FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

July – September 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)

Goodman v. State, __ So. 3d __, 2017 WL 3168979 (Fla. 4th DCA 2017)

The defendant was convicted of DUI manslaughter with failure to render aid, and vehicular homicide with failure to render aid, and he appealed. The appellate court affirmed the conviction and sentence for DUI manslaughter with failure to render aid, but it remanded to vacate the conviction for vehicular homicide, stating: "Although the [trial] court withheld adjudication on the vehicular homicide charge, we have held that the withholding of adjudication on an offense constitutes a 'conviction' for double jeopardy purposes. . . . A conviction for DUI manslaughter and for vehicular homicide involving a single victim violates double jeopardy." https://edca.4dca.org/DCADocs/2014/4479/144479_DC05_07262017_102726_i.pdf

State v. Proeh, 25 Fla. L. Weekly Supp. 428a (Fla. 17th Cir. Ct. 2017)

After a one-car accident, the defendant was taken to a hospital and consented to a blood sample. He was charged with DUI with property damage, and the state filed a notice of intent to issue a subpoena duces tecum as to the blood draw. The defendant filed a motion to quash the subpoena, which the trial granted. The state appealed, and the circuit court, in its appellate capacity, quashed the trial court's order, holding that the defendant's right to privacy had to yield to the compelling state interest in investigating the criminal DUI charge, and that the medical records were relevant.

***Radeka v. State,* 25 Fla. L. Weekly Supp. 422a (Fla. 13th Cir. Ct. 2017)**

The defendant drove over a raised median while making a left turn. Two officers stopped her, both testifying that the stop was for failure to maintain a single lane, and one officer testifying that the stop was also for running over the curb. The defendant was charged with DUI and filed a motion to suppress the stop and a motion to suppress statements. The trial court denied her motions, and she appealed the denial of the motion to suppress the stop. The circuit court, in its appellate capacity, reversed, stating that there was no pattern of unusual or erratic driving, and no concern for the safety of other drivers existed. It held further that there was no reasonable suspicion to stop the defendant based on a belief that she was ill, tired, or impaired.

***State v. Hall,* 25 Fla. L. Weekly Supp. 227a (Fla. 6th Cir. Ct. 2015)**

The defendant was charged with DUI and she filed a motion to suppress. The trial court granted the motion, "finding the delay of one hour and ten minutes to be unreasonable when any of the other deputies on the scene could have performed the DUI investigation at any time." The state appealed, and the circuit court, in its appellate capacity, reversed, stating:

> The length of the detention alone is insufficient to render it unreasonable absent additional facts. . . . The question . . . is not whether it was possible for the officers on the scene to accomplish the objectives by alternative means, but whether the officers' actions were unreasonable. . . . The initial stop in this case resulted from [the defendant's] traffic accident, and [she] was obligated to remain at the scene of the accident until an investigation into the accident was conducted. The investigating officer informed [her] at the conclusion of the accident investigation that he was beginning a DUI investigation, and there was no delay between the accident investigation and DUI investigation. It was not unreasonable for the officers to wait for FHP to respond to the traffic accident, which was the policy of the Sheriff's Office, prior to conducting the accident investigation.

***State v. Moore,* 25 Fla. L. Weekly Supp. 227a (Fla. 17th Cir. Ct. 2017)**

The defendant was charged with DUI and he filed a motion to suppress based on lack of reasonable suspicion to detain him for a DUI investigation. The trial court granted the defendant's motion to suppress, and the state appealed. The circuit court, in its appellate capacity, reversed, stating that "while there was no speeding observed, there was both the odor of alcohol and the bloodshot eyes, PLUS slurred speech, the screeching of tires, coming within inches of striking the patrol car, and [the defendant's] yelling."

***Latorre v. State,* 25 Fla. L. Weekly Supp. 218a (Fla. 11th Cir. Ct. 2017)**

During closing argument in the defendant's DUI trial, the state told the jury that the defendant "had the opportunity at [sic] that room to not lose her license, and to provide a breath sample. Why does -- why don't we have the evidence to show you today?" The defendant was convicted of DUI and appealed, arguing that the remarks constituted improper comments on her right to remain silent. The circuit court, in its appellate capacity, reversed, stating that "the State improperly suggested that it lacked evidence due to the [defendant's] refusal" to testify, and that it did not "prove beyond a reasonable doubt that this error did not contribute to the verdict."

***Bachiochi v. DHSMV*, 25 Fla. L. Weekly Supp. 215b (Fla. 6th Cir. Ct. 2017)**

The defendant was arrested for DUI and her license was suspended. She sought review, arguing that the stop was not lawful and that the hearing officer considered hearsay statements (made by the stopping officer to the investigating officer). The circuit court, in its appellate capacity, denied review, stating that

> the evidence establishing the basis for the initial stop indicates that [the stopping officer] stopped [the defendant] because [she] was asleep in the driver's seat of the vehicle while it was stopped on the shoulder of the road with the keys in the ignition. Since the Complaint/Arrest Affidavit specifically states that the reason for the stop was for 'sleeping in the driver's seat,' there is no competent substantial evidence that could support the initial stop being lawful based on the occurrence of a traffic infraction. However, the totality of the circumstances supports the initial stop as lawful based on the existence of reasonable suspicion created by [the stopping officer's] legitimate concern for the safety and welfare of [the defendant] and the public.

As to the defendant's hearsay argument, the court stated that "reports submitted by law enforcement, regardless of whether they are hearsay documents, are properly within the purview of the hearing officer to consider."

II. Criminal Traffic Offenses

***State v. Miller*, __ So. 3d __, 2017 WL 4296307 (Fla. 2017)**

The defendant was charged with violating section 322.34(5), Florida Statutes – habitual traffic offender driving with a license that had been revoked under section 322.264. He filed a motion to dismiss, arguing that he never had a Florida license, which was a prerequisite for the offense. The trial court granted the motion and reduced the charges to driving without a valid driver license, and the state appealed. The Third District Court of Appeal aligned with the First District Court of Appeal and affirmed, but certified conflict with the Second, Fourth, and Fifth district courts of appeal. The supreme court affirmed, stating: "Having a driver license that has been revoked under the habitual traffic offender statute, section 322.264, Florida Statutes, is a necessary element of a section 322.34(5) offense. Therefore, defendants who have never possessed a driver license may not be charged under section 322.34(5)." http://www.floridasupremecourt.org/decisions/2017/sc16-1170.pdf

***State v. Dahl*, __ So. 3d __, 2017 WL 4280601 (Fla. 4th DCA 2017)**

The defendant pled guilty to leaving the scene of a crash involving death. She was sentenced to 364 days in jail and ten years' probation with conditions. The trial court withheld adjudication over the state's objection, and the state appealed. The appellate court reversed, stating:

> After the State's notice of appeal was filed, the trial court recognized its mistake, entered an order that its previous withhold of adjudication was now

> "converted" to an adjudication of guilt, issued a new sentencing order, and amended the judgment to adjudicate [the defendant] guilty. Thereafter, the State filed its motion to quash the amended judgment and sentencing order, arguing that the trial court did not have jurisdiction to enter an amended judgment adjudicating [the defendant] guilty because the State already filed a notice of appeal and an appellate case number was assigned. The court denied that motion without a hearing. Our review is de novo. . . .
>
> As [the defendant] concedes, the trial court erred . . . because section 775.08435(1)(a), Florida Statutes (2015), prohibits a court from withholding adjudication of guilt for "[a]ny capital, life, or first degree felony offense." . . .
>
> Further, the trial court lacked jurisdiction to enter its corrected sentencing order and amended judgment because the trial court was divested of jurisdiction when the State filed its appeal. . . .
>
> Accordingly, we reverse the trial court's withhold of adjudication and remand for entry of an adjudication of guilt.

https://edca.4dca.org/DCADocs/2016/3001/163001_DC13_09272017_093135_i.pdf

***Jackson v. State*, __ So. 3d __, 2017 WL 3896978 (Fla. 5th DCA 2017)**

The defendant was charged with leaving the scene of a crash involving death. Her main defense theory was that her confession had been obtained improperly, as the detective who interviewed her suggested that witnesses had identified her as the driver, which was not true. The state's expert testified that the defendant said "she felt pressured because the detective knew that [she] had done it." The defense objected and then moved for a mistrial, arguing that the testimony of the state's expert constituted "the introduction of an admission by [the defendant], which the State had not disclosed to the defense during discovery" The trial court denied the motion, and the defendant was convicted. She filed a motion for new trial, which the trial court denied. She appealed, and the appellate court reversed, stating: "The content of [the state's expert's] testimony . . . was the equivalent of an admission of guilt by [the defendant]. The presence of [her] attorney during the interview with [the expert] did not negate the necessity for a *Richardson* hearing—defense counsel argued that [the defendant] never made any such admission and that [the state's expert] mischaracterized her statement. . . . [W]e cannot conclude that the trial court's failure to conduct such an inquiry was harmless error."
http://www.5dca.org/Opinions/Opin2017/090417/5D16-619.op.pdf

***Parenti v. State*, __ So. 3d __, 2017 WL 3567501 (Fla. 5th DCA 2017)**

The defendant was convicted of DUI manslaughter (count I), driving while license suspended or revoked causing death (count II), and vehicular homicide (count III). He filed a motion for postconviction relief alleging ineffective assistance of counsel, which the trial court denied. The defendant appealed, arguing that defense counsel "provided ineffective assistance by not informing him that he qualified for sentencing as a habitual felony offender ('HFO')," and that if defense counsel had informed him that he faced a maximum sentence of 30 years' incarceration he "would have unhesitantly accepted the State's plea offer." The appellate court

reversed and remanded, stating: "We disagree with the trial court's conclusion that, because the State did not file its notice of intent to seek an HFO sentence until after trial, defense counsel did not provide ineffective assistance. Defense counsel should have informed [the defendant] that his twelve prior felony convictions potentially qualified him for the HFO designation, regardless of whether the State sought HFO sentencing before or after trial."
http://www.5dca.org/Opinions/Opin2017/081417/5D16-2203.op.pdf

***Pitts v. State*, __ So. 3d __, 2017 WL 3428273 (Fla. 1st DCA 2017)**

The defendant was convicted of driving with a suspended license (felony) and leaving the scene of a crash involving death (felony). He appealed, raising four arguments. But the appellate affirmed.

The defendant argued that the trial court should have severed the two charges. But the appellate court stated: "Two or more offenses may be joined if they are based on the same act or transaction, or two or more connected acts or transactions. . . . Here, the two acts were connected. [The defendant] left the scene *while* driving with a suspended license. Plus, the status of [his] license was relevant to [his] motive in fleeing." Further, the defendant "failed to demonstrate that severance was necessary for a fair determination of his guilt or innocence on either charge."

The defendant also argued that "the trial court should have granted his motion for judgment of acquittal because the State failed to refute his reasonable theory of innocence." But the appellate court noted that in his motion for judgment of acquittal he had argued "a theory of innocence that someone else was driving. . . . Even if [the defendant] could concoct a new theory of innocence here . . . , it would not help [him]: There was sufficient evidence below to refute both theories."

The defendant's third argument was that "the trial court should have excluded evidence of his son's hearsay statements" given by his former girlfriend (his son's mother). The defendant had made a hearsay objection, but the trial court overruled it, and the appellate court held there was no abuse of discretion because the statement was offered "to show the effect on the listener rather than the truth of the statement. . . . [The defendant's] response to an allegation that he killed someone is relevant, so there was no error in admitting the testimony."

The defendant's final argument was that "the trial court erred by allowing the State to introduce evidence of the former girlfriend's prior inconsistent statements." At trial, the prosecutor asked the former girlfriend whether the defendant had told her not to report the crash, and she "unequivocally denied it. The State subsequently called the investigating officer and asked what the former girlfriend had told him. Over [the defendant's] objection, the officer testified that the former girlfriend said [he] *had* instructed her not to tell the police. This testimony was admissible because it directly contradicted the former girlfriend's testimony."
https://edca.1dca.org/DCADocs/2016/2156/162156_DC05_08102017_112658_i.pdf

***Atkins v. State*, __ So. 3d __, 2017 WL 2989719 (Fla. 1st DCA 2017)**

The defendant was convicted of burglary of a conveyance and carjacking, which he argued constituted double jeopardy. The appellate court disagreed "because the offenses do not share identical elements and because neither is subsumed in the other." https://edca.1dca.org/DCADocs/2015/4399/154399_DC05_07142017_084309_i.pdf

***State v. Bojanic*, 25 Fla. L. Weekly Supp. 424b (Fla. 17th Cir. Ct. 2017)**

The defendant was cited for leaving the scene of an accident, but he did not sign the two citations. His attorney filed a motion to dismiss, alleging that the defendant "was never served with the citations nor was he arrested." The trial court granted the motion to dismiss for lack of jurisdiction, but the circuit court, in its appellate capacity, reversed and remanded, stating that "the trial court's jurisdiction was invoked and prosecution commenced because the State filed an information, a summons to appear was sent to the [defendant], [he] was represented by counsel at arraignment, pretrial status hearings were scheduled, and defense counsel's knowledge of all this was imputed to his client." The court held further that "although the State did not object in the trial court, a trial court's erroneous ruling on jurisdiction is considered fundamental error which needn't be preserved in order for appellate review on the issue to occur."

***Lachance v. State*, 25 Fla. L. Weekly Supp. 308b (Fla. 17th Cir. Ct. 2017)**

The defendant appealed his conviction and sentence, arguing that "by not objecting to the inadmissible hearsay from dispatch to the deputy that his license was suspended, ineffective assistance of trial counsel is evident on the face of the record. Additionally, [the state] sought to prove that [the defendant] knew his license was suspended by his admission to the deputy, but there was no independent evidence admitted that a crime had been committed, and as such, the State failed to prove a corpus delicti of the offense. Without such evidence, [the defendant's] admission should not have been admitted." The state conceded error, and the circuit court, in its appellate capacity, reversed and remanded for a new trial.

III. Civil Traffic Infractions

IV. Arrest, Search and Seizure

***Presley v. State*, __ So. 3d __, 2017 WL 4296316 (Fla. 2017)**

While on drug offender probation that included the condition that he would not, nor would he associate with anyone who illegally did, use alcohol or drugs, the defendant was a passenger in a vehicle that was stopped for a faulty taillight and a stop sign violation. Another passenger tried to leave and became belligerent. During the incident, the defendant told an officer he had consumed alcohol and later asked, "So what is the problem?" The officer told the defendant "we're just talking, man. You can't go anywhere at the moment because you're part of this stop." After a background check showed that the defendant was on drug offender probation with the condition that he not consume alcohol, he was arrested for violation of probation, and during the search incident to arrest an officer found a bag of cocaine in his pocket. The defendant filed a motion to suppress, which the trial court denied, holding that "the limited nature and duration of the detention did not significantly interfere with his Fourth Amendment liberty interests." In *Presley v. State*, 204 So. 3d 84 (Fla. 1st DCA 2016), the First District Court of

Appeal affirmed but certified conflict with the Fourth District decision in *Wilson v. State*, 734 So. 2d 1107 (Fla. 4th DCA 1999). The supreme court affirmed *Presley* and disapproved of *Wilson*, determining that two United States Supreme Court cases "support the conclusion that a passenger may be detained for the duration of a traffic stop." As to the reasonableness of the duration of the stop, the supreme court noted that "although this traffic stop may have lasted longer than a routine, uneventful stop, it was prolonged not by law enforcement, but by the fact that one of the passengers exited the vehicle and attempted to leave."
http://www.floridasupremecourt.org/decisions/2017/sc16-2089.pdf

***Jacobson v. State*, __ So. 3d __, 2017 WL 4158822 (Fla. 1st DCA 2017)**

An officer investigated a possible vehicle accident and determined that, although the vehicle damage was preexisting, the defendant was intoxicated. Having no basis to arrest the defendant, the officer warned her that he'd arrest her for DUI if he saw her driving. A little over an hour later the officer saw the defendant driving her car away, so he followed her, and although he did not see her disobey traffic laws or driving erratically he eventually stopped her and arrested her for DUI and a search revealed cocaine in her pocket. The defendant filed a motion to suppress, arguing the stop was illegal because she had not broken traffic laws and was not driving erratically, and that the stop was not supported by a founded suspicion of criminal activity because "the officer's observation of her intoxication during the first encounter was not corroborated by any field sobriety exercises." The trial court denied the motion, and the appellate court affirmed, stating:

> The founded suspicion came from the rather unusual circumstance wherein the officer had the opportunity to personally observe that the [defendant] was extremely intoxicated approximately one hour prior to observing her driving. His training and experience led him to conclude that it would have been impossible for [her] to have sobered up within the hour. Thus, the officer's stop was justified out of his belief that the appellant was impaired and his concern for the safety of the public. . . . We reject the [defendant's] assertion that the officer's initial observation of her intoxication should have been corroborated by field sobriety exercises because, at the time of their first encounter, the appellant was not driving.

https://edca.1dca.org/DCADocs/2016/1400/161400_DC05_09202017_091940_i.pdf

***Johnson v. State*, __ So. 3d __, 2017 WL 3616438 (Fla. 3d DCA 2017)**

After a robbery in which a store owner was killed, an officer responding to BOLOs stopped the car the defendant and a co-defendant were in, and both defendants were charged with first degree felony murder. Both moved to suppress the traffic stop based on lack of reasonable suspicion. The trial court denied the motions, and the defendant was convicted of second degree murder and his co-defendant was convicted of first degree murder. Both appealed. The defendant's appellate counsel had not raised the denial of the motion to suppress on direct appeal, and the appellate court affirmed his conviction and sentence per curiam. His co-defendant's attorney did raise the issue on appeal, and the appellate court reversed his

conviction, "holding that the trial court erred in denying the motion to suppress the traffic stop because the officer lacked reasonable suspicion."

The defendant filed a timely petition for writ of habeas corpus, arguing that "his appellate counsel was ineffective for failing to argue that the trial court erred in denying the motion to suppress. The State argues that the petition should be dismissed as successive because Johnson filed a previous petition alleging ineffective assistance of appellate counsel on different grounds, which was denied. Johnson agrees that we have discretion to dismiss the petition as successive, but maintains that we must grant relief to prevent a manifest injustice." The appellate court agreed and granted the petition, stating:

> Disparate treatment of similarly situated co-defendants can result in manifest injustice, warranting habeas relief. . . .
>
> We are mindful that our authority to grant a writ of habeas corpus based on manifest injustice should only be exercised in "uncommon and extraordinary circumstances." . . . However, we find that this case presents one of those rare circumstances. Failing to grant Johnson the same relief afforded to [his co-defendant], under virtually identical circumstances, would be an "incongruous and manifestly unfair" result.
>
> We find it unnecessary to allow a new direct appeal, as such a proceeding would be redundant to [the co-defendant's] direct appeal. . . . We therefore vacate Johnson's conviction and sentence for second degree murder and remand for a new trial.

https://edca.4dca.org/DCADocs/2016/3571/163571_DC03_08232017_091217_i.pdf

***State v. Adams*, __ So. 3d __, 2017 WL 3567004 (Fla. 5th DCA 2017)**

After stopping the defendant's vehicle on the suspicion that the window tint was too dark, officers ordered the defendant to exit the vehicle and he was arrested. He filed a motion to suppress evidence that was discovered in plain view, which the trial court granted. The state challenged the order and the appellate court reversed, holding that "the State's argument regarding the justification for ordering [the defendant] from the vehicle was sufficient to preserve the issue."
http://www.5dca.org/Opinions/Opin2017/081417/5D17-442.op.pdf

***Lopez v. State*, __ So. 3d __, 2017 WL 3161046 (Fla. 3d DCA 2017)**

The defendant was a passenger in a vehicle parked in a no-parking zone. An officer asked the driver for his license and registration, and after noticing the defendant "exhibiting odd behavior and appearing nervous and shaking," the officer told the defendant to exit the vehicle, which he did, but then he fled and threw an object over a fence. The defendant was later charged with possession with intent to deliver cocaine, tampering with evidence, and resisting an officer without violence. He filed a motion to suppress, arguing that, while the officer had the authority to order him to exit the vehicle, once he had exited he was free to leave, and that there was no reasonable suspicion to detain him during the traffic stop. The trial court denied the motion, and

the appellate court affirmed, stating that the "interest of officer safety compels the conclusion that an officer may order the exiting passenger to remain at the scene for the duration of the traffic stop."
http://www.3dca.flcourts.org/Opinions/3D16-1998.rh.pdf

Sammiel v. State, __ So. 3d __, 2017 WL 2983991 (Fla. 4th DCA 2017)

Police stopped a minivan that fit the description in a BOLO, and the defendant was arrested for robbery and murder. He moved to suppress evidence of the cellphone found in the vehicle and his statement, arguing that the arrest was unlawful because "law enforcement did not have reasonable articulable suspicion to justify stopping the van [because] the BOLO in this case was vague." The trial court denied the motion, and the appellate court affirmed, stating that

> although the physical description of the van given by the eyewitness in the 911 call was relatively bare-bones ("grayish-greenish beat up van"), there were four additional factors which created reasonable suspicion to stop the van. First, the BOLO came from a reliable source: a citizen eyewitness who had no interest in the situation and who was fully cooperative with law enforcement. Second, there were virtually no other cars on the road at the time the BOLO went out. Third, the witness told law enforcement that there were at least three people in the vehicle and was able to identify the vehicle's direction of travel. Fourth, law enforcement stopped the vehicle within 10 minutes of the BOLO and less than 5 miles away from where it was initially spotted. Under the totality of these circumstances, law enforcement had a reasonable suspicion to conduct the stop.

https://edca.4dca.org/DCADocs/2015/3310/153310_DC05_07122017_084044_i.pdf

A.D.P. v. State, 223 So. 3d 428 (Fla. 2d DCA 2017)

A vehicle was reported stolen, and when an officer found it a few days later a bead necklace that had been hanging from the rearview mirror was gone and the defendant's palm print was found on the mirror. The defendant was charged with grand theft motor vehicle, the trial court denied his motion for judgment of dismissal, and the defendant was adjudicated delinquent. The appellate court reversed, stating: "Evidence that a person was a passenger in a previously stolen vehicle is insufficient to prove the theft of the vehicle. . . . The . . . State relied on the palm print on the rearview mirror and the fact that the vehicle was parked outside a building where A.D.P. was known to have lived. The trial court determined that this evidence 'pointed to' A.D.P. and observed that usually the driver is the one 'playing with' the rearview mirror. But 'suspicion alone is not sufficient to meet the State's burden of proof.'"
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/July/July%2014,%202017/2D15-5341.pdf

J.V. v. State, 221 So. 3d 689 (Fla. 4th DCA 2017)

After a traffic stop of a vehicle in which the defendant was a passenger, police found a firearm, heroin, and rock cocaine. The defendant was arrested and was found delinquent. He appealed, arguing that "his adjudications on two separate counts for possession of drug paraphernalia arising from the same incident violated double jeopardy." The appellate court did

not address the double jeopardy issue but reversed the delinquency adjudication because of a fundamental defect in the charging document that amounted to fundamental error:

> Both counts charged appellant with possession of "drug paraphernalia being used, intended for use, or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, contrary to Florida Statute section 893.147(1)(b)."
>
> At trial, however, the state prosecuted appellant on the theory that appellant used or possessed drug paraphernalia to "pack, repack, store, contain, or conceal" a controlled substance, which would be a violation of section 893.147(1)(a). Yet, as noted above, the state did not allege that element in the delinquency petition; nor did the state cite section 893.147(1)(a) in the petition. The petition was thus fundamentally defective as to Counts V and VI because those counts cited the wrong statutory provision and failed to allege an essential element of the crime for which appellant was tried.

https://edca.4dca.org/DCADocs/2016/0442/160442_DC13_07052017_091426_i.pdf

V. Torts/Accident Cases

Holmes Regional Medical Center, Inc. v. Allstate Insurance Co., __ So. 3d __, 2017 WL 2981863 (Fla. 2017)

Hintz was injured when his scooter collided with an automobile driven by Emily Boozer, who was driving her father's car, which was insured by Allstate. The jury found the Boozers liable for Hintz's injuries and awarded his guardian, Stalley, $14,905,585.29, which was reduced by 25% because of Hintz's comparative negligence. Allstate paid $1.1 million, its policy limit, but the Boozers did not pay the remainder of the judgment.

After the PI verdict, Stalley filed a medical malpractice action against the petitioners, Holmes and other medical providers, seeking "recovery for the same injuries involved in the initial lawsuit against the Boozers." Respondents Allstate and Emily Boozer were granted leave to intervene and "filed complaints claiming they were entitled to equitable subrogation from the medical provider defendants," who sought dismissal of the complaints because Allstate and Boozer had not paid Hintz's damages in full. The trial court agreed with the medical provider defendants and dismissed the respondents' complaints with prejudice.

The First District Court of Appeal reversed, finding that "the right to equitable subrogation arises when payment has been made or judgment has been entered, so long as the judgment represents the victim's entire damages" and that "Florida courts have allowed subrogation claims to proceed on a contingent basis," and certified this question: "IS A PARTY THAT HAS HAD JUDGMENT ENTERED AGAINST IT ENTITLED TO SEEK EQUITABLE SUBROGATION FROM A SUBSEQUENT TORTFEASOR WHEN THE JUDGMENT HAS NOT BEEN FULLY SATISFIED?"

The Supreme Court reversed, stating: "The Fifth District erred in holding that Respondents could assert claims for contingent equitable subrogation without first paying the judgment in full. As such, we answer the certified question in the negative, reverse the district court's decision, and remand the case to reinstate the dismissal of the equitable subrogation claims."
http://www.floridasupremecourt.org/decisions/2017/sc15-1555_CORRECTED.pdf

***Heartland Express, Inc. of Iowa v. Farber*, __ So. 3d __, 2017 WL 4318608 (Fla. 1st DCA 2017)**

Farber was the limited guardian of the property of Torres, who was injured in an accident with a tractor-trailer driven by Heartland's employer (Jones). Heartland's motion for summary judgment as to choice of law was granted, as was Farber's motion to limit the testimony of a trooper. The jury found Jones liable but did not find wantonness and award punitive damages. Heartland filed a motion for judgment NOV and for new trial, which the trial court denied. The trial court also denied Farber's motion for attorney's fees pursuant to a proposal for settlement, as the parties had stipulated that Alabama law applied to the substantive issues. But the trial court granted Farber's motion for new trial regarding wantonness and punitive damages, finding that it had erred in allowing the trooper's testimony. Heartland appealed, and Farber cross-appealed. The appellate court affirmed as to the trial court's denial of Heartland's motion for judgment NOV and for new trial, and affirmed the denial of Farber's motion for attorney's fees. But it reversed the trial court's granting of Farber's motion for new trial regarding wantonness and punitive damages, stating that Farber

> contends on appeal that in light of the fact that Jones himself testified as to all of the elements of wantonness, "there really is no other explanation *other* than [the trooper's] theory as to why the jury would come to such an erroneous opinion, which was contrary to the established facts . . . ." In our opinion, however, [Farber's] "explanation" is based upon speculation and conjecture as to why the jury found no wantonness on Jones's part. It is entirely possible that the jury accepted Jones's testimony as to what occurred but simply did not find that his actions rose to the level of a reckless or conscious disregard of the safety of others. . . . It is not reasonable though to assume that it was [the trooper's] testimony that led to the jury's verdict on a lack of wantonness. Given that the testimony pertained to causation, an acceptance of such would have precluded a finding that Jones was a cause of the accident. Yet, the jury in this case did, in fact, make such a finding. While [Farber's] counsel may have been surprised that the trial court allowed [the trooper's] deposition to be played, that surprise does not equate to substantial prejudice, particularly where the trial court permitted [Farber] to call [a forensics accident reconstructionist] in rebuttal.

https://edca.1dca.org/DCADocs/2015/1157/151157_DC08_09292017_082509_i.pdf
https://edca.1dca.org/DCADocs/2016/1356/161356_DC08_09292017_083136_i.pdf

***Thornton v. American Family Life Assurance Co. of Columbus*, __ So. 3d __, 2017 WL 4018834 (Fla. 1st DCA 2017)**

Thornton, a 22-year-old living with and dependent on her parents, was injured when she fell off a motorcycle. The trial court held that her injuries were covered specified health events as defined in her mother's insurance policy, but that she was not covered because she did not qualify as a "dependent child." She and her mother appealed, and the appellate court reversed, holding that "the specific age limit stated in the policy prevails over any contrary, more restrictive age limit in the generally referenced Tax Code. The policy's reference to the Tax Code retains the I.R.C.'s meaning and operative effect for the relationship, residency, and economic details which do not conflict with the policy's age provision." It held further that "to the extent the age requirement in the policy definition for 'dependent children' was not sufficiently clear, due to the general reference to the Tax Code, Florida law requires resolution of any ambiguity in favor of the insured."
https://edca.1dca.org/DCADocs/2016/1472/161472_DC13_09132017_090511_i.pdf

***Sajiun v. Hernandez*, __ So. 3d __, 2017 WL 3616391 (Fla. 4th DCA 2017)**

Hernandez and Sajiun's decedent (Santiago) were in a collision. Sajiun recovered nothing and appealed, arguing that "certain improper evidence resulted in the defense verdict, and she challenge[d] several of the trial court's rulings," specifically its permitting, over the plaintiff's objection, the following evidence: "1) witness testimony regarding the speed the decedent motorcycle driver traveled on his motorcycle in the moments preceding the accident; 2) evidence of the weight of the truck, which was used by the defense expert to calculate the motorcycle's speed at impact; and 3) statements the motorcycle driver's child made to a psychotherapist regarding an argument." The appellate court affirmed, finding that the trial court did not abuse its discretion.
https://edca.4dca.org/DCADocs/2016/0589/160589_DC05_08232017_085632_i.pdf

***GEICO v. Mukamal for Lacayo*, __ So. 3d __, 2017 WL 3611593 (Fla. 3d DCA 2017)**

After an automobile accident in which their son died, the Kastenholzes sued Lacayo. GEICO, Lacayo's insurer, notified Lacayo of its reservation of rights to deny coverage because he was not listed as a driver under the policy. Lacayo disappeared, and GEICO again notified Lacayo of its reservation of rights because he had failed to cooperate with GEICO's investigation. GEICO issued other reservation of rights letters and continued to represent Lacayo. The jury returned a verdict for $15,350,000 in favor of the Kastenholzes, and the trial court entered final judgments consistent with the verdict. Final summary judgments were entered in favor of the Kastenholzes. GEICO sought to decline coverage based on breach of cooperation, but the appellate court affirmed, "concluding that insurance coverage existed as a matter of law because there was no genuine issue of material fact that GEICO failed to comply with the Claims Administration Statute, section 627.426, Florida Statutes (2015)." It did not comply with the written "refusal to defend" by registered or certified mail, but rather continued to defend Lacayo. Nor could GEICO "obtain from Lacayo a 'nonwaiver agreement' or 'retain[ ] independent counsel which [was] mutually agreeable to the parties' because Lacayo had absconded."
http://www.3dca.flcourts.org/Opinions/3D15-2750.pdf

***Choi v. Auto-Owners Insurance Co.* __ So. 3d __, 2017 WL 3495603 (Fla. 2d DCA 2017)**

Beutler was the driver of the vehicle that allegedly struck the car Choi was riding in. Choi sued Beutler and Auto-Owners (Choi's UM insurance carrier), and the trial court granted Auto-Owners' motion to sever the causes of action. Choi sought review, which the appellate court granted, concluding that "because all [the] claims were inextricably interwoven, the circuit court departed from the essential requirements of the law by granting the motion to sever."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/August/August%2016,%202017/2D16-4642co.pdf

GEICO v. Nocella, __ So. 3d __, 2017 WL 3495448 (Fla. 2d DCA 2017)

Nocella got a judgment against GEICO's insured after an automobile accident. Thirty-two days after the judgment was entered, Nocella moved to join GEICO as a party defendant to the damages judgment, which the court granted. GEICO sought review, and the appellate court quashed the trial court's order, noting that Nocella had "filed her motion to join GEICO . . . thirty-two days after entry of the final judgment and fifteen days after [the latest date that she could have properly moved to join GEICO]. Accordingly, she failed to satisfy both section 627.4136(4) and the fifteen-day requirement in rule 1.530(g)."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/August/August%2016,%202017/2D16-4696.pdf

Miccosukee Tribe of Indians of Florida v. Lewis Tein, P.L., __ So. 3d __, 2017 WL 3400029 (Fla. 3d DCA 2017)

After a car accident, the family of the deceased (Bermudez) filed a wrongful death action against two members of the Miccosukee Tribe. Although the Tribe was not a party, it paid the law firm of Lewis and Tein to defend the defendants. The plaintiffs were awarded $3.177 million. Roman, the Tribe's new attorney, gave the plaintiffs' attorney copies of checks and check stubs payable to Lewis and Tein for $3.177 million, after which the plaintiffs' attorney filed a claim of perjury and fraud action against Lewis and Tein, which turned out to be false. In a previous opinion the Third District Court of Appeal held that "the Tribe and Roman's conduct in providing the [plaintiffs'] attorney with the checks constituted a waiver of the Tribe's sovereign immunity." The Tribe filed actions against Lewis and Tein, including allegations of racketeering, fraud, and breach of fiduciary duty, and Lewis and Tein filed a complaint against the Tribe alleging malicious prosecution and civil remedies for criminal practices. The Tribe filed a motion to dismiss the action filed against it based on sovereign immunity, which the trial court denied, concluding that the decision in the tort action "found an explicit waiver of immunity, and the Tribe's litigation conduct in the four prior cases 'demonstrated a clear, explicit and unmistakable waiver of sovereign immunity with regard to this matter.'" The Tribe appealed, and the appellate court reversed, stating that the Tribe "did not clearly, unequivocally, and unmistakably waive its immunity." It stated further: "Lewis and Tein had a right not to have their reputations ruined and their business destroyed by the Tribe. Like any injured party, if the allegations are true they should have proper redress for their injuries. But just as every right has its remedy, every rule has its exception. The exception here is sovereign immunity. Granting immunity to Indian tribes is a policy choice made by our elected representatives to further important federal and state interests. It is a choice to protect the tribes understanding that others may be injured and without a remedy."
http://www.3dca.flcourts.org/Opinions/3D16-2826.pdf

Rasinski v. McCoy, __ So. 3d __, WL 3318712 (Fla. 5th DCA 2017)

After an automobile accident, Rasinski was found 100% liable for permanent injuries sustained by McCoy. He appealed, arguing the trial court erred by "(1) denying his motion for new trial due to opposing counsel's improper closing argument; (2) denying his motions for directed verdict, new trial, and remittitur on three grounds; and (3) denying his motion to determine set-off." The appellate court affirmed as to the first two arguments, but it reversed "the trial court's denials of Rasinski's motions for remittitur relating to lost earning capacity and to set off $25,037.56 from the final judgment, an amount for which McCoy's healthcare provider waived any right to subrogation or reimbursement."
http://www.5dca.org/Opinions/Opin2017/073117/5D15-4423.op.pdf

Stewart v. Draleaus, __ So. 3d __, 2017 WL 3169272 (Fla. 4th DCA 2017)

Draleaus and two other plaintiffs sued Stewart after his car struck their motorcycles. Final judgment was entered in favor of the plaintiffs, and the defendant appealed, arguing that "the trial court erred in precluding three types of evidence: a witness's statement to an investigating police officer, alcohol consumption by the plaintiffs, and a motorcycle license violation by one of the plaintiffs." The appellate court agreed and reversed and remanded for a new trial.
https://edca.4dca.org/DCADocs/2015/2320/152320_DC13_07262017_095754_i.pdf

Las Olas Holding Co. v. Demella, __ So. 3d __, 2017 WL 3085329 (Fla. 4th DCA 2017)

Kim, with a blood alcohol level over three times the legal limit, drove into the Riverside Hotel (owned by Las Olas), injuring Demella and killing his pregnant wife. Demella sued Kim and Riverside, and Riverside moved for a directed verdict, arguing that the plaintiff had failed to prove reasonable foreseeability. The trial court denied the motion, and Riverside's expert testified that "the chances of a car crash happening at the time of the instant drunk driving incident were 'statistically as close to zero as you can get.'" The jury found Kim 85% at fault and Riverside 15% at fault. Riverside renewed its motion for a directed verdict, which the trial court denied, and moved for a mistrial during opening and closing arguments based on remarks made by plaintiff's counsel, which the trial court also denied. Riverside appealed, and the appellate court reversed and remanded for the trial court to grant Riverside's motion for a directed verdict:

> The plaintiff and his wife were, unfortunately and through no fault of their own, in the wrong place at the wrong time. However, Riverside was also without fault. Riverside owed no duty of care to invitees within its walls with regard to [the road], as a danger to the hotel's invitees from the placement of the pool cabana in relation to that road was not one of which Riverside knew or should have known. Additionally, even if a duty was owed, the actions taken to prevent injury were legally sufficient such that there was no breach of this duty. Finally, even assuming a duty and a breach, the collision of the severely intoxicated driver's car with the pool cabana, at such speed and force as to collapse the steel-reinforced concrete columns of the cabana, was an extraordinary and unforeseeable event, making Riverside legally not the proximate cause of any of the injuries suffered in this highly fact-specific case.

The appellate court therefore did not need to address the remarks made by plaintiff's counsel, but it did express concern about several of the remarks and "caution[ed] against their future use." https://edca.4dca.org/DCADocs/2016/0231/160231_DC13_07192017_085623_i.pdf

Gonzalez v. Stoneybrook West Golf Club, LLC, Inc., __ So. 3d __, 2017 WL 2988826 (Fla. 5th DCA 2017)

After drinking at Stoneybrook West Golf Club, Hartman, with a blood alcohol content of .302, caused an automobile accident in which a woman was killed. Gonzalez sued Stoneybrook as personal representative of the deceased woman's estate, under Florida's reverse dram shop liability statute (section 768.125, Florida Statutes; vendor of alcoholic beverages is not liable for damages resulting from intoxication unless vendor knew purchaser was "habitually addicted" to alcohol). The trial court entered summary judgment in favor of Stoneybrook, and Gonzalez appealed. The appellate court reversed for further proceedings, finding "sufficient evidence to raise a factual dispute not resolvable by summary judgment as to whether Hartman was habitually addicted to alcohol and, if so, whether Stoneybrook knew of his addiction." http://www.5dca.org/Opinions/Opin2017/071017/5D16-2680.op.pdf

Government Employees Insurance Co. v. Macedo, __ So. 3d __, 2017 WL 2981812 (Fla. 2017)

Macedo and Lombardo were in an automobile accident, and Macedo sued Lombardo. Lombardo's insurance policy with GEICO provided bodily injury liability coverage for up to $100,000 per person and $300,000 per incident and gave GEICO sole authority to settle claims. Macedo made a proposal for settlement for $50,000, which was not accepted, and the jury returned a verdict in favor of Macedo for $243,954.55. Macedo joined GEICO to the judgment and sought taxable fees and costs, which the trial court awarded against GEICO jointly and severally with Lombardo. On appeal, the First District Court of Appeal affirmed based on *New Hampshire Indemnity Co. v. Gray*, 177 So. 3d 56 (Fla. 1st DCA 2015), which held "that the insurer's policy provision stating that it would cover 'other reasonable expenses incurred at our request' included costs associated with choosing to litigate a case instead of settling it." It stated that "GEICO's policy with Mr. Lombardo gave it the sole right to litigate and settle claims, and contractually obligated it to pay for 'all investigative and legal costs incurred by us' and 'all reasonable costs incurred by an insured at our request,'" which could include "not only the insurer's litigation costs, but also those incurred by the opposing party should that party prevail." The First District certified conflict with *Steele v. Kinsey*, 801 So. 2d 297 (Fla. 2d DCA 2001).

The Supreme Court affirmed, holding that "the ambiguous Additional Payments section of the insurance policy must be construed in favor of coverage for the costs and attorneys' fees awarded against the insured pursuant to section 768.79, Florida Statutes." http://www.floridasupremecourt.org/decisions/2017/sc16-935.pdf

Harrison v. Gregory, 221 So. 3d 1273 (Fla. 5th DCA 2017)

Gregory was personal representative of the estate of the decedent, who was killed in a collision with Harrison. Gregory sued Harrison, and the jury found Harrison 75% at fault and the decedent 25% at fault, and Harrison appealed. The appellate court reversed, finding that "the cumulative effect of the errors at trial materially prejudiced" the defendant. One error involved

the admission into evidence of Harrison's statement to her sister at the accident scene that she had just killed someone. The trial court had earlier ruled the statement inadmissible, but at trial it permitted a witness to testify as to the statement. The second error was the mention by the estate's expert witness of "the insurance company." The third error was when, during closing argument, the estate's attorney suggested how the jury should fill out the verdict form and "inexplicably advised the jury as follows: 'By the way, 50 percent or more at fault, there's no recovery.' . . . [I]t was highly improper for counsel to advise the jury as to the potential adverse effect to the parents of the jury's potential factual findings regarding comparative fault. Frankly, we can conceive of no reason why counsel would [do so] other than to deliberately and improperly evoke sympathy and compassion for Decedent's parents."
http://www.5dca.org/Opinions/Opin2017/070317/5D16-1037.op.pdf

***Heiston v. Schwartz & Zonas, LLP*, 221 So. 3d 1268 (Fla. 2d DCA 2017)**

Dylan Heiston was killed in an automobile accident, and his brother was appointed personal representative. Dylan's parents, the statutory survivors, were represented by the law firm of Schwartz & Zonas in the wrongful death action, and, as they did not qualify as personal representatives of the estate, Dylan's brother Dominic was appointed. He was represented by Morgan & Morgan. The final accounting of the estate included $50,190.51 to Morgan & Morgan for fees and costs, but Schwartz & Zonas filed an objection to that disbursement, claiming: "All assets as stated in the Amended Inventory were collected by the Law Offices of Schwartz & Zonas LLP during their lawful representation of [Dylan's parents]. As Morgan & Morgan PA performed no duties in the collection of Estate Assets, it is not entitled to an attorney fee." Schwartz & Zonas also ultimately suggested it receive 80% of the attorney's fees amount and Morgan & Morgan would receive 20%. But the trial court ordered the entire attorney's fee to Schwartz & Zonas, and Dominic appealed. The appellate court reversed, stating:

> The trial court seems to have decided to prefer Schwartz & Zonas for payment of the entire fee because they became active in the matter before Morgan & Morgan. In basing its ruling on which law firm was the first to act, the trial court overlooked that Morgan & Morgan's client, the personal representative of the estate, was the sole party who was authorized under the Act to pursue the claim. . . . The trial court erred in preferring Schwartz & Zonas for payment of the entire contingent fee simply because they were the first to contact the insurance companies and to file a lawsuit.
>
> . . . . On remand, the trial court shall reconsider the allocation of the $50,000 attorney's fee between the two law firms based on the provisions of the Act and the principles stated in . . . pertinent case law. Thus, the trial court must award the full $50,000 contingent fee to Morgan & Morgan and then reduce the fee award in a manner commensurate with the value, if any, of the services that Schwartz & Zonas provided to the statutory survivors.

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/July/July%2007,%202017/2D16-3417.pdf

VI. Drivers' Licenses

Carpenter v. DHSMV, __ So. 3d __, 2017 WL 3686771 (Fla. 1st DCA 2017)

The appellate court denied the defendant's motion, noting that "the Department's records are 'prima facie evidence' that the driver committed the offenses identified in its records, and that the burden then shifts to the driver to dispute the evidence."
https://edca.1dca.org/DCADocs/2017/0234/170234_DC02_08282017_091121_i.pdf

S.C. v. State, __ So. 3d __, 2017 WL 2960626 (Fla. 3d DCA 2017)

The defendant used a fake ID at a bar and was charged with possessing a stolen driver license. He filed a motion for judgment of dismissal because there was no evidence that he had stolen the license. The trial court denied his motion, and he was adjudicated delinquent for possessing a stolen driver license. He appealed, but the appellate court affirmed, noting that the defendant "took the driver's licenses without having the permission of the owner, and he did it without the owner having any idea." Further, the defendant had concealed the stolen licenses in a separate wallet and ran when the officer was arresting him, "which is consciousness of his guilt"; he "had on him the identification information of three people . . . and four driver's licenses; the photo and the defendant "were so different looking that the bartender called security when she was showed the license"; and the defendant "was trying to use the fake license to buy something he would otherwise not be entitled to buy."
http://www.3dca.flcourts.org/Opinions/3D16-2066.pdf

Rudd v. DHSMV, 25 Fla. Law Weekly Supp. 432a (Fla. 19th Cir. Ct. 2016)

An officer saw the defendant's vehicle parked with the lights on at a closed business. As the officer approached, the defendant left the parking lot and the officer followed her, pulled her over, and noticed indicia of impairment. The defendant was arrested for DUI and her license was suspended for refusal to submit to a breath test. The hearing officer affirmed the suspension, finding the encounter to be consensual. The defendant sought review, arguing that the stop was not lawful. The circuit court, in its appellate capacity, agreed, granted review, and quashed the suspension, noting that the officer had "approached the [defendant's] car while still in his patrol car and turned on his lights. The record is devoid of evidence that he had reasonable suspicion to believe that [the defendant] had committed, was committing, or was about to commit a crime at the time he activated his lights and followed [her] vehicle out of the parking lot with his emergency lights engaged. . . . The Fourth District has routinely held that an officer's use of emergency lights evidences an investigatory stop, not a consensual encounter, because the lights lead a citizen to believe that he is not free to leave."

Johnson v. DHSMV, 25 Fla. Law Weekly Supp. 429d (Fla. 19th Cir. Ct. 2017)

After being stopped for driving with high beams on and failing to dim them, the defendant was arrested for DUI and her license was suspended for refusal to submit to a breath test. She sought review, arguing that the stop was not lawful. The circuit court, in its appellate capacity, granted review and quashed the suspension, noting that an officer does not have reasonable suspicion to stop a vehicle for failing to dim headlights when the driver's lane is separated from oncoming lanes by a median.

***Fury v. DHSMV*, 25 Fla. Law Weekly Supp. 421a (Fla. 13th Cir. Ct. 2017)**

DHSMV discovered that, around ten years earlier, the defendant had obtained a license in a friend's name, allegedly for taking drug tests for the friend. No criminal charges were filed against the defendant because the statute of limitations period had passed. She argued that the statute of limitations barred the civil penalty of license suspension as well. The circuit court, in its appellate capacity, agreed, granted the petition, and directed the clerk to close the case file.

***Burke v. DHSMV*, 25 Fla. Law Weekly Supp. 417a (Fla. 13th Cir. Ct. 2017)**

The defendant was charged with leaving the scene of an accident with injuries and his license was suspended. He filed a petition for writ of certiorari, arguing that (1) he was denied due process at his hearing because the hearing officer did not permit his criminal defense attorney to testify, (2) his license was not lawfully suspended because he was not afforded a preliminary hearing, and (3) "law enforcement failed to timely furnish certain information required by law." The circuit court, in its appellate capacity, denied the petition, stating that (1) the underlying proceeding was an informal review, which "does not contemplate receipt of testimony," (2) a "license may be suspended without a preliminary hearing upon . . . sufficient evidence that a licensee 'has committed an offense for which mandatory revocation of license is required upon conviction,'" and (3) "[t]he information [the defendant] claims law enforcement failed to timely furnish was not required in the context of this case."

***Foster v. DHSMV*, 25 Fla. Law Weekly Supp. 404a (Fla. 6th Cir. Ct. 2017)**

After stopping the defendant for failing to stop at a stop sign, a deputy smelled alcohol and noticed that the defendant's eyes were bloodshot and watery and that his speech was slurred. 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 dash cam video evidence contradicted the deputies' documentary and testimonial evidence and that there was not competent substantial evidence that the defendant was lawfully arrested for DUI. The circuit court, in its appellate capacity, denied review. It noted that the supreme court in *Wiggins v. Florida Department of Highway Safety and Motor Vehicles*, 209 So. 3d 1165 (Fla. 2017), stated "that a circuit court in its appellate capacity is not reweighing the evidence and applies the correct law by rejecting documentary and testamentary statements of a law enforcement officer as being competent, substantial evidence when such evidence is 'totally contradicted and totally negated and refuted by video evidence of record.'" But it held that the dash cam video in this case did not totally contradict, negate, or refute the deputies' reports and testimony.

***Bell v. DHSMV*, 25 Fla. Law Weekly Supp. 403a (Fla. 6th Cir. Ct. 2017)**

The defendant was charged with DUI and his license was suspended for refusal to submit to a breath test. At his administration hearing he moved to invalidate the suspension, "alleging an improper reading of implied consent." The hearing officer denied his motion, and he filed a petition for writ of certiorari. The circuit court, in its appellate capacity, denied the petition, stating: "[The defendant] states that [the deputy's] statement that a second refusal will result in an 18-Month suspension is a clear misstatement of the implied consent statute [and] that the suspension should have been overturned by the hearing officer. [He] overlooks the fact that [the

deputy] correctly read implied consent before any subsequent misstatement of law. Furthermore, there is no indication in the record that [the deputy's] explanation had any exacerbating effect on [the defendant or his] confusion. [The deputy] was entitled to interpret [the defendant's] actions as a refusal to supply a breath sample."

***Flintom v. DHSMV*, 25 Fla. Law Weekly Supp. 400a (Fla. 6th Cir. Ct. 2016)**

The defendant was charged with DUI and his license was suspended. He filed a petition for writ of certiorari, arguing that the stop was not lawful and that the person inspecting the breath testing machines was not properly certified. The circuit court, in its appellate capacity, had denied the petition, but upon rehearing and/or clarification granted the petition for certiorari as to the lawfulness of the stop. It held there was a lack of competent substantial evidence to support the suspension:

> The only evidence in the record as to the basis for the stop is the statement of [the trooper] contained in the arrest and booking report that stated, "I was traveling south . . . when I observed a vehicle headed North that was flashing its high beam on the traffic in front of it. There was (sic) several cars in front of the vehicle and I (sic) continued to flash its high beams for over a block. After the vehicle passed I proceeded after it with my emergency equipment activated." As found by the hearing officer, [the trooper] cited the [defendant] for failing to dim his headlamps within 300 feet of approaching a vehicle from the rear. . . . The above facts, without more, do not constitute competent substantial evidence to support a stop of the [defendant] for this reason.

***Vandetti v. DHSMV*, 25 Fla. Law Weekly Supp. 399a (Fla. 2d Cir. Ct. 2016)**

Based on four DUI convictions, the defendant's license was revoked. He sought a records review, arguing that "his driving record did not accurately reflect his convictions." At his hearing one of the citations could not be located, but after the close of evidence a copy was found. The hearing officer informed the defendant's attorney and set a show-cause hearing, at no cost to the defendant. The hearing officer for that hearing affirmed the revocation, and the defendant filed a petition for writ of certiorari. The circuit court, in its appellate capacity, denied the petition, finding that it was not improper for DHSMV to hold a show-cause hearing after the missing citation was found, and that the defendant was not unduly prejudiced by the hearing officer's decision to reopen the hearing. The court distinguished *State, Dept. of Highway Safety and Motor Vehicles v. Griffin*, 909 So. 2d 538 (Fla. 4th DCA 2005), noting that there was no evidence that the hearing officer in this case "took it upon herself to locate the missing citation and cause the matter to be set for a new hearing, nor does it appear that [the defendant] requested her recusal. Even assuming, *arguendo*, that the [hearing officer] did look for the evidence herself, [the defendant] cannot demonstrate prejudice because [that hearing officer] did not preside over the second hearing." The court also found no evidence that the second hearing officer was impartial or that the defendant had requested her recusal.

The court held further that regarding the defendant's argument that DHSMV denied him due process by failing to conduct the second hearing within 30 days of the request, "he again relies on the incorrect statute."

The court also held that DHSMV was entitled to rely on uncertified citations, and because the defendant had not objected to the entry of the citations at the hearing, he did not preserve the issue of their certification or legibility for review. And "[e]ven if the citations were improperly considered, [the defendant's] certified driving record entered during the rehearing constituted competent, substantial evidence to support the hearing officer's decision."

***Savnik v. DHSMV*, 25 Fla. Law Weekly Supp. 304a (Fla. 15th Cir. Ct. 2017)**

A trooper responded to a 911 call about a domestic violence incident. When the trooper arrived on the scene, the subject vehicle was parked on I-95 and two passengers told the trooper that the defendant had been driving and had gotten into a fight with another passenger. That passenger threw the defendant's keys in the grass "for safety reasons" and walked away. The trooper noticed indicia of impairment, and eventually 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 stop was not lawful. The circuit court, in its appellate capacity, granted review and quashed the suspension, because the trooper had not observed the defendant driving "and no exceptions to the misdemeanor warrant requirement were present."

DHSMV argued that the passenger had conducted a valid citizen's arrest of the defendant, from which the trooper "subsequently developed probable cause based on statements by the other passengers." The court disagreed, noting: "'In order to effectuate a citizen's arrest, a misdemeanor must not only be committed in the presence of the private citizen, but there must also be an arrest -- that is a deprivation of the suspect's right to leave.' *Steiner v. State*, 690 So. 2d 706, 708 (Fla. 4th DCA 1997). . . . Although [the defendant] could not find his keys in the grass, [the passenger's] leaving the scene was insufficient to detain [him] for the purposes of a citizen's arrest."

***Franklin v. DHSMV*, 25 Fla. Law Weekly Supp. 303b (Fla. 15th Cir. Ct. 2017)**

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 stop was not lawful. Although the arresting officer initially followed the defendant's vehicle based on a BOLO, the hearing officer found that the traffic stop was based on the officer's observation that the defendant's license plate was obstructed. The circuit court, in its appellate capacity, granted review and quashed the suspension, stating: "The officer in this case lacked probable cause to stop [the] vehicle based upon the frame obstructing the name of the state on his license plate."

***Southerland v. DHSMV*, 25 Fla. Law Weekly Supp. 301a (Fla. 4th Cir. Ct. 2017)**

The defendant was arrested for DUI and his license was suspended. He sought review, arguing that the stop was not lawful because the basis for it was the trooper's conclusory statement that he saw the defendant weaving "in a matter [sic] that is consistent with the driver being ill, fatigued or impaired" and saw him cross the lane marker. The circuit court, in its appellate capacity, granted review and quashed the suspension, noting that the trooper "did not provide the facts and circumstances underlying these conclusions."

***Williams v. DHSMV*, 25 Fla. Law Weekly Supp. 230a (Fla. 18th Cir. Ct. 2017)**

The defendant failed to stop at a red light, causing a death. His license was revoked, and he sought a business-purposes-only license. The hearing officer denied the request, and the defendant sought review, arguing that "the Hearing Officer was biased toward his age and his most recent car accident during the hearing, and that he was not treated fairly in his request for a hardship license." The circuit court, in its appellate capacity, denied review, finding no evidence of bias or any violation of due process.

***Millas v. DHSMV*, 25 Fla. Law Weekly Supp. 221a (Fla. 13th Cir. Ct. 2017)**

DHSMV denied the defendant's request for reinstatement of his license, and he sought review. The circuit court, in its appellate capacity, granted review and quashed the denial order and remanded for a new hearing. It stated that

> the Department applied the wrong statutory criteria in denying [the defendant's] request for reinstatement of his driving privilege; the criteria in §322.271(1)(b), not §322.271(2)(b-c), Florida Statutes, are applicable, where [he] had never been convicted of [DUI]. . . . Accordingly, the hearing officer need not have considered whether [the defendant] had driven in the previous 12 months.
>
> In addition, the Court finds some basis in the record that suggests the Department erred in imposing . . . HTO . . . status on [the defendant] where unrebutted testimony is that [he] never held a Florida Driver's License. . . . The issue, however, was not raised in the proceeding below. The lower tribunal should be given the opportunity to consider the issue before this Court undertakes review.

VII. Red-light Camera Cases

VIII. County Court Orders

***State v. Breese*, 25 Fla. L. Weekly Supp. 491a (Broward Cty. Ct. 2017)**

The defendant was arrested for DUI and filed a motion to suppress, arguing that the detention was unlawful for lack of reasonable cause, and that his continued detention for another officer to determine reasonable cause created an unreasonable delay and violated his Fourth Amendment rights. The court agreed and granted the motion, stating that "the observations of bloodshot watery eyes, and the odor of alcohol, without more, was not in and of itself sufficient to establish reasonable cause to request sobriety exercises. . . . [O]nce [the officer] determined that there was no medical emergency, he had a legal duty to continue the investigation to determine whether there was sufficient objective/articulable grounds sufficient to establish reasonable cause to detain the defendant for suspicion of DUI." As to the reasonableness of the delay, the court noted that the first two officers could have conducted a DUI investigation without waiting for the third officer.

***State v. Young*, 25 Fla. L. Weekly Supp. 468a (Volusia Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a motion to suppress, arguing that "the deputy seized her without a reasonable suspicion when he ordered her to roll down her window."

The court granted her motion, stating: "The facts known to the deputy at the time of the seizure were that Defendant was asleep in a lawfully parked car at 1:47 a.m. Courts confronting similar facts have found no reasonable suspicion to justify a seizure."

***State v. Shattuck*, 25 Fla. L. Weekly Supp. 465a (Volusia Cty. Ct. 2017)**

An officer outside her jurisdiction saw the defendant's motorcycle lying in the middle of an intersection blocking traffic. The defendant was "visibly injured" and belligerent and tried to leave the scene, and eventually a trooper arrived and arrested him for DUI. He filed a motion to suppress, arguing that the initial detention was improper because the officer was outside her jurisdiction and there was no fresh pursuit, mutual aid agreement, or breach of the peace/intent to arrest warranting a citizen's arrest; the length of the detention was improper; and there was no probable cause for the arrest. The court granted the motion and stated, with regard to probable cause: "While there was a minor type of accident and an odor of alcohol and some other signs of possible impairment, once [the defendant] was medically cleared, there was not enough evidence at the point to make a DUI arrest and, standing in the shoes of a private citizen, [the officer] could not continue a DUI investigation. A person may not be detained once the initial purpose of a stop has been satisfied and removed." And none of the three circumstances in which an officer can arrest a person for misdemeanor DUI existed: the trooper (1) did not witness all elements of DUI, (2) was not investigating an accident and developing probable cause to charge DUI, and (3) could not rely on the fellow officer rule because the first officer was outside her jurisdiction and therefore "the equivalent of a private citizen."

***State v. Hart*, 25 Fla. L. Weekly Supp. 461a (Volusia Cty. Ct. 2013)**

The defendant refused a breath test and was arrested for DUI. He filed a motion to suppress, alleging that (1) the stopping deputy unlawfully detained him longer than necessary to issue a ticket for illegally parking in a roadway, (2) the investigating deputy detained him without reasonable suspicion or probable cause for a DU1 investigation, (3) he was confused because a deputy read him his *Miranda* warnings and advised him of his constitutional right to remain silent, and therefore his refusal to perform field sobriety exercises should not be used against him, and (4) the arresting deputy did not handcuff him and state that he was under arrest before reading the implied consent, so his refusal to submit to a breath test should be suppressed as not in compliance with section 316.1932, Florida Statutes. The court denied the motions, stating that (1) the 15-minute wait time between the initial encounter and the arrival of the investigating deputy was reasonable, (2) the initial detention by the stopping deputy was justified based on evidence that the defendant "was stopped in the middle of the roadway, asleep at the wheel, with his engine running and lights on," and there were indicia of impairment, which were communicated to the investigating deputy, who also observed such indicia, (3) the confusion doctrine did not apply, and (4) the arresting deputy substantially complied with the requirements of section 316.1932.

***State v. Philage*, 25 Fla. L. Weekly Supp. 459b (Pasco Cty. Ct. 2014)**

The defendant was arrested for DUI and filed a second motion to suppress breath test and breath results because the Intoxilyzer was not inspected by FDLE upon its return to Pasco County from an authorized repair facility (FDLE). The court denied the motion, noting that the

Alcohol-Testing Program Administrator testified for the state that, "although defined as, an 'authorized repair facility', [FDLE] is not a repair facility and has never been a repair facility." He further testified that to interpret it as a repair facility as argued by the defendant "would result in agencies all over the State of Florida sending intoxilizer instruments to Tallahassee for annual {FDLE] inspections; and, having inspected the instruments and returning them to the various agencies, [an FDLE] inspector would then need to travel to each agency and re-inspect the instruments before they could be put into evidentiary use." The court agreed, stating that "[t]o hold otherwise would lead to an illogical result that upon the return of a breath testing instrument by [FDLE] to an agency, [FDLE] would need to perform a second or re-inspection."

***State v. Philage,* 25 Fla. L. Weekly Supp. 459a (Pasco Cty. Ct. 2014)**

The defendant was arrested for DUI and filed a motion to suppress breath test and breath results because the Intoxilyzer "experienced an inordinate amount of RFI [Radio Frequency Interference] indicators in the months preceding and after Defendant submitted to her breath tests." The court denied the motion, stating: "While this Court appreciates the efforts that Defendant has put forth regarding the collection of the statistical data and the thoroughness of her witness' testimony, there is simply no evidence that a RFI affected Defendant's breath test."

***State v. Ivanova*, 25 Fla. L. Weekly Supp. 458a (Pasco Cty. Ct. 2015)**

A BOLO was issued from an anonymous report of driver believed to be impaired. A deputy followed the described vehicle and, after seeing it drifting, braking erratically, and then veering left with the right signal on, stopped the defendant. The deputy called in another deputy, who arrived 17 minutes later and began a DUI investigation. The defendant was arrested and filed a motion to suppress. The court denied the motion, stating that

> in light of the calls of concerned citizens, albeit anonymous, describing the make of the vehicle and tag number and the driving pattern observed by [the first deputy] and subsequently corroborated, together with time of day, the difficulty in operating the vehicle and the Defendant's slow response, [the deputy] had a reasonable articulable suspicion that the Defendant was impaired, justifying the detention to conduct a DUI investigation. . . . While [the first deputy] did not detect the odor of alcohol, or report any slurred speech, blood shot watery eyes, or other classic signs of alcohol impairment, he suspected some type of impairment. Further the lack of these "classic signs" is not dispositive. Other factors may include the Defendant's reckless or dangerous operation of a vehicle . . . or lack of dexterity and the officer need not eliminate all possible defenses in order to establish probable cause. . . . The court is further not convinced that the caller was truly "anonymous" or at least that the caller was "aware" of anonymity. [Further,] the Court finds that the 17 minutes it took [the second deputy] to arrive and begin his investigation in order to have a more experienced Deputy perform the investigation was not unreasonable.

***State v. Pinto et al.,* 25 Fla. L. Weekly Supp. 456d (Pinellas Cty. Ct. 2013)**

The defendants filed motions to suppress breath tests and breath test results because of alleged problems with the Intoxilyzer 8000. The court denied the motions, stating:

> There is nothing on the record or presented into evidence to suggest that the flow sensor or exhaust port check valve affect the analytical methodology or reliability of the Intoxilyzer 8000. Furthermore, the Defendants have not presented any evidence that in their particular breath tests that there was anything unusual or problematic with the results that may be attributable to either the flow sensor or exhaust port check valve. As such, this Court finds that the Defendants have failed to present substantial compelling evidence that their breath tests were not performed in substantial compliance with the Florida Implied consent law and are unable to shift the burden of showing compliance to the State. Furthermore, the Defendants have failed to demonstrate that the flow sensor or exhaust port check valve affects the analytical methodology or reliability of the Intoxilyzer 8000 or that the Intoxilyzer 8000s used in their cases had any issues with either the flow sensor calibration or the exhaust port check valve.

***State v. Lagardere*, 25 Fla. L. Weekly Supp. 456c (Pasco Cty. Ct. 2015)**

The court denied the defendant's motion to suppress Intoxilyzer and refusal to submit, stating that "the Defendant's Refusal to take a breath test is admissible without the proof that the breath test instrument is in substantial compliance with the rules. Whether a test was not approved or did not comply with administrative rules and regulations are matters which, although relevant to the admissibility of a breath test, are irrelevant where the test has been refused."

***State v. Raneiri*, 25 Fla. L. Weekly Supp. 456b (Pinellas Cty. Ct. 2016)**

The court denied the defendant's motion for a *Daubert* hearing and motion to exclude field sobriety exercises, stating: "[T]he Field Sobriety Exercises (excluding the Horizontal Gaze Nystagmus) are not scientific and do not fall within the purview of either *Daubert* or Florida Statute Section 90.702. . . . As a result, the Defendant's request for a *Daubert* Hearing is denied. Furthermore, lay opinion testimony is permissible with regard to the Defendant's impairment and performance on the Field Sobriety Exercises. . . . This longstanding rationale remains in place, and Florida's adoption of the *Daubert* standard has not eliminated the State's ability to elicit such lay opinion testimony."

***State v. Berger*, 25 Fla. L. Weekly Supp. 456a (Pasco Cty. Ct. 2013)**

The defendant filed a motion to exclude for lack of substantial compliance because "[i]t was uncontested that in late 2004 and into 2005, a pin hole was drilled in every Intoxilyzer 8000 in Florida, and that prior written notice was not given to FDLE by the manufacturer." The court denied the motion, stating:

> Specifically, the State argues that the Defense failed to prove that the Intoxilyzer 8000 at issue (serial number 80-001117) was a "previously approved" instrument, defined in Florida Administrative Code Rule 11D-8.003(2) (2002) as ". . . CMI, Inc. Intoxilyzer 8000 using software approved by the Department. . . ."

> The State relies on the testimony of the Defense expert who said the software approved by the Department was not in use in the Intoxilyzer 8000 until 2005, and he did not know when during the late 2004 into 2005 time frame the pin hole was drilled in the Intoxilyzer 8000 at issue.
>
> The Court agrees that the Defense failed to shift the burden of proof to the State.

***State v. Diaz,* 25 Fla. L. Weekly Supp. 455b (Pinellas Cty. Ct. 2016)**

The court granted the state's motion to strike the defendant's motion to exclude field sobriety exercises, stating that "the Field Sobriety Exercises (excluding the Horizontal Gaze Nystagmus) are not scientific and do not fall within the purview of FL. Stat. §90.702, as a result, the Court denies the Defendant's request for a *Daubert* hearing prior to trial."

***State v. Boyer*, 25 Fla. L. Weekly Supp. 391a (Broward Cty. Ct. 2017)**

The defendant was arrested for DUI, and an electronically filed information was not received by the court clerk until after the speedy trial period expired. The defendant filed a notice of expiration and a motion for discharge, which the court granted, stating: "The Florida Supreme Court mandated the electronic filing of court documents in criminal cases to begin on October 1, 2013. . . . The original paper Information deposited with the Clerk . . . did not become part of the official court file as it was not converted to an electronic document, indexed, and stored in the official court file. There was no testimony that the State intended that [it] was to become part of the official court file. Had the State relayed its intention as such, then the Clerk was bound by the rules to convert the Information into an electronic document. This was not done." The court also noted that the exception for parties who are unable to electronically file was not applicable.

***Kurow v. Infinity Auto Insurance Co.*, 25 Fla. L. Weekly Supp. 368a (Orange Cty. Ct. 2017)**

After a motor vehicle collision, the plaintiff sued the defendant and her insurer for diminished value to his vehicle. The insurer denied coverage for diminished value, and the plaintiff sought a summary judgment on the issue. The court granted the summary judgment, noting the defendant's policy did not include an exclusion for diminished value, and that "**'Damages'** is *not* defined in the Policy, so this Court must look to Florida law for the legally recognized elements of damages. . . . One of the elements of damages that a person can recover when a motor vehicle suffers property damage is diminished value. Under Florida law, diminished value is the difference between the value of the vehicle that suffered property damage immediately before the collision and its value after it was repaired and returned. . . . Thus, Plaintiff's claim for diminished value . . . is covered as a damage caused by property damage."

***State v. Kennedy*, 25 Fla. L. Weekly Supp. 362c (Volusia Cty. Ct. 2017)**

After investigating a single-vehicle accident, the arresting officer wrote the defendant a citation for an expired registration. But the officer did not give the defendant his copy of the citation right away but rather sought to observe him further "to see if he displayed indicators of impairment." Based on observations of such indicia, the arresting officer started a DUI investigation and the defendant was arrested. The defendant filed a motion to suppress, which the court granted, holding that the defendant was detained without a reasonable suspicion:

> Once a vehicle is lawfully stopped, a law enforcement officer may conduct an investigation reasonably related in scope to the circumstances that justified the traffic stop. This investigation may include asking the driver for an operator's license, insurance and registration. Also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether the driver has any outstanding warrants. However, absent an articulable suspicion of criminal activity, the time an officer takes to issue a citation should last no longer than is necessary to make any required license or registration checks and to write the citation.
>
> . . . [T]here is a bright-line rule that any delay without a reasonable suspicion is unconstitutional. . . .
>
> In this case, there is no issue with the detention of Defendant for the purposes of conducting the accident investigation and writing the civil citation. However, when the police decided to prolong the detention to see if Defendant showed signs of impairment, they had at most a bare suspicion that he was under the influence. A bare suspicion is not enough to warrant an investigative detention under the Fourth Amendment.

***State v. Demauney*, 25 Fla. L. Weekly Supp. 362a (Pinellas Cty. Ct. 2016)**

The defendant filed a motion to suppress breath test "based on an alleged failure to comply with administrative procedures." The court struck the motion and considered it a motion in limine, stating: "Defendant seeks to have the Court make a pretrial evidentiary ruling on the admissibility of evidence based upon a procedural violation. This is a matter properly addressed with a contemporaneous objection at trial or in a pre-trial motion in limine, not a motion to suppress. . . . The moving party bears the burden of proof in a motion in limine."

***State v. Lardeo*, 25 Fla. L. Weekly Supp. 359a (Pinellas Cty. Ct. 2016)**

The defendant filed a motion to suppress breath test "based on an alleged failure to comply with administrative procedures." The court struck the motion and considered it a motion in limine, stating: "Defendant seeks to have the Court make a pretrial evidentiary ruling on the admissibility of evidence based upon a procedural violation. This is a matter properly addressed with a contemporaneous objection at trial or in a pre-trial motion in limine, not a motion to suppress. . . . The moving party bears the burden of proof in a motion in limine."

***State v. Patterson*, 25 Fla. L. Weekly Supp. 359b (Pinellas Cty. Ct. 2016)**

The defendant was arrested for DUI and filed a motion in limine as to the horizontal gaze nystagmus test. The court denied his motion, finding that the officer was "qualified to testify at trial regarding his administration of the HGN test on the Defendant" and that "the HGN test satisfies the requirements of *Daubert*."

***State v. Coulter*, 25 Fla. L. Weekly Supp. 357a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a second motion in limine as to the horizontal gaze nystagmus test. The court denied his motion, stating:

> Defendant had previously sought to limit the scope of its original Motion in Limine solely to the issue of HGN in a partially reclined (or inclined) position. The Second Motion in Limine re-casts the *Daubert* challenge in terms of a HGN "test administered in a reclined position. . . ."
>
> As a starting point, the Court found that there was a sufficiently relevant and reliable scientific foundation for HGN that is the product of reliable principles and methods. The Court further finds that . . . the accuracy of HGN does not change when performed on a seated or reclined patient so long as a protocol was used that ensured the patient's head was not moving and their eyes were following the stimulus. Any arguments as to how [the officer] performed the HGN examination on the Defendant are more properly made at the trial in this matter.
>
> While the Second Motion in Limine can be properly denied on the merits, it could also be denied procedurally as untimely.

***State v. Coulter*, 25 Fla. L. Weekly Supp. 355a (Duval Cty. Ct. 2015)**

The defendant was arrested for DUI and filed a motion in limine as to the horizontal gaze nystagmus test. The court denied his motion, finding that the officer and the state's expert were qualified to testify regarding the HGN test and that "there is a relevant, reliable scientific foundation for HGN that is the product of reliable principles and methods. Additionally, the Court finds that the use of HGN is generally accepted within the scientific community as a reliable tool for detection of impairment by alcohol or other drugs."

***State v. Alston*, 25 Fla. L. Weekly Supp. 290b (Hillsborough Cty. Ct. 2017)**

The defendant got a red-light camera citation and filed a motion to dismiss, citing *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). But the court denied the motion, holding that under *City of Oldsmar v. Trinh*, 210 So. 3d 191 (Fla. 2d DCA 2016), which, rather than *Arem*, was applicable, "(a) section 316.0083(1)(a), Florida Statutes authorizes the City of Tampa to contract with American Traffic Solutions to sort images from a traffic infraction detector system into queues based on the City of Tampa's written directives; and (b) sections 316.640(5) and 316.0083, Florida Statutes do not prohibit the City of Tampa from contracting with [ATS] to electronically generate and mail a notice of violation and uniform traffic citation after the City of Tampa finds probable cause to issue a notice of violation."

***State v. Burch*, 25 Fla. L. Weekly Supp. 289a (Sarasota Cty. Ct. 2017)**

The defendant was arrested for DUI and filed a motion in limine to preclude evidence that he initially refused to submit to a breath test. The court granted the motion, noting: "The breath test affidavit that is marked 'subject test refused' shows that the Intoxilyzer was run at 11:37 pm, which was long after [the defendant] retracted the refusal." It stated further that to prohibit consent after an initial refusal would "lead to unnecessarily harsh and self-defeating results."

***State v. Boudreau*, 25 Fla. L. Weekly Supp. 271c (Pinellas Cty. Ct. 2017**)

The defendant filed a motion to dismiss her red-light camera citation, arguing the city had illegally delegated tasks to its vendor, and citing *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). But the court denied the motion, noting that the Second and Third District courts of appeal have issued opinions denying the *Arem* defense, finding that "when a camera vendor reviews video images and mails citations to violators, the camera vendor's activities are merely ministerial and clerical functions." It noted further that the Second District Court certified conflict with *Arem* and the Florida Supreme Court had not yet decided whether to hear the case.