contravention of both section 627.727, Florida Statutes (2015) , and Florida Supreme Court precedent interpreting its provisions." The trial court agreed that *Martin* appeared to conflict with section 627.727 but felt bound to follow it "because it was factually analogous to the instant case."

The estate appealed, and the appellate court reversed and certified conflict with *Martin*, stating: "In order to limit coverage, . . . the insurer must obtain the insured's written consent on an approved form selecting the limitations on uninsured motorist coverage. . . . The parties agree that American Southern did not secure Lentini's consent to any of these limitations in this case."
http://5dca.org/Opinions/Opin2017/121117/5D17-326.corr%20op.pdf

***Wright v. Morsaw*, __ So. 3d __, 2017 WL 6368629 (Fla. 4th DCA 2017)**

Wright was charged with criminal offenses for a hit-and-run accident that killed a pedestrian. After the accident, he allegedly went to a friend's home and posted about the accident on social media. Morsaw, the personal representative of the decedent's estate, sued Wright, his mother (who owned the vehicle), and the bar where the defendant had allegedly been drinking before the accident. Morsaw served many production requests, which the trial court ordered Wright to respond to. He sought review, arguing that the order as to four of the requests, focusing on finances and social media, "violate[d] his Fifth Amendment privilege against self-incrimination because the records sought are communicative in nature and could furnish a link in the chain of evidence needed to prove him guilty in the related criminal case." The appellate court denied review because Wright did not provide it with the transcript from the hearing on the motion to compel and "does not contend that he proffered information to the trial court in order to demonstrate the testimonial or communicative nature of the social media and financial records." It stated further: "[E]ven if we were to assume that the records at issue are testimonial or communicative in nature, petitioner still has not demonstrated how those records could furnish a link in the chain of evidence needed to prove him guilty in the related criminal case."
https://edca.4dca.org/DCADocs/2017/0589/170589_1703_12132017_09515297_i.pdf

***Gardner v. Standard Fire Insurance Co.*, __ So. 3d __, 2017 WL 4817439 (Fla. 4th DCA 2017)**

Gardner, a Broward County resident, was in an accident in Manatee County with an at-fault uninsured driver who was a Hillsborough County resident. Gardner filed UM claims with his insurance companies (Standard Fire and Allstate), which were foreign corporations. The companies denied the claims, and Gardner sued them in Palm Beach County. Standard Fire filed motions to transfer venue, one based on Fla. R. Civ. P. 1.060 and one for forum non conveniens. The trial court granted the former and therefore denied the latter as moot. Gardner appealed the order granting a transfer of venue, and the appellate court reversed it because Allstate had an agent in Palm Beach County. But it also reversed the order denying the motion to transfer venue for forum non conveniens because it was no longer moot.
https://edca.4dca.org/DCADocs/2017/1546/171546_DC13_10252017_093306_i.pdf

***Lee Memorial Health System v. Progressive Select Insurance Co.*, __ So. 3d __, 2017 WL 4798927 (Fla. 2d DCA 2017)**

Gallegos was injured in a car accident, and Lee Memorial Health System (LMHS) treated him. Gallegos sued both the driver and the owner of the car that hit him, informed LMHS about the availability of bodily injury coverage from the two insurers (Progressive and MGA), and asked LMHS to write off the balance of his bill. LMHS offered to write off a small portion of the balance. Meanwhile Progressive gave Gallegos $14,000 and paid LMHS $10,000 in PIP benefits, and Gallegos gave Progressive a release. LMHS filed suit against Progressive and MGA, alleging they impaired the liens it had recorded against Gallegos. MGA was dismissed from the suit, and Progressive filed a motion for summary judgment. The trial court granted Progressive's motion, stating that Chapter 2000-439, Laws of Florida, which created LMHS as "a public health care system in Lee County," "was 'unconstitutional as a special law which improperly creates a lien based on a private contract' and that therefore, the lien imposed by LMHS on the proceeds received by Mr. Gallegos from Progressive was invalid." Progressive appealed, arguing "article II [sic], section 11(a)(9), of the Florida Constitution only prohibits special laws that create, enforce, extend, or impair liens based on *private* contracts. But . . . the contract between itself and Mr. Gallegos was a public contract." But the appellate court disagreed and affirmed, stating that "section 18 of chapter 2000–439 authorizes the imposition of a lien based on a private contract in violation of article III, section 11(a)(9), of the Florida Constitution. Further, it impairs the obligations of contracts entered into by an insurer and its insured or a claimant under the insured's contract of insurance, in violation of article I, section 10, of the Florida Constitution."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/October/October%2025,%202017/2D14-5925.pdf

***Powell v. Washington*, __ So. 3d __, 2017 WL 4699997 (Fla. 5th DCA 2017)**

Washington filed an action against GEICO for uninsured/underinsured motorist coverage. GEICO disclosed Powell as an expert witness. Powell objected to Washington's subpoena duces tecum, claiming he was the Department of Defense's only neurosurgeon east of the Mississippi and was required to give notice of leave at least six weeks in advance. The trial court nevertheless compelled Powell's attendance. Later Washington discovered that Powell's actual employer, the Air Force, had two neurosurgeons east of the Mississippi. Further, Powell had produced only some of the requested records at the deposition and had sent the rest directly to GEICO's counsel, based on which the trial court ordered Powell to attend a second deposition. Washington moved to strike Powell for fraud on the court and sought sanctions against him and

his attorney. The trial court did not strike Powell as a witness as "his actions did not rise to the level of fraud on the court." But it did order him to pay Washington nearly $5,000 in attorney's fees and costs. Powell appealed the sanction, and the appellate court reversed, stating: "Although not expressly labeled as such . . . , the award of attorney's fees most resembles a sanction for indirect criminal contempt because 'the purpose of the fine was to punish [an expert witness] rather than to coerce his compliance,' and 'the order contained no purge provision permitting [him] to avoid paying the fine.'" . . . Because the trial court imposed attorney's fees as sanctions . . . without the correct procedure or the requisite finding of contempt, we reverse and remand." http://www.5dca.org/Opinions/Opin2017/101617/5D16-3936.op.pdf

***Schoeck v. Allstate Insurance Co.*, __ So. 3d __, 2017 WL 4557756 (Fla. 2d DCA 2017)**

Schoeck was injured in an automobile accident while a passenger in a vehicle owned and driven by her father. She was covered by her mother's UM policy as well as her father's, but she sued only her father's insurer (Allstate). Allstate sought summary judgment, "requesting among other things that the court prioritize the [mother's] policy and reduce Allstate's total excess exposure to $5000," the difference between the highest limit available under the Allstate (excess) policy and the highest available limit available under the primary (the mother's) policy. The circuit court granted summary judgment to Allstate, and Schoeck moved for reconsideration, arguing that UM recovery is only limited "to the highest limit applicable to a vehicle covered under the Allstate policy itself, and that there was no basis for 'crediting' the excess carrier for proceeds owed by a primary carrier." She also argued that Allstate "had waived any argument relating to the 'Other Insurance' clause because [it] had not pleaded an affirmative defense seeking to preclude or diminish recovery in reliance on that clause." In reply, Allstate, for the first time, argued that "Schoeck had not satisfied a condition precedent in the 'Other Insurance' clause—that she must fully exhaust all other sources of recoverable insurance before suing Allstate," and that the other policy's limits were probably unrecoverable because of the statute of limitations. The circuit court again agreed with Allstate and granted summary judgment. But the appellate court reversed, holding that Allstate had waived the defense of failure to satisfy a condition precedent by failing to plead it with sufficient specificity: "Whereas Florida Rule of Civil Procedure 1.120(c) permits the satisfaction of a condition precedent to be alleged generally, the rule requires a pleader to deny the performance or occurrence of a condition precedent 'specifically and with particularity.' . . . We also clarify that limiting Allstate's maximum exposure to $5000 was error."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/October/October%2013,%202017/2D16-3161.pdf

VI. Drivers' Licenses

***Barker v. DHSMV*, 25 Fla. L. Weekly Supp. 692b (Fla. 8th Cir. Ct. 2017)**

The defendant's license was suspended for an enhanced period of 18, rather than 12, months, for refusal to submit to a breath test. He sought review, arguing that the hearing officer had sufficient evidence only for a 12-month suspension. The circuit court, in its appellate capacity, denied review because the defendant had not raised the issue of the enhanced suspension at his administrative hearing.

***Woodard v. DHSMV*, 25 Fla. L. Weekly Supp. 688a (Fla. 5th Cir. Ct. 2017)**

The hearing officer denied the defendant's request for a hardship license, and she sought review, arguing that "the indicators of alcohol impairment were insufficient to establish probable cause for her arrest." The circuit court, in its appellate capacity, denied review, noting that the defendant "was cited for no less than five offenses of driving while license suspended, resulting in an Habitual Traffic Offender status, for which she is currently serving a five-year suspension of her driving privilege."

***Gregg v. DHSMV*, 25 Fla. L. Weekly Supp. 688b (Fla. 6th Cir. Ct. 2017)**

The defendant was stopped for not having functioning tag lights, and ultimately her driver license was suspended for refusal to submit to a breath test. She sought review, arguing that "the indicators of alcohol impairment were insufficient to establish probable cause for her arrest." The circuit court, in its appellate capacity, granted review, stating that the case "lacks any reckless or dangerous operation of a vehicle, balance or dexterity issues, or flushed face, and there was no admission given or field sobriety exercises performed by [the defendant]. . . . Due to the conflict in the paperwork concerning the speech, the slurred speech factor is not supported by competent evidence. Furthermore, the additional factors that are supported by competent evidence, which are the odor of alcohol, bloodshot, watery, glassy eyes, and 'a blank stare,' are not sufficiently substantial to support the Hearing Officer's finding that probable cause existed for the arrest."

***Hampton v. DHSMV*, 25 Fla. L. Weekly Supp. 687a (Fla. 2d Cir. Ct. 2017)**

After an accident, the defendant was arrested for DUI and his license was suspended for refusal to submit to a breath test. He sought review, arguing that "the hearing officer departed from the essential requirements of law by not invalidating his license suspension based on the plain meaning of Florida Statute § 322.2615(11), which requires invalidation of the suspension if the administering officer or breath test analyst fails to appear pursuant to a subpoena." The circuit court, in its appellate capacity, denied review, stating that "no breath or blood test was administered or analyzed. . . . Thus, the provision of § 322.2615(11) requiring invalidation of the suspension does not apply in this matter as there was no officer or person who administered or analyzed a breath or blood test."

***Mitchell v. DHSMV*, 25 Fla. L. Weekly Supp. 585b (Fla. 15th Cir. Ct. 2017)**

The defendant's license was suspended for refusal to submit to a breath alcohol test. He sought review, having argued that "the evidence was so in conflict that there was no competent, substantial evidence to support a finding that he refused to submit incident to his arrest." The circuit court, in its appellate capacity, agreed and quashed the suspension, stating that "where conflicting documents support two differing reasonable inferences, the arbitrary choice of one document over another does not meet the competent, substantial evidence test."

VII. Red-light Camera Cases

VIII. County Court Orders

***State v. Calonge*, 25 Fla. L. Weekly Supp. 747a (Polk Cty. Ct. 2017)**

After the sheriff's office received an anonymous call about someone possibly passed out in a vehicle, a deputy conducted a DUI investigation and the defendant was charged with DUI and refusal to submit to a breath test. He filed a motion to suppress, which the court granted, stating:

> As a general rule, an encounter between a police officer and a citizen becomes an investigative stop when the citizen is asked to exit a vehicle. . . . Opening the door of Defendant's vehicle in his private driveway to awaken him is tantamount to asking Defendant to exit his vehicle. . . . Thus, the Defendant was seized within the meaning of the Fourth Amendment, and as such, law enforcement was required to have a well-founded, articulable suspicion of criminal activity to do so. Sleeping in a legally parked car, standing alone, is not sufficient to provide that suspicion. . . . Intrusion into a car by a police officer to "sniff around or otherwise search" is a warrantless and unwarranted intrusion into a place he has no right to be. . . . By opening the car door, [the deputy] gave himself access to the inside of Defendant's vehicle, allowing the Deputy to smell the odor of alcohol which he could not smell outside the vehicle.

***State v. Richison*, 25 Fla. L. Weekly Supp. 745b (Volusia Cty. Ct. 2017)**

While investigating a burglary, a deputy saw the defendant turn off his vehicle lights and accelerate away. After the defendant got stuck, the deputy ordered him out of his vehicle and arrested him for fleeing and eluding. The deputy also noticed indicia of impairment, and the defendant was also charged with DUI. He filed a motion to suppress, arguing that "[f]irst, the breath test results must be suppressed, because Defendant was not lawfully arrested for DUI prior to submitting to a breath test. Second, there was no probable cause to arrest the Defendant for DUI." But the court noted that the defendant had been lawfully arrested for an offense committed while he was driving while under the influence of alcohol, and his arrest for fleeing and eluding met that requirement. But the court granted the motion on the second ground, stating that "even with a lawful arrest for Fleeing and Eluding, this Court finds there was no reasonable cause or probable cause for DUI that would require Defendant to submit to a breath test."

***State v. Cage*, 25 Fla. L. Weekly Supp. 668c (Volusia Cty. Ct. 2016)**

After a crash, the defendant was arrested for DUI. He filed a motion to suppress, arguing that "law enforcement held him at the scene for an unreasonably long time [90 minutes] before initiating a DUI investigation." The court denied the motion, stating:

> There is no bright-line rule for how long the police may detain someone before the delay will be deemed unreasonable. . . . [I]f the officer develops a reasonable suspicion of criminal activity during the stop, he or she may continue to detain the

> driver to investigate the suspected criminal activity. . . . In this case, [the deputy] had a reasonable suspicion that Defendant had committed the crime of [DUI] from the first moments of his contact with Defendant, based on the accident and the indicators of impairment exhibited by Defendant. . . . Thus, it was constitutionally permissible for the law enforcement officers to detain Defendant for a criminal investigation once the initial purposes of the stop were completed, despite the length of time between the accident and the commencement of the criminal investigation.
>
> Although the Court finds no constitutional violation . . . , the Court by no means suggests that it is a wise practice to detain a DUI suspect for nearly an hour and a half before beginning the DUI investigation. Law enforcement agencies may want to reexamine practices. . . . Given the rapid rate at which the body eliminates alcohol, such delays may lead to the loss of critical evidence.

***State v. Bates*, 25 Fla. L. Weekly Supp. 668a (Pasco Cty. Ct. 2017**)

Officers saw the defendant stop his vehicle to pick up a known prostitute, stop at and go into a bank, and then continue on the highway. Detectives then made an investigatory traffic stop and the defendant was arrested. He filed a motion to suppress the stop and all evidence subsequently obtained, which the court granted, stating that "law enforcement lacked the reasonable suspicion required to have stopped Defendant's vehicle, let alone to question him or search or inventory his vehicle."

***State v. Arment,* 25 Fla. L. Weekly Supp. 666b (Brevard Cty. Ct. 2017**)

The defendant filed a motion to produce the field sobriety testing manual, which the court denied. The state then moved in limine to prevent the defendant from trying to show on cross-examination, by referring to the manual from which the officer had been trained or other materials, that the officer failed to comply with standardized instructions for administering the exercise. The court granted the state's motion, holding that an officer is a lay witness – not an expert – who can't be impeached "with a treatise, a book, or a manual."

***State v. Heimbegner*, 25 Fla. L. Weekly Supp. 650b (Hillsborough Cty. Ct. 2017**)

The defendants were arrested for DUI and filed motions to suppress their breath tests and test results, arguing that FDLE's Alcohol Testing Program failed to follow its procedure manual because it did not independently analyze distilled or deionized water. But the court denied the motions, noting that the stated purpose of analyzing the water samples is to show they don't contain alcohol, and that there was no evidence that the samples did contain ethanol. The court also noted steps FLDE takes to ensure the samples are in compliance with requirements.

***State v. Woodall*, 25 Fla. L. Weekly Supp. 647c (Sarasota Cty. Ct. 2017**)

The defendant was charged with driving with a suspended license. He filed a motion to dismiss, arguing that a 14-month pre-arrest and pre-filing delay violated his right to speedy trial. The court agreed and granted his motion.

***State v. Quiles*, 25 Fla. L. Weekly Supp. 645a (Polk Cty. Ct. 2017**)

A detective saw the defendant travelling 15-20 mph on a public roadway on a bicycle that had a gas tank and a battery, and the defendant was charged with driving without a valid driver license. The court found him not guilty, stating that it had "reasonable doubt as to whether the defendant's bicycle . . . qualifies as a motorcycle or moped requiring a valid driver license to operate upon the highway in Florida."

***State v. Berlanga*, 25 Fla. L. Weekly Supp. 644a (Polk Cty. Ct. 2017**)

A deputy responding to a call about a suspicious vehicle in a gated community stopped the defendant. Another deputy asked for and got consent to search the car and found a "cannabis grinder," which the defendant said belonged to him. The defendant was charged with possession of cannabis and possession of drug paraphernalia, and he filed a motion to suppress. The court denied the motion, stating that, although two of the callers were anonymous, law enforcement had already received information from an identified "citizen informant," which, along with the two later anonymous calls, provided the deputy "with reasonable suspicion that the occupants of [the car] were engaged in criminal activity. Therefore, the stop of Defendant's vehicle was justified. Incident to the stop, the Defendant voluntarily consented to the search of his vehicle."

***State v. Ross*, 25 Fla. L. Weekly Supp. 642a (Polk Cty. Ct. 2017**)

A deputy responding to a call arrived at a parking lot, where a civilian told him the defendant had driven into the middle of the parking lot, got out of her vehicle, appeared distraught, and made "bizarre" statements. The civilian also told the deputy that she spoke on the phone with the defendant's mother, who told her to "[k]eep her there and don't let her leave," that the civilian moved the defendant's car into a parking space and took the keys, and that the defendant said she'd been drinking. The defendant was charged with DUI, refusal to submit to a breath test, and violation of driver license restrictions. She filed a motion to suppress, which the court granted in part, stating that an officer may make a warrantless misdemeanor arrest (1) if the crime was committed in the officer's presence, (2) if the officer was investigating a crash scene and has reasonable and probable cause to believe a driver "has committed certain offenses, including DUI, in connection with the crash," or (3) "when the observations of two or more officers can be united to establish probable cause for the arrest." Since no traffic crash or investigation was involved, "the officer must have had probable cause to . . . believe that the crime was committed, and the crime must have been committed in the officer's presence," which was not the case. Although witnesses had "developed reasonable suspicion" that the defendant was impaired, no officer saw her driving or in control of the vehicle. The state conceded that the arresting deputy did not have authority to make a valid misdemeanor DUI arrest, but it argued that the civilian had made a valid citizen's arrest "such that 'custody' of the Defendant was merely transferred to [the] Deputy upon his arrival."

The court disagreed, noting that while the civilian did intend to detain the defendant, it was not clear that she intended to arrest her. So it granted the defendant's motion to suppress evidence seized after the arrest, but not as to evidence obtained before the arrest.

***State v. West*, 25 Fla. L. Weekly Supp. 548a (Polk Cty. Ct. 2017**)

The defendant was a passenger in a vehicle driven by her husband. A deputy stopped the vehicle, saw the driver was not wearing a seatbelt, and asked the driver for permission to search the vehicle. The driver consented, and the deputy found cannabis and paraphernalia in the defendant's purse, which she had put on the floor before exiting the vehicle. The defendant was arrested and filed a motion to suppress, which the court granted, stating: "The search of the vehicle was not incident to arrest, but was pursuant to alleged consent given during a traffic stop for a civil traffic infraction. Police authority to search the vehicle pursuant to the driver's consent does not extend to the passenger's purse."

***State v. James*, 25 Fla. L. Weekly Supp. 543a (Volusia Cty. Ct. 2017**)

After responding to a 911 call, a deputy located and stopped the defendant. Other deputies arrived, and the first deputy related his observations to a second deputy. The second deputy relayed the information to a third deputy, who arrested the defendant. The defendant filed motions to suppress, which the court granted, stating that "for the fellow officer rule to apply, the information establishing probable cause for the arrest must be communicated directly from the officer possessing the knowledge to the officer who will be making the arrest." It stated further that "the evidence was inconclusive and/or inconsistent with respect to what information exactly was conveyed," and some of the testimony was "contradicted in a number of ways by the video and audio testimony." The court stated further:

> The State argued that [the third deputy] had sufficient basis to arrest because of the information conveyed to him by the 911 caller coupled with [the second deputy]. However, the State only offered the hearsay testimony of the 911 caller to establish the mental state of [the second deputy] for the traffic stop without offering that evidence to prove the truth of the matters asserted by the caller. If the State had wanted this Court to consider the caller's testimony as evidence to justify the arrest, [it] should have called that witness to testify at the suppression hearing. For this Court to do otherwise would be to allow the State to prove the truths of the matters asserted by the 911 caller via inadmissible hearsay testimony. The testimony is unclear as to what information [the second deputy] conveyed to [the third deputy], and without more, the case law is well-settled that odor of alcohol alone is insufficient to make an arrest for DUI.

***State v. Hindman*, 25 Fla. L. Weekly Supp. 541a (Volusia Cty. Ct. 2017**)

While driving in Edgewater, the defendant struck a police car that was parked by the road. Protocol was for the police department to ask another law enforcement agency to investigate an accident under certain circumstances, including when, as in this case, estimated damages are over $1,000. The officer asked for assistance from the New Smyrna Beach Police Department, and the defendant was ultimately arrested for DUI. She filed a motion to suppress, which the court granted, stating that the officer "could have called for assistance from the Volusia County Sheriff's Office or the Florida Highway Patrol, either agency having overlapping jurisdiction," but that the New Smyrna Beach police did not have jurisdiction: "While a mutual aid agreement can allow for some extra-jurisdictional arrests, this was not a situation involving an emergency, a DUI Task Force, a special event detail, or any type of major law enforcement

issue that would allow for the delegation of a traffic accident investigation and subsequent DUI arrest from the Edgewater Police Department to the New Smyrna Beach Police Department."

***State v. Gentile*, 25 Fla. L. Weekly Supp. 540a (Volusia Cty. Ct. 2017)**

After the defendant was seen trying to right a fallen motorcycle in the fast lane of a highway, a police officer sent to the scene noted the defendant smelled of alcohol and had slurred speech, but did not ask the defendant to perform field sobriety exercises because the defendant said his ankle hurt. But the officer did arrest the defendant for DUI and had him taken to a hospital by ambulance. At the hospital, the defendant agreed to provide a blood sample after being told the consequences of refusal. In his DUI case, the defendant filed a motion to suppress the blood sample test results, which the court granted, stating:

> At the time [the officer] asked the Defendant to provide a blood sample, the Defendant was conscious and there was no indication that [he] was either strapped to a gurney, in shock, about to go into surgery, or was going to be admitted into the hospital. . . . Before asking the Defendant to provide the blood sample, [the officer] had not inquired of any medical staff regarding the Defendant's medical condition, treatment, how long he might be at the hospital, or whether he would be admitted. It is clear that [the officer] made assumptions from the start and thus ". . . demonstrate[d] a predisposition to request blood testing."
>
> Since the Defendant was conscious and physically able to provide breath samples, there was a nearby police department and an available breath test operator, there was no testimony about the unavailability of a nearby breathalyzer instrument, and the Defendant was released from the hospital within a few hours . . . , the State has not met its burden to show that having the Defendant take a breath test was either impractical or impossible. . . .
>
> The facts also do not show that there was either a death or serious bodily injury that would justify the taking of a blood sample under Florida Statutes § 316.1933(1)(a). . . .
>
> There is a third way a blood test could be allowed and that is if there was true voluntary consent by the Defendant. But for that to happen, there must be no coercion or acquiescence to authority. [The officer] would have had to make clear to the Defendant that the giving of a blood sample for testing was an alternative to providing a breath or urine sample and that there would be no consequences if he declined. Obviously, that did not occur here.

***State v. Schiessle*, 25 Fla. L. Weekly Supp. 561b (Hillsborough Cty. Ct. 2017)**

Around 1:00 a.m., an officer saw the defendant stop at a green light and then go through as it turned yellow, and the defendant was ultimately arrested. She filed a motion to suppress, alleging the officer did not have a well-founded suspicion of criminal activity or probable cause that she had committed a traffic infraction. The court granted the motion, stating: "The officer testified that the sole basis for stopping Defendant was because she was impeding the flow of traffic. Based on the factual circumstances of this case, the Court finds that Defendant did not

commit a traffic violation by blocking or impeding the flow of traffic in violation of Florida Statute 316.183(5)." The court held further that "there was no evidence . . . that the officer was concerned with the safety and/or well-being of the driver of the vehicle at the time he activated his emergency lights. As such, the 'community caretaking function' of law enforcement is not a supportable justification for the stop in this case."

***South Tampa Chiropractic Center, PA v. United Services Automobile Association*, 25 Fla. L. Weekly Supp. 550b (Miami-Dade Cty. Ct. 2017**)

The defendant filed a motion to transfer venue and/or dismiss. The court denied the motion stating that the plaintiff did not meet the burden to show that (1) "the venue selection clause is unreasonable or unjust," or (2) the claimant/assignor was living outside of Pinellas County at the time of the loss.

***State v. Townley*, 25 Fla. L. Weekly Supp. 547 (Orange Cty. Ct. 2017**)

A police officer responding to a burglary saw the defendant's vehicle abruptly cut off a driver. The officer stopped the defendant and, while waiting for backup, noticed the defendant's eyes were bloodshot, he was sweating and clammy, and his speech was slurred, and he was wearing the kind of paper bracelet bars use for customers. Although the officers were told the defendant was not connected to the burglary and the backup officers left, the initial officer asked the defendant to submit to field sobriety exercises, and ultimately the defendant was arrested for DUI. He filed a motion to suppress, alleging the officer did not have probable cause to stop him for a traffic violation. The court granted the motion, holding that although the officer had probable cause to stop the defendant for a traffic violation, and the indicia of impairment he observed may have provided reasonable suspicion for a DUI investigation, while "the Defendant was detained for the investigation of the possibility of his involvement in a commercial burglary, [the officer] neither issued a civil citation nor began an investigation for an alleged DUI. [The] detention was unreasonable and violated the fourth amendment." The court held further that "the credible evidence presented at this hearing failed to establish probable cause for the arrest of this Defendant for DUI."