FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

April – June 2018

[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)

Hawthorne v. State, __ So. 3d __, 2018 WL 2945639 (Fla. 1st DCA 2018)

After a fatal accident, the defendant was convicted of DUI causing death, DUI causing serious personal injury, and DUI causing property damage and was sentenced to a long prison term. (He had also been charged and found guilty of vehicular homicide and driving without a valid license, but the state dismissed those counts.) The defendant appealed, arguing that the testimony of the state's expert witness was not admissible under *Daubert*, and that it was error to admit the defendant's redacted driving record and evidence of his release from county detention shortly before the accident. The appellate court affirmed, concluding that the expert's testimony was admissible under *Daubert* because (1) he "relied on ample data—'more than a century' of medical data and observation—regarding the impact of methamphetamine on human beings"; (2) his opinion was based on sufficient facts or data; and (3) his testimony was the "product of reliable principles and methods."

The appellate court further found that the defendant's release from jail 12 hours before the accident "was relevant to prove a material fact—that he recently ingested methamphetamine and was impaired when he ran into the victim's car at a high rate of speed." And it held that evidence of his driving record, "which contained multiple license suspensions," was "relevant to prove that he knowingly drove without a license on the day of the accident."
https://edca.1dca.org/DCADocs/2016/3793/163793_1284_06132018_10003695_i.pdf

***Miller v. State*, __ So. 3d __, 2018 WL 2399218 (Fla. 1st DCA 2018)**

After a collision with a motorcycle, the defendant agreed to a voluntary blood draw. But he refused to sign the consent form and withdrew his consent, and the officer told him a warrant would be obtained. The defendant then agreed to the blood draw and signed the consent form. He was convicted of DUI and causing the death of another human being, DUI and causing serious bodily injury, and DUI and causing property damage. He appealed, arguing that "his consent was not freely and voluntarily given, but rather it was an acquiescence to [the officer's] misrepresented authority that he had probable cause to obtain a warrant" and that the trial court erred in denying his motion to suppress. He also argued that "the trial court erred by precluding him from presenting evidence that the victim was driving a motorcycle without an endorsement . . . because this evidence was relevant to [the] defense that the victim's conduct was the sole cause of the accident." The appellate court affirmed, stating that "the record demonstrates that [the defendant] consented to the blood draws, and because there was no reasonable basis to conclude that the decedent's conduct was the sole proximate cause of the accident." https://edca.1dca.org/DCADocs/2016/2020/162020_1284_05252018_11372158_i.pdf

***State v. Kersting*, __ So. 3d __, 2018 WL 2230760 (Fla. 4th DCA 2018)**

In a DUI criminal case, the defendant filed a motion in limine to exclude the non-testifying victim from the courtroom during trial. The trial court ordered the victim to undergo a neurological examination "to ascertain his conscious awareness of the legal proceeding," in an effort to balance his right, under article I, section 16(b), of the Florida Constitution, to be present at trial, with the defendant's right to a fair trial. The court had held that if the victim was determined by a neurologist to be "aware," he would be allowed to be in the courtroom during trial. The state sought review of the examination order, which the appellate court granted, stating that (1) the order "infringes upon the victim's right to remain inviolate from an invasive examination not authorized or required by law," and (2) "the record does not reflect that this is a case where the exam targets evidentiary or impeachment issues." https://www.4dca.org/content/download/202979/1805251/file/180291_1704_05162018_09381122_i.pdf

***State v. Birnbaum*, 26 Fla. L. Weekly Supp. 14a (Fla. 18th Cir. Ct. 2017)**

The defendant was stopped and performed poorly on field sobriety exercises. A jury found her guilty, but the trial court granted a post-verdict mistrial. The state appealed, and the defendant claimed that the mistrial was based on the state's improper comments during trial about her right to remain silent. The circuit court, in its appellate capacity, reversed and remanded, stating: "The trial court abused its discretion by failing to address the State's comments in proper context. Even if the State's statements could be construed as a comment on silence, the comments were not so prejudicial as to vitiate the entire trial."

***State v. Thrift*, 26 Fla. L. Weekly Supp. 11c (Fla. 17th Cir. Ct. 2017)**

The defendant was charged with DUI. He filed a motion in limine as to his refusal to perform field sobriety exercises, claiming the arresting officer failed to advise him of any adverse consequences of refusal. The trial court granted his motion, and the state appealed. The

circuit court, in its appellate capacity, affirmed, noting that the trial court found the state's argument – that because the defendant "was under investigation for DUI and was read Implied Contest warnings and Miranda warnings, he knew there were adverse consequences of some sort in refusing to submit to the exercises and had an understanding of the general purpose of the exercises" – contrary to the evidence and factual findings. The court also noted conflict among other appellate opinions in the Seventeenth Judicial Circuit on this issue and stated: "This opinion is intended to resolve any future conflict."

***Herring v. DHSMV*, 26 Fla. L. Weekly Supp. 1a (Fla. 6th Cir. Ct. 2018)**

The defendant's license was suspended for his refusal to provide a breath sample. The defendant sought review, but the circuit court, in its appellate capacity, denied review, holding that DHSMV's finding of probable cause for the defendant's arrest was supported by competent substantial evidence in the dash camera video, testimony, and police reports.

***Counihan v. State*, 25 Fla. L. Weekly Supp. 993a (Fla. 5th Cir. Ct. 2018)**

The defendant was convicted of DUI. He made five claims of error on appeal, four of which were barred procedurally or lacked merit. The circuit court, in its appellate capacity, considered his claim that the trial court erred in allowing the arresting officer to testify that "he does not arrest all individuals he originally suspects of DUI," which was an "improper bolstering of [the sergeant's] credibility." But the circuit court affirmed, stating that the error was harmless: "Evidence of impairment was overwhelming and [the defendant's] stated reasons for refusing the field sobriety exercises, refusing the breath test, and refusing the hospital's blood and urine tests, are not credible."

II. Criminal Traffic Offenses

***Bertonatti v. State*, __ So. 3d __, 2018 WL 3040323 (Fla. 3d DCA 2018)**

After killing a bicyclist, the defendant pled guilty to manslaughter while DUI and failing to render aid, resisting a law enforcement officer without violence, and fleeing or attempting to elude a law enforcement officer where lights and sirens had been activated. He filed a motion to vacate his plea based on ineffective assistance of counsel regarding DNA testing. The trial court denied his motion and he appealed. The appellate court affirmed, finding that the defendant "failed to demonstrate a reasonable probability that, but for the claimed errors, he would not have pled guilty and would have insisted on going to trial."
http://www.3dca.flcourts.org/opinions/3D17-1647.pdf

***Scott v. State*, __ So. 3d __, 2018 WL 2437091 (Fla. 1st DCA 2018)**

The defendant was convicted of driving while license suspended, revoked, canceled, or disqualified. The appellate court reversed for the trial court to adjudicate him guilty of the lesser included offense of driving without a valid driver's license.
https://edca.1dca.org/DCADocs/2017/1206/171206_1287_05312018_09375425_i.pdf

***Anderson v. State*, __ So. 3d __, 2018 WL 2399221 (Fla. 1st DCA 2018)**

The defendant followed and then hit his girlfriend's car with his truck and was convicted of aggravated assault with a deadly weapon. He appealed, arguing that he did not intentionally hit his girlfriend's car and that "the jury should have been instructed on the lesser-included offense of reckless driving." The appellate court affirmed, noting that the charging information stated that the defendant "did unlawfully and intentionally make an assault . . . with a motor vehicle. . . . Noticeably absent from the information is an allegation that [he] was driving the vehicle, an essential element of reckless driving." Although the defendant argued that "it is not possible to commit aggravated assault with a motor vehicle without driving the vehicle," the court stated that the elements of the lesser offense must be specifically alleged in the information. And in a footnote the court noted ways a person could commit aggravated assault with a motor vehicle without driving the vehicle.
https://edca.1dca.org/DCADocs/2015/5433/155433_1284_05252018_11305376_i.pdf

***State v. Snook*, __ So. 3d __, 2018 WL 2370454 (Fla. 5th DCA 2018)**

The defendant was charged with driving while license canceled, suspended, or revoked as a habitual offender. The trial court stated at a sidebar that it would dismiss the case because the defendant "had his license back and there were more serious cases on the docket," and advised defense counsel to make an oral motion. On the record defense counsel made an oral motion to dismiss and the court granted the motion, stating that the defendant did not deserve to be prosecuted "and doing so would put 'him back on the treadmill of failure.'" The state appealed, and the appellate court reversed, holding that "[w]hile the trial court may have had good intentions, it abused its discretion when it dismissed the case without a valid legal ground."
http://www.5dca.org/Opinions/Opin2018/052118/5D17-2362.op.pdf

***Myers v. State*, __ So. 3d __, 2018 WL 2223724 (Fla. 2d DCA 2018)**

The defendant was charged with being a habitual traffic offender driving while license revoked. After entering a plea he filed a motion for postconviction relief, arguing that he never had a Florida driver license, and therefore his trial attorney was ineffective for failing to move to dismiss; that had his attorney moved to dismiss, "the motion would have been granted and he would not have entered a plea in the circuit court because his case would have been resolved as a misdemeanor in county court." The trial court summarily denied his motion, holding that there was no basis for the defendant's attorney to file a motion to dismiss, and that the defendant waived the claim by entering a plea. The defendant appealed, and the appellate court reversed and remanded, stating: "'[A] trial attorney's failure to investigate a factual defense . . . which results in the entry of an ill-advised plea of guilty, has long been held to constitute a facially sufficient attack upon the conviction.' . . . And at the time [the defendant] entered his plea there was a dispute among Florida courts regarding whether someone who had never possessed a driver's license could ever be lawfully charged and convicted of a violation of section 322.34(5). . . . Accordingly, it does not appear that filing the motion to dismiss would have been futile or that the motion would have been without merit." It also held that the defendant did not waive his claim of ineffective counsel by entering a plea.
https://edca.2dca.org/DCADocs/2017/2558/172558_39_05162018_08381377_i.pdf

***Ellis v. State*, __ So. 3d __, 2018 WL 2066688 (Fla. 1st DCA 2018)**

After being stopped for reportedly stealing cigarettes, the defendant sped away, injuring the officer who had stopped him, and he was eventually caught and charged with aggravated fleeing or attempting to elude "a law enforcement officer in an authorized law enforcement vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated." He filed a motion for judgment of acquittal, arguing that "the state failed to establish that agency insignia were prominently displayed on [the officer's] patrol vehicle." The trial court denied his motion, and he appealed. The appellate court affirmed, holding that "the state presented legally sufficient evidence that the agency insignia and other jurisdictional markings were prominently displayed on the law enforcement vehicle." https://edca.1dca.org/DCADocs/2016/2922/162922_1284_05032018_09385146_i.pdf

***Booker v. State*, __ So. 3d __, 2018 WL 1833406 (Fla. 1st DCA 2018)**

The defendant pled no contest to fleeing or attempting to elude a law enforcement officer and driving without a valid driver's license. His scoresheet reflected 20.4 sentence points, which required that he be sentenced to a "nonstate prison sanction." But at the state's request, under section 775.082(10), Florida Statutes, the trial judge increased the sentence to a four-year state prison term, based on the judge's independent factual findings that the defendant could otherwise present a danger to the public. The defendant filed a motion to correct sentence, claiming that the enhancement was unconstitutional under the Sixth Amendment "because the trial judge, rather than a jury, made the factual findings that were necessary to increase his punishment beyond the statutory maximum of a nonstate prison sanction to a state prison sanction." The appellate court reversed, stating: "Because the last sentence of subsection (10) is unconstitutional as applied to [the defendant], and the violation is not harmless, the remedy is to invalidate [his] sentence and remand for resentencing under the prior version of the sentencing statute." It also noted conflict with other districts and certified the following question:

> WHETHER THE SECOND SENTENCE IN SUBSECTION (10) OF SECTION 775.082, FLORIDA STATUTES, WHICH AUTHORIZES A TRIAL JUDGE TO MAKE FACTUAL FINDINGS INDEPENDENT OF A JURY AS TO AN OFFENDER'S POTENTIAL "DANGER TO THE PUBLIC" AND TO IMPOSE A STATE PRISON SENTENCE THAT EXCEEDS THE MAXIMUM NONSTATE SANCTION OF UP TO ONE YEAR IN COUNTY JAIL VIOLATES THE SIXTH AMENDMENT AS APPLIED TO BOOKER? IF THE ERROR IS NOT HARMLESS, WHAT REMEDY IS APPROPRIATE?

https://edca.1dca.org/DCADocs/2015/3558/153558_1287_04182018_08454730_i.pdf

***Williams v. State*, __ So. 3d __, 2018 WL 1833396 (Fla. 1st DCA 2018)**

The defendant was charged with violating section 322.34(2)(b), Florida Statutes, which makes it a first-degree misdemeanor for a person, except a habitual traffic offender, to obtain a second conviction for driving a motor vehicle while knowing that his or her driver's license has been canceled, suspended, or revoked. He filed a motion to dismiss, arguing that "the only offense with which he can be charged is driving without a valid driver's license given that he is a habitual traffic offender and he has never had a Florida driver's license and does not fall within a statutory exemption to the licensure requirement." The trial court denied his motion and certified

questions to the appellate court. The appellate court reworded the questions as follows: "Does a person who has never had a Florida driver's license and who is not exempt from the licensing requirement under section 322.031 or section 322.04, Florida Statutes, have a 'driving privilege' such that he or she can be convicted under section 322.34(1) or section 322.34(2), Florida Statutes?" It answered the question in the negative and reversed and remanded for the trial court to vacate the defendant's convictions under section 322.34(2)(b) and adjudicate him guilty of the lesser-included offenses of driving without a valid driver's license.
https://edca.1dca.org/DCADocs/2017/1781/171781_1287_04182018_08593722_i.pdf

***Dortch v. State*, __ So. 3d __, 2018 WL 1769117 (Fla. 2d DCA 2018)**

The defendant was convicted of fleeing or attempting to elude a law enforcement officer by driving at high speed or with wanton disregard for the safety of other persons or property, resisting an officer without violence, leaving the scene of a crash causing damage to other attended property, and driving without a valid driver license. He appealed, and the appellate court reversed as to the leaving-the-scene-causing-damage count because there was no evidence that the building in question was damaged.
https://edca.2dca.org/DCADocs/2016/2407/162407_114_04132018_08250824_i.pdf

***Anguille v. State*, __ So. 3d __, 2018 WL 1747814 (Fla. 4th DCA 2018)**

After a serious crash, the defendant was charged with DUI with serious bodily injury, reckless driving with serious bodily injury, DUI with property damage, reckless driving with property damage, and refusal to submit. He entered an open plea as charged, and at the sentencing hearing he argued that he "could not be sentenced consecutively for the DUI with serious bodily injury and reckless driving with serious bodily injury." But the trial court held that "there was not a double jeopardy issue in a conviction and sentence for DUI with serious bodily injury and reckless driving with serious bodily injury when there is only one victim." The appellate court affirmed in part and reversed in part, stating: "[W]e affirm the convictions for DUI with serious bodily injury and reckless driving with serious bodily injury as not violative of due process principles. Because the misdemeanor DUI with property damage and reckless driving with property damage convictions are degrees of the same offenses as the felony charges, we remand for the trial court to vacate those two misdemeanor convictions."
https://edca.4dca.org/DCADocs/2016/3706/163706_1708_04112018_08583394_i.pdf

***Hernandez v. State*, 240 So. 3d 778 (Fla. 4th DCA 2018)**

The defendant's reckless driving conviction was remanded for the trial court to conform the written sentence to the oral pronouncement of sentence.
https://edca.4dca.org/DCADocs/2016/1685/161685_1708_04112018_09001513_i.pdf

***Marsh v. State*, __ So. 3d __, 2018 WL 1660225 (Fla. 2d DCA 2018)**

The defendant rear-ended another vehicle, injuring two passengers. She was convicted, as to each passenger, with DUI with serious bodily injury and driving while license suspended (DWLS) with serious bodily injury. The appellate court affirmed the convictions for DUI causing serious bodily injury, but it reversed the convictions for DWLS causing serious bodily injury and remanded with directions for the trial court to enter convictions for two counts of

DWLS, stating that "the dual convictions as to each victim based on the serious bodily injury arising from one act violate the constitutional prohibition against double jeopardy." It also noted that the defendant "did not waive a double jeopardy challenge by entering a plea because the plea was a general plea, as opposed to a plea bargain."
https://edca.2dca.org/DCADocs/2016/3542/163542_114_04062018_08231521_i.pdf

***State v. Spuhler*, __ So. 3d __, 2018 WL 1613743 (Fla. 2d DCA 2018)**

The defendant was charged with driving while license suspended and driving while license suspended causing death, and he was "determined to be incompetent and not restorable." As the parties agreed, he was placed on a year of conditional release. But toward the end of the year the state filed a motion seeking an additional period of conditional release pursuant to Florida Rule of Criminal Procedure 3.212(d). The trial court denied the motion, holding that because the defendant "did not meet the criteria for commitment under section 916.13, conditional release was not available and the State's only remedy was under the Baker Act, if appropriate." The state sought review, which the appellate court denied, stating that "the trial court did not depart from the essential requirements of law." But the appellate court did discuss "the availability of release conditions for defendants who are incompetent but do not qualify for involuntary commitment under section 916.13, Florida Statutes (2016)."
https://edca.2dca.org/DCADocs/2017/3152/173152_118_04042018_08444773_i.pdf

III. Civil Traffic Infractions

***Verhoeven v. State*, 26 Fla. L. Weekly Supp. 9a (Fla. 15th Cir. Ct. 2018)**

The defendant got a citation for violating section 316.074, Florida Statutes, "Traffic Control Device – Failure to Obey." The citation did not provide a description of how he violated the statute, and he filed a motion to dismiss. The hearing officer denied the motion, and as stipulated the defendant pled no contest and reserved the right to appeal. On appeal, the circuit court, in its appellate capacity, reversed, stating that "the lack of specificity in the charging document was not an informality or irregularity as contemplated by Florida Rule of Traffic Court 6.455, but instead failed to provide Defendant with due process so that Defendant could properly contest the citation. Defendant's no contest plea is therefore vacated and the citation dismissed."

IV. Arrest, Search and Seizure

***A.P. v. State*, __ So. 3d __, 2018 WL 3192545 (Fla. 1st DCA 2018)**

The defendant was driving, and had two passengers, when he was stopped by officers who claimed to have smelled marijuana coming from the car. The defendant was convicted of minor in possession of a firearm and felon in possession of a firearm. He appealed, arguing that without his admission that the gun was his, the state did not present prima facie evidence that he actually or constructively possessed the gun; that the state "failed to prove the corpus delicti of the crimes charged and therefore should not have been allowed to introduce his admission into evidence." The appellate court agreed and reversed. It acknowledged that "the traditional doctrine of corpus delicti seems ill suited to crimes such as the ones charged here. . . . However,

we are not free to ignore the fact that the Florida Supreme Court has rejected that option on more than one occasion, although not as to these specific crimes."
https://edca.2dca.org/DCADocs/2016/0979/160979_39_06292018_09273258_i.pdf

***Campbell v. State*, __ So. 3d __, 2018 WL 2749806 (Fla. 2d DCA 2018)**

An officer saw the defendant lying in the backseat of a parked vehicle with a marijuana cigar in his hat brim. The officer searched the car and found drugs, and the defendant was convicted of trafficking in illegal drugs, trafficking in cocaine, and possession of a controlled substance, and misdemeanor possession of marijuana. He sought postconviction relief, arguing ineffective assistance of counsel. The trial court denied his motion and he appealed, and the appellate court reversed for a new trial on all the charges except marijuana possession. It stated that the defendant "presented unrefuted competent substantial evidence that counsel's performance was deficient for failing to call two witnesses who would have testified to a potentially exculpatory fact at trial, namely that [the defendant] had not been the only person in the vehicle on the day of his arrest."
https://edca.2dca.org/DCADocs/2016/4698/164698_114_06082018_08253061_i.pdf

***Bedell v. State*, __ So. 3d __, 2018 WL 2437087 (Fla. 1st DCA 2018)**

The defendant was arrested for DUI third conviction within ten years, and she filed motions to suppress evidence of her blood alcohol level, arguing that the samples did not strictly follow the Florida Administrative Code rules. The trial court denied the motions, finding that "the collection and handling of the blood samples 'substantially complied' with [the Code] and that there was no evidence of a substantial adverse effect from failing to strictly follow" the rules. The defendant appealed, arguing that "the trial court's application of a substantial compliance test was legal error and that strict compliance . . . was required." But the appellate court affirmed, finding that "the trial court applied the correct standard and law to the facts in evidence."
https://edca.1dca.org/DCADocs/2017/1252/171252_1284_05312018_09413212_i.pdf

***McGraw v. State*, __ So. 3d __, 2018 WL 1413038 (Fla. 4th DCA 2018)**

After an accident, the defendant was unconscious, a warrantless blood draw was made, and he was arrested for DUI. He filed a motion to suppress, arguing that the blood draw violated the Fourth Amendment. The trial court found the blood draw was an unconstitutional search but denied the motion based on the "good faith" exception to the warrant requirement. It also certified the following question:

> Does the following sentence in § 316.1932(1)(c), Florida Statutes,
>
> > Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such [blood] test.
>
> remain constitutionally valid under the Fourth Amendment to the United States Constitution and Article 1, Section 12 of the Florida Constitution in light of *Missouri v. McNeely*, [569 U.S. 141, 133 S.Ct. 1552, 185 L.Ed.2d 696] (2013),

> *State v. Liles*, 191 So.3d 484 (Fla. 5th DCA 2016), and *Birchfield v. North Dakota*, —— U.S. ——, 136 S.Ct. 2160, 195 L.Ed.2d 560 (2016)?

The appellate court rephrased the question as follows:

> Under the Fourth Amendment, may a warrantless blood draw of an unconscious person, incapable of giving actual consent, be pursuant to section 316.1932(1)(c), Florida Statutes (2016) ("Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to [a blood draw and testing]."), so that an unconscious defendant can be said to have "consented" to the blood draw?

It answered in the affirmative and affirmed the denial of the motion to suppress. https://www.4dca.org/content/download/202962/1805098/file/170232_1711_05162018_09021586_i.pdf

***Brown v. State*, __ So. 3d __, 2018 WL 2225013 (Fla. 1st DCA 2018)**

An officer stopped the defendant for running a stop sign, and a database search showed the defendant's license was suspended. The defendant tried to drive away, but he was arrested and officers found drugs and paraphernalia. The trial court denied his motion to suppress, and he was convicted on drug and paraphernalia charges. He appealed, arguing that his license was not suspended, and therefore the search was based on an unlawful arrest and the trial court should have granted his motion to suppress. The appellate court affirmed, noting that although the trial court's order denying the motion lacked factual findings, it "comes to us clothed with a presumption of correctness and . . . we must interpret the evidence and reasonable inferences . . . in a manner most favorable to sustaining the trial court's ruling." https://edca.1dca.org/DCADocs/2016/5419/165419_1284_05162018_09131374_i.pdf

***State v. Pena*, __ So. 3d __, 2018 WL 2123004 (Fla. 3d DCA 2018)**

In 2015, an officer stopped the defendant for a violation of section 316.605(1), Florida Statutes (tag-obstruction statute) because the words "MyFlorida.com" were obscured by his tag frame. The officer testified that he searched the car because he smelled marijuana as he approached (none was found), after which the defendant was arrested for driving while license suspended and drug charges related to alprazolam pills that were found. The defendant moved to suppress, arguing that the traffic stop was illegal, and the trial court granted his motion. The tag frame did not obscure the tag or decal numbers on the license plate and was clearly visible at 100 feet, and the trial court held the officer did not have reasonable suspicion to stop the defendant, citing *State v. St. Jean*, 697 So. 2d 956 (Fla. 5th DCA 1997). The state appealed, and the appellate court reversed, noting that in 2005 the legislature amended section 316.605(1) to clarify that "the 'other identification marks' in section 316.605(1) were those on the license plate 'regarding the word "Florida," the registration decal, and the alphanumeric designation.'" Because the defendant's tag frame obscured the word "Florida," the officer had probable cause.

In a footnote, the appellate court noted that, effective January 1, 2016, the legislature amended the statute to delete "other identification marks upon the plates regarding the word

'Florida,'" eliminating the requirement that the word "Florida" be unobscured on license plates. But that amendment was not applicable at the time the defendant was arrested.
http://www.3dca.flcourts.org/Opinions/3D16-0564.pdf

D.V. v. State, __ So. 3d __, 2018 WL 2031072 (Fla. 1st DCA 2018)

Two police detectives saw a man speaking with a passenger in a vehicle that was parked in front of his home, and they stopped behind the vehicle, activated lights and siren, and radioed in a traffic stop. The man ran into his house. One detective looked through an open window of the vehicle and saw a gun on the back seat, near where the 15-year-old defendant was sitting. The defendant was arrested and charged with being a minor in possession of a fireman, and the trial court denied his motion to dismiss, found him guilty, withheld adjudication of delinquency, and placed him on probation. He appealed, and the appellate court reversed, noting there was no evidence that the defendant owned the vehicle, and the firearm was not tested to see if his fingerprints were on it; the state failed to prove that the defendant "had dominion and control over the firearm."
www.3dca.flcourts.org/Opinions/3D16-1593.pdf

Wooden v. State, __ So. 3d __, 2018 WL 1833419 (Fla. 1st DCA 2018)

An officer pulled the defendant over because of an improper lane change that cut off a semi-truck. The officer then called for a K9 unit, which alerted to narcotics. The defendant was arrested and charged with possession of a controlled substance without a prescription. He filed a motion to suppress, arguing the original stop was delayed for performance of the dog sniff search. The trial court denied his motion, finding that the delay was "very little." But the appellate court reversed, stating that because the trial court did find that there was a delay, it would have had to find that the officer had reasonable suspicion to prolong the stop, but "reasonable suspicion was not addressed" and "there is no basis in the record to conclude that reasonable suspicion existed to justify prolonging the stop."
https://edca.1dca.org/DCADocs/2016/2077/162077_1287_04182018_08491543_i.pdf

Johns v. State, __ So. 3d __, 2018 WL 1769174 (Fla. 2d DCA 2018)

A detective got a search warrant to open a suspicious looking package and found marijuana. He and other detectives surveilled the duplex listed on the package's address, saw a resident speaking with a man later identified as Mason (the defendant's brother), and, after a failed attempt to impersonate a UPS driver and deliver the package, knocked on the unit's door, got consent to search the unit, and found nothing incriminating. They later saw Mason drive up again, with the defendant in the car, checked their driver licenses for outstanding warrants, patted them down, and asked why they had come to the duplex. The defendant repeatedly asked them to search his car so he could leave, and a joint was found near the center console. Ultimately, more illegal drugs and incriminating evidence were found, the defendant was arrested, and he filed a motion to suppress. The trial court denied the motion, finding the detectives had reasonable suspicion that the defendant intended to pick up the package of marijuana and that he "did not acquiesce to police authority but, rather, gave his consent to search his vehicle freely, intelligently, and voluntarily." The appellate court reversed, finding that "there was no

reasonable suspicion justifying his investigatory stop and that [the defendant's] consent was invalidated by his illegal detention and a show of police authority."
https://edca.2dca.org/DCADocs/2017/0420/170420_39_04132018_08264704_i.pdf

***City of Boca Raton v. Basso*, 242 So. 3d 1141 (Fla. 4th DCA 2018)**

Basso was arrested for DUI and was not released from policy custody until late the next morning. She sued the City of Boca Raton for false arrest and false imprisonment. The city prevailed on the false arrest claim because the jury found probable cause for the initial arrest, but Basso prevailed on the false imprisonment claim because no probable cause was found for her continued restraint. Basso was awarded $32,000 in damages on the false imprisonment claim, but the trial court ordered her to pay over $6,000 in court costs to the City on the false arrest claim. The city appealed, and the appellate court affirmed Basso's damages award but reversed the judgment on costs and remanded for the trial court to award her all her taxable costs.
https://edca.4dca.org/DCADocs/2017/0976/170976_1708_04042018_09163568_i.pdf

***State v. Moseley*, 26 Fla. L. Weekly Supp. 90e (Fla. 12th Cir. Ct. 2018)**

After the defendant's car collided with another vehicle, an officer was called to the scene and conducted a crash investigation. The defendant was arrested for DUI and filed a motion to suppress, arguing that "the term 'crash' as used in § 316.645, Fla. Stat. (2016), requires some degree of damage." The trial court granted the motion to suppress, but the circuit court revered and remanded "[b]ecause the phrase 'traffic crash' as used in § 316.645 is not ambiguous and requires only that a vehicle collide with another vehicle, object, or person."

***State v. Swick*, 25 Fla. L. Weekly Supp. 995a (Fla. 7th Cir. Ct. 2018)**

The defendant was charged with DUI and filed a motion to suppress, which the trial court granted. The circuit court, in its appellate capacity, affirmed, as the two-person appellate panel was divided. The prevailing opinion stated that, contrary to the state's argument, "[t]he defendant was unreasonably detained because after [the officer] stopped the defendant, nothing was done to further the DUI investigation" for nearly half an hour. It also disagreed with the state's argument that "the officers had probable cause to arrest the defendant for driving under the influence and the detention is therefore a de facto arrest," as this was not preserved for appellate review. The dissenting judge believed the reasons given by the officers for the delay in conducting the DUI investigation "were sufficient to justify the short delay before beginning the field sobriety tests."

V. Torts/Accident Cases

***Lopez v. Yo Roofing and Associates, Inc.* __ So. 3d __, 2018 WL 3156861 (Fla. 4th DCA 2018)**

After an accident with an employee of Yo Roofing, Lopez sued the employee for negligence and Yo Roofing under vicarious liability and the dangerous instrumentality doctrine. The employee died, and Lopez proceeded against Yo Roofing. During voir dire, a prospective juror said she didn't think she could render a verdict against an employer for an employee's negligence. Lopez challenged the juror for cause, but the trial court denied the challenge. The

jury found Yo Roofing not liable, and Lopez moved for a new trial. The trial court denied her motion, and she appealed. The appellate court reversed, stating "the court abused its discretion in denying the challenge for cause, which actually resulted in the seating of a biased juror." https://www.4dca.org/content/download/244169/2149966/file/172075_1709_06272018_09220271_i.pdf

***Wallace v. Keldie*, __ So. 3d __, 2018 WL 2945556 (Fla. 1st DCA 2018)**

Wallace alleged that on two occasions he was riding in a car owned by Keldie, his fiancée, when a white pickup truck struck the car and fled. Wallace sued Keldie, alleging she was negligent in the second accident and that he suffered permanent neck and low back injuries as a result. He claimed that a previous low-back injury had not bothered him in 30 years, and that he hadn't seen a doctor about it since 2000. But Keldie filed a motion to dismiss based on discrepancies between Wallace's deposition testimony and his medical records. At the hearing on the motion, Wallace admitted his history of low-back pain but "claimed that his contrary deposition testimony was not due to an intent to deceive but rather was attributable to his 'poor memory' caused by mental health issues, heavy drinking, and his medications." The trial court granted the motion to dismiss, and the defendant appealed. The appellate court affirmed, holding that the dismissal order contained sufficient factual findings to establish fraud, and that it was not error for the trial court to dismiss the lawsuit with prejudice based on fraud. https://edca.1dca.org/DCADocs/2017/2877/172877_1284_06132018_10224395_i.pdf

***Sanchez v. Martin*, __ So. 3d __, 2018 WL 2715354 (Fla. 4th DCA 2018)**

After a jury trial in an automobile negligence action, judgment was entered in favor of Martin against the defendants, Sanchez and Santana. The defendants appealed, arguing that the trial court erred in the jury instruction regarding the aggravation of a preexisting condition: If the jury could not decide what portion of Martin's condition resulted from the aggravation of an existing condition, or activation of a latent condition, it should award him damages for the entire condition. The appellate court reversed, stating that "the record in this case contains no material evidence supporting the aggravation instruction. In fact, Plaintiff readily admits in his brief that he 'has never believed or suggested that his injuries came from an aggravation of a pre-existing condition.' Nonetheless, Plaintiff maintains that by introducing evidence of his preexisting conditions, Defendants provided the material record evidence needed to support the instruction. We disagree. Defendants merely presented evidence of the preexisting conditions to rebut Plaintiff's contention that the accident caused him any permanent injury." https://www.4dca.org/content/download/214444/1911512/file/171731_1709_06062018_09200320_i.pdf

***Valiente v. R.J. Behar & Co.*, __ So. 3d __, 2018 WL 2708712 (Fla. 1st DCA 2018)**

Herrera was killed in a motor vehicle accident at an intersection, and his estate sued the City of Hialeah. It also sued a company that designed the roadway project, a paving company, and a plant nursery, alleging they "were negligent and responsible for a visual obstruction that caused the fatal accident." The trial court granted summary judgment in favor of those three defendants, finding that the *Slavin* doctrine – "which relieves a contractor of liability for injuries to third parties when the contractor's work is completed, the owner of the property (in this case,

the City) accepts the work, and the defect that allegedly caused the injury is patent"– relieved them from liability "because **if** the shrubs had created a visual obstruction, then that obstruction would have been patent when the completed project was accepted by the City more than two years before the subject accident." The estate appealed, and the appellate court affirmed, holding that the trial court had correctly applied the *Slavin* doctrine.
http://www.3dca.flcourts.org/Opinions/3D15-1049.pdf

Travelers Home and Marine Insurance Co. v. Gallo, __ So. 3d __, 2018 WL 2448799 (Fla. 5th DCA 2018)

A jury returned a verdict for Gallo on his uninsured/underinsured motorist claim against Travelers. Travelers appealed, contesting the final judgments awarding Gallo attorney's fees and taxing court costs. The appellate court reversed and remanded for a new trial, holding that the trial court erred in disallowing Travelers' peremptory challenge to strike a black female as a juror. Travelers had claimed as a race-neutral reason for the strike that the juror was inattentive and unengaged, which the trial court held was legally insufficient. The appellate court noted that this could constitute a racially neutral reason, and that the trial court had "specifically agreed with Travelers' counsel's observation that this juror was 'not particularly engaged.'" Having reversed the underlying judgment, the appellate court also reversed the final judgments awarding Gallo attorney's fees and court costs.
http://www.5dca.org/Opinions/Opin2018/052818/5D16-3158.op.pdf

Nieves v. State Farm Mutual Automobile Insurance Co., __ So. 3d __, 2018 WL 2370463 (Fla. 5th DCA 2018)

The Nieveses were injured in an automobile accident with an uninsured motorist. They sued State Farm, and a jury awarded the Nieves over $1 million in damages. State Farm moved for remittitur, challenging all the damages awarded, which the trial court granted only as to future medical damages. State Farm rejected the remittitur, and the trial court ordered a new trial as to all damages. The Nieveses appealed, and the appellate court reversed and remanded for a new trial solely on future medical expenses, stating that "when remittitur is granted solely for one type of damages, and then that remittitur is rejected, the subsequent new trial should be limited to the damages subject to the award of remittitur."
http://www.5dca.org/Opinions/Opin2018/052118/5D17-893.op.pdf

Walerowicz v. Armand-Hosang, __ So. 3d __, 2018 WL 2338151 (Fla. 4th DCA 2018)

After an automobile accident, Amand-Hosang sued Walerowicz, who admitted liability but denied that the accident caused Amand-Hosang's injuries. The jury found for Amand-Hosang and awarded her damages for past medical expenses, past pain and suffering, and future pain and suffering. Walerowicz appealed, arguing that "the trial court erroneously (1) allowed the jury to consider evidence of past medical expenses for which there was insufficient proof of the reasonableness and necessity; (2) allowed Plaintiff's treating physician to testify as an expert witness about causation and permanency in violation of a trial preparation order; and (3) used a procedure for jury selection which denied Defendant the right to intelligently use his peremptory challenges." The appellate court affirmed as to issue (3) without discussion. It affirmed as to issue (1), stating that "by the combination of Plaintiff's testimony and the Surgeon's testimony,

coupled with the introduction of the medicals bills, Plaintiff provided sufficient testimony to establish the reasonableness and necessity of the medical bills presented to the jury." And it affirmed as to issue (2), stating that "part of the reason the trial court decided not to strike the Surgeon's expert testimony was because it had found that neither party had strictly complied with the trial preparation order."
https://www.4dca.org/content/download/203049/1806017/file/171900_1257_05232018_09003434_i.pdf

***Domino's Pizza, LLC v. Wiederhold*, __ So. 3d __, 2018 WL 2165224 (Fla. 5th DCA 2018)**

Before their marriage, Wiederhold's husband was rendered a quadriplegic after a collision with a driver for Domino's. After her husband died, Wiederhold sued Domino's as personal representative of his estate and as a surviving spouse under the Wrongful Death Act. The trial court denied Domino's request for directed verdicts, and a final judgment was entered in favor of Wiederhold. Domino's appealed, arguing that (1) Wiederhold was not married to the decedent when he was injured, and (2) it was not vicariously liable for its franchisee's actions because it did not control the franchisee's day-to-day operations. It also sought a new trial based on Wiederhold's improper closing arguments. The appellate court affirmed the denial of the directed verdicts, but it reversed and remanded for a new trial on liability and damages based on Wiederhold's improper closing argument. It also found merit in Wiederhold's cross-appeal claim that "the trial court erred by denying her request for an award of [the decedent's] medical expenses paid by Medicare and insurance" pursuant to section 768.21(6)(b), Florida Statutes.
http://www.5dca.org/Opinions/Opin2018/050718/5D16-2794.op.pdf

***Jervis v. Castaneda*, __ So. 3d __, 2018 WL 1952980 (Fla. 4th DCA 2018)**

Jervis bought UM coverage from Geico through an online form. Geico argued that this constituted an election of non-stacked coverage. The first circuit judge ruled on summary judgment that the online form "was void; the form was not actually signed by Jervis, Jervis had no ability to reject or deselect non-stacked coverage, and the signing page did not have the warning language required by statute." Geico amended its affirmative defenses to assert that Jervis "made an oral rejection of stacked UM coverage," and on the oral rejection issue the jury ruled in favor of Geico. Jervis appealed, and the appellate court reversed and remanded for entry of a final judgment in Jervis' favor entitling him to stacked UM coverage. It stated:

> Geico's notice was void, which means that, in the eyes of the law, there was no section 627.727 notice at all. Without such notice, there can be no informed and knowing acceptance of the limitations on stacking. To allow an insurance company to prove that an insured orally and knowingly rejected stacked coverage in the absence of the statutory notice would undermine the legislature's determination that such written notice is mandatory. The summary judgment ruling in this case conclusively established that the notice was void. Jervis's second motion for summary judgment should have been granted, obviating the necessity of a trial. Similarly, at the jury trial, Jervis's motion for directed verdict should have been granted.

https://www.4dca.org/content/download/202145/1797552/file/170332_1709_04252018_09192276_i.pdf

***Black v. Cohen*, __ So. 3d __, 2018 WL 1952924 (Fla. 4th DCA 2018)**

Cohen was injured in an automobile accident and sued Joseph Black (the driver) and Elizabeth Black (the owner of the vehicle driven by Joseph Black). The jury found Joseph Black and Cohen both 50% at fault and that Cohen's injuries were not permanent. It awarded $18,506 in past medical bills and no non-economic damages. Cohen filed a motion for new trial, alleging that (1) in voir dire Black's attorney stated that "[t]his is not an insurance case," which influenced the jury and made it seem as though Black did not have insurance, and (2) during trial Black stated that he was in medical school and doing PhD research, the sole purpose of which statements were "sway the jurors to 'feel' for Black and prejudice them in his favor." The trial court granted Cohen's motion for new trial, finding the verdict "grossly inadequate," and the Blacks appealed. The appellate court reversed, holding that (1) Cohen waived her objection to the voir dire comment by accepting a curative instruction, and (2) Black's status as a medical student was not inadmissible and it couldn't be presumed that the jury disregarded all other evidence and decided the case in favor of Black merely because he did cancer research. It stated further that the trial court made no findings and credibility determinations, nor did it explain why it held the verdict to be grossly inadequate.
https://www.4dca.org/content/download/202138/1797489/file/162485_1709_04252018_09045031_i.pdf

***Simon's Trucking, Inc. v. Lieupo*, __ So. 3d __, 2018 WL 1833415 (Fla. 1st DCA 2018)**

A tractor-trailer owned by Simon's Trucking was involved in an accident, spilling battery acid onto the road. Lieupo arrived to tow away the truck and was allegedly seriously injured by the battery acid. He sued Simon's under section 376.313(3), Florida Statutes, which imposes strict liability for the discharge of certain types of pollutants, and was awarded damages. Simon's appealed, arguing that "the case should never have gone to trial because the Florida Supreme Court held that the statutory cause of action created by section 376.313(3), Florida Statutes, under which Lieupo filed his claim, does not permit recovery for personal injuries." The appellate agreed and reversed, and certified to the supreme court the following question of great public importance: "DOES THE PRIVATE CAUSE OF ACTION CONTAINED IN SECTION 376.313(3), FLORIDA STATUTES, PERMIT RECOVERY FOR PERSONAL INJURY?"
https://edca.1dca.org/DCADocs/2017/1782/171782_1287_04182018_09002161_i.pdf

***O'Malley v. Brian Freeman, Esq.*, 241 So. 3d 204 (Fla. 4th DCA 2018)**

After a car accident, O'Malley was in a coma for months, during which time his mother signed a contingency fee contract, as "personal representative of the estate of William O'Malley," with Freeman, although O'Malley had not given her power of attorney, had not been declared legally incompetent, and had not been appointed a legal guardian. After awakening from the coma, O'Malley did give his mother power of attorney, and later terminated Freeman's representation without explanation. Freeman sought fees and costs for work performed, and the court awarded him $83,379.47. O'Malley appealed, and the appellate court reversed the award "because the trial court erred in finding the parties had an enforceable agreement. However, as

services were performed by Freeman and a benefit was received by [O'Malley], the trial court may award Freeman fees and costs on a quantum meruit basis." It remanded for fees to be calculated in accordance with *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz*, 652 So. 2d 366 (Fla. 1995).
https://edca.4dca.org/DCADocs/2017/1500/171500_1709_04042018_09282758_i.pdf

VI. Drivers' Licenses

Boulineau v. DHSMV, __ So. 3d __, 2018 WL 2271397 (Fla. 1st DCA 2018)

After two DUI arrests, the defendant's license was revoked for five years. He sought review, arguing that his second offense did not occur "after the date of a prior conviction" because his convictions on both offenses were entered on the same day. But the appellate court denied review, stating that section 322.28(2)(e), Florida Statutes, "clearly provides that 'the offense that occurred earlier will be deemed a prior conviction for purposes of this section.'"
https://edca.1dca.org/DCADocs/2017/3684/173684_1281_05182018_10334316_i.pdf

Elso v. DHSMV, 26 Fla. L. Weekly Supp. 87a (Fla. 11th Cir. Ct. 2018)

The defendant's license was suspended for his refusal to submit to a breath test. He sought review, arguing that he had been denied due process. After the first certiorari review, the court had remanded for a hearing before an impartial hearing officer. DHSMV then ordered a new hearing to take place 38 days after it received the remand order, which the defendant argued was beyond the 30-day statutory requirement. He also claimed he did not receive notice of that hearing date. The circuit court, in its appellate capacity, held that the defendant overcame the rebuttable presumption of DHSMV's compliance with notice and granted review "solely to provide [the defendant] a formal review hearing before an impartial hearing officer to take place within thirty (30) days of the date of the filing of this Opinion."

Sanchez v. DHSMV, 26 Fla. L. Weekly Supp. 73a (Fla. 4th Cir. Ct. 2018)

The defendant's license was suspended for refusal to submit to a breath test. The hearing officer declined to vacate the suspension, and the defendant sought review, arguing that (1) the hearing officer should have granted his motion to recuse herself and all other DHSMV hearing officers because the defendant, "based upon biased Departmental training conducted by the hearing officer's supervisor, had a well-founded fear that he would not receive a fair and impartial hearing before a neutral and detached hearing officer"; (2) the suspension should have been invalidated when the breath test operator, under subpoena, failed to appear at the formal review hearing; (3) the hearing officer should have concluded that the defendant was detained for an unreasonably long period of time; and (4) the arresting officer lacked the authority to make a warrantless arrest of the defendant for misdemeanor DUI. The circuit court, in its appellate capacity, denied review, stating that (1) Florida courts have rejected the argument that DHSMV's "dual role" in suspension cases is constitutionally infirm; (2) the breath test operator's failure to appear did not matter because this was a refusal case; (3) the time between the stop and when a trained DUI officer arrived was "eminently reasonable"; and (4) while the arresting officer did not see the defendant in control of "a vehicle involved in the crash," he was investigating an accident and developed probable cause to charge the defendant with DUI.

***Frizzell v. DHSMV*, 26 Fla. L. Weekly Supp. 71a (Fla. 2d Cir. Ct. 2018)**

The defendant's license was suspended based on his refusal to submit to a breath test. He sought review, arguing that "unlike the DUI Traffic Citation, Arrest/Probable Cause Affidavit, Refusal Affidavit, Alcohol Influence Report, the Implied Consent Warning Form indicate[d] [the defendant] changed his mind on refusing to take a breath test, as shown by the second box on the form checked 'No.'" He argued that the hearing officer was not permitted to rely on those first four documents. The circuit court, in its appellate capacity, disagreed and denied review, noting that "four documents, including the only sworn evidence provided in this case, established [the defendant] refused a breath test. One unsworn document suggested [he] changed his mind. Even when conflicting interpretations are plausible (which the Department does not concede) the court must refrain from reweighing the evidence and must defer to the hearing officer."

***Sarris v. DHSMV*, 26 Fla. L. Weekly Supp. 68a (Fla. 4th Cir. Ct. 2018)**

The defendant's license was suspended and she sought review, arguing that (1) she was denied due process because the Bureau of Administrative Review (BAR) "has provided training to law enforcement officers regarding their appearances in license suspension hearings"; (2) the breath test operator failed to appear at her hearing; and (3) the detention and arrest were unlawful. The circuit court, in its appellate capacity, granted review and quashed the suspension, finding that (1) a conflict of interest existed because, not only was the arresting officer employed by the same department as the hearing officer, he also "received training from the B.A.R. on how to testify so as to decrease the number of suspensions that are invalidated"; (2) the defendant's request to invalidate the suspension should have been granted for the breath technician's failure to appear; and (3) the contents of the video of the encounter clearly contradicted the officer's allegations of the officer, and "[t]he remaining observations leading up to the detention were merely signs of alcohol *consumption*, not impairment."

***Koenig v. DHSMV*, 26 Fla. L. Weekly Supp. 67a (Fla. 4th Cir. Ct. 2018)**

The defendant's license was suspended based on his breath test results. He sought review, arguing that the certification of the officer who inspected the Intoxylizer was invalid because it was issued by FDLE's Criminal Justice Standards and Training Commission (CJSTC) rather than, as required by statute, its Alcohol Testing Program. The circuit court, in its appellate capacity, denied review, stating that "FDLE operates the Alcohol Testing Program within its CJSTC."

***Sperberg v. DHSMV*, 26 Fla. L. Weekly Supp. 4a (Fla. 11th Cir. Ct. 2018)**

The defendant's Virginia license was revoked based on "at least three" DUI convictions. Ten years later it was reinstated and he got a Florida license, but about four months later DHSMV permanently revoked the Florida license based on four DUI convictions. The defendant sought review, arguing that DHSMV "failed to recognize the Virginia [reinstatement] Order under the doctrine of full faith and credit," and that it "incorrectly alleged that he was convicted of four DUI's" based on an uncertified transcript of his driver record. The circuit court, in its appellate capacity, granted review, stating:

> Concerning [the defendant's] mandatory driver's license revocation, the lack of record submitted for review, and the Department's Response which merely alludes to a notice of [his] fourth DUI conviction and introduces [his] uncertified driver record in support of its decision to revoke [his] driver's license, it is most noteworthy that this Court is reviewing [an] uncertified driver record. The driver record's admissibility is suspect since allowing such a record as evidence risks an unjust result.
>
> Therefore, we find that both the uncertified record and the alleged and undocumented notice of [the defendant's] fourth DUI do not provide enough evidentiary support for finding that competent substantial evidence supported [his] driver's license revocation.

***McMillan v. DHSMV*, 25 Fla. L. Weekly Supp. 931a (Fla. 6th Cir. Ct. 2017**)

After stopping the defendant, who had drifted off the road and almost hit a motorcyclist, for speeding and driving without headlights, a trooper noticed indicia of impairment, and the defendant was arrested for DUI and his license was suspended. The defendant sought review, but the circuit court, in its appellate capacity, denied review, finding sufficient evidence for the hearing officer's decision.

VII. Red-light Camera Cases

***Jimenez v. State*, __ So. 3d __, 2018 WL 2050000 (Fla. 2018)**

Jimenez got a traffic citation after red-light camera footage showed him making a right turn on red at an intersection that had a no-turn-on-red sign. He challenged the legality of the City of Aventura's red-light camera program, in which a third party agent reviews images from the cameras and then sends the images to the city police to determine whether a citation should be issued. The Third District Court of Appeal held that the city's program was legal and it certified a question, which the supreme court rephrased as follows: "Does a local government have the authority under section 316.0083(1)(a), Florida Statutes (2014), to contract with a private third-party vendor to review and sort information from red light cameras, in accordance with written guidelines provided by the local government, before sending that information to a trained traffic enforcement officer who determines whether probable cause exists and a citation should be issued?" The Supreme Court answered in the affirmative, approving *State ex rel. City of Aventura v. Jimenez*, 211 So. 3d 158 (Fla. 3d DCA 2016), and *City of Oldsmar v. Trinh*, 210 So. 3d 191 (Fla. 2d DCA 2016), and disapproving *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), to the extent it was inconsistent with this opinion. http://www.floridasupremecourt.org/decisions/2018/sc16-1976.pdf

***Easter v. City of Orlando*, __ So. 3d __, 2018 WL 2746467 (Fla. 5th DCA 2018)**

Easter was the class representative in a class action suit seeking refunds for fines paid pursuant to an unconstitutional red-light camera ordinance. The trial court denied his motion to certify a class, based largely "on its determination that the voluntary payment defense applies to this case. The voluntary payment defense provides that 'where one makes a payment of any sum

under a claim of right with knowledge of the facts such a payment is voluntary and cannot be recovered.' . . . Rather, there must also be a showing of 'some compulsion or coercion attending its assertion which controls the conduct of the party making the payment.'" Easter appealed, arguing that the voluntary payment defense was inapplicable under the facts of the case. The appellate court affirmed, holding that the defense was applicable, and it discussed the elements of class certification.
http://www.5dca.org/Opinions/Opin2018/060418/5D17-276.op.pdf

VIII. County Court Orders

***State v. Rios*, 26 Fla. L. Weekly Supp. 133a (Miami-Dade Cty. Ct. 2018)**

The defendant was involved in an accident and was before the court on a criminal charge of driving with an expired driver's license and a civil charge of careless driving. He filed a motion to dismiss for lack of personal jurisdiction. The court dismissed the charges, stating:

> There is no proof of service filed in this case. Proper service or an arrest is required in order for the Court to have jurisdiction over Defendant for the criminal charge of Driving with an Expired Driver's License. On the other hand, the civil charge of Careless Driving does not require the Defendant sign a promise to appear. A certification by the officer is sufficient . . . for the Court to have jurisdiction over Defendant. However, more than 180 days have elapsed since these charges were filed. Accordingly, . . . the criminal charge is dismissed for failure to obtain personal jurisdiction over the Defendant and for violation of this State's *Speedy Trial Rule*. Additionally, the infraction is similarly **dismissed**, but solely on *Speedy Trial* ground.

***State v. Sargent*, 26 Fla. L. Weekly Supp. 117c (Pasco Cty. Ct. 2018)**

The defendant got out of his vehicle and urinated in a parking lot, and was arrested for DUI and disorderly conduct. He filed a motion to suppress, which the court granted, stating that the defendant's "act of urinating in a public parking lot, without more, did not amount [to] a reasonable suspicion of disorderly conduct."

***State v. Collins*, 26 Fla. L. Weekly Supp. 60a (Indian River Cty. Ct. 2018)**

An auxiliary trooper followed the defendant, who was driving erratically. He stayed in touch with FHP dispatch until the defendant stopped, and then he made contact with the defendant and waited until a trooper arrived, about ten minutes later. Eventually the trooper arrested the defendant for DUI. The defendant filed a motion to suppress, arguing that the auxiliary trooper was not directed to stop her by an officer with authority, and that he did not have probable cause to make a citizen's arrest. The court denied the motion, holding that the auxiliary trooper acted within the scope of his authority. In a footnote, it also found that the auxiliary trooper's "actions in detaining the defendant were proper under the line of cases validating citizen's arrests."

***State v. Seguna*, 26 Fla. L. Weekly Supp. 59a (Brevard Cty. Ct. 2018)**

An officer responding to an accident noticed indicia of impairment in the defendant and had him perform field sobriety exercises, after which she arrested the defendant for DUI. The defendant filed motions to suppress evidence, statements, and field sobriety exercises. The court denied the motion to suppress evidence, stating that the indicia of impairment, the defendant's crashing into a tree, and the officer's training and experience provided "sufficient reasonable suspicion to detain the defendant and conduct a DUI investigation." It denied the motion to suppress statements, noting that the defendant waived his *Miranda* rights when, after being asked if he was willing to speak to the officer, replied "to an extent."

The court also denied the motion to suppress/motion in limine regarding the field sobriety exercises, stating that "a defendant may be required to perform FSEs. The issue of consent is immaterial," but noting that there are county court opinions that reach a different result. And with regard to the defendant's argument that he had told the officer that he "would have a hard time doing the exercises due to a physical issue," the court found that went "to the weight of the evidence and not the admissibility of the defendant's FSE performance."

***State v. Beasy*, 26 Fla. L. Weekly Supp. 57a (Brevard Cty. Ct. 2018)**

The defendant was stopped and eventually arrested for DUI. After performing field sobriety exercises, she was arrested. She filed a motion to suppress, claiming that she was coerced into performing the FSEs, and offering as evidence that she repeatedly stated she needed to urinate but was not permitted to. The court denied her motion, finding that she "was not coerced into performing the field sobriety exercises in a manner violative of her Fourth Amendment rights."

***State v. Abrams*, 26 Fla. L. Weekly Supp. 43a (Palm Beach Cty. Ct. 2018)**

The defendant stopped at a red light partially over the stop bar, but did not enter the intersection. When the light turned green he made a left turn, after which an officer stopped him. The defendant was arrested and charged with DUI and driving while license suspended, and was issued a citation for, among other things, running a red light. He filed a motion to suppress, arguing the officer lacked probable cause that he had committed any traffic infraction justifying the stop. The court agreed and granted his motion, disagreeing with the state's argument that the stop bar was an "official traffic control device" that the defendant failed to obey. It also rejected the state's other arguments, including that the defendant violated section 316.075(1)(c)1, Florida Statutes, noting that it applies to drivers turning right while a signal is red.

***State v. Baumer*, 26 Fla. L. Weekly Supp. 39a (Sarasota Cty. Ct. 2018)**

The defendant was in an automobile accident and was ultimately arrested for DUI with property damage and taken to jail. After being read the implied consent warning, he agreed to give a breath sample, which showed no alcohol. The arresting deputy then read the warning again and asked for a urine sample, but the defendant was unable to provide one because of a catheter. The deputy, without seeking a warrant, read the warning a third time and asked for a blood sample, which the defendant agreed to provide. He filed a motion to suppress the blood sample, which the court granted, stating that the defendant "gave his consent for a blood draw after he was read the implied consent warning inside the jail. [His] consent cannot be said to

have been given freely and voluntary, because he was told that he must consent or face the consequences that go as far as to threaten criminal liability. The Supreme Court has held that drivers do not impliedly consent to a blood test. The Deputy's reading of implied consent and the consequences of refusal effectively made [the] consent involuntary."

***State v. Choate*, 26 Fla. L. Weekly Supp. 30c (Pinellas Cty. Ct. 2016)**

The court denied the defendant's motion to exclude field sobriety exercises, finding that FSEs "(excluding the Horizontal Gaze Nystagmus) are not scientific and do not fall within the purview of either *Daubert* or Florida Statute Section 90.702."

***American Chiropractic & Rehabilitation v. USAA Casualty Insurance Company*, 26 Fla. L. Weekly Supp. 30a (Duval Cty. Ct. 2018)**

The court granted the plaintiff's motion to amend its complaint to correct the defendant's name, noting that "United Services Automobile Association and USAA Casualty Insurance Company are 'sufficiently related'; and that the Plaintiff moved to amend its Complaint in a timely manner so as to cause no prejudice to the Defendant."

***State v. Hemmer*, 25 Fla. L. Weekly Supp. 1023b (Orange Cty. Ct. 2018)**

A deputy stopped the defendant's vehicle, and a trooper initiated a DUI investigation. The defendant was charged with DUI. The state called the trooper, but not the stopping deputy, to testify at the evidentiary hearing, and the defendant filed a motion to suppress. The court granted her motion, stating: "There is no exception to the hearsay rule that would allow one officer, who did not participate in the decision to stop the defendant, to testify as to what another officer told him was the reason for the stop in a case challenging the validity of the initial stop and to allow that testimony to be admitted in evidence for the truth of the matter."

***State v. Marrier*, 25 Fla. L. Weekly Supp. 1022b (Volusia Cty. Ct. 2018)**

An Edgewater officer responding to a notice of a vehicle that might have been involved in an accident in New Smyrna saw and caught up with the described vehicle and followed it for 8-10 miles, observing it swerve in its lane, cross over the fog line, and tail the vehicle in front of it. He contacted the Volusia County Sheriff's Office and was asked to pull the defendant's vehicle over, which he did. A VCSO deputy arrived within 30 seconds and conducted a DUI investigation. The defendant filed a motion to suppress because the stopping officer was outside of his jurisdiction. The state argued that an exception to the jurisdiction requirement applied – a citizen's arrest based on breach of the peace. The court granted the defendant's motion, noting that the Edgewater officer testified that the defendant "never left the roadway, and that the shoulder was only 1-1½ feet wide. . . . The Defendant's conduct of crossing over the fog line did not put any oncoming traffic in danger, nor is such conduct a traffic violation." It noted further that the officer "never testified that he stopped the Defendant to make a citizen's arrest because her driving was so outrageous. He rather testified it was solely at the request of VCSO Sergeants." The court found the defendant's conduct did not amount to a breach of the peace.

***State v. Conn*, 25 Fla. L. Weekly Supp. 1022a (Flagler Cty. Ct. 2018)**

The defendant was involved in a crash. A deputy conducting an investigation noticed indicia of impairment and asked the defendant to perform field sobriety exercises. The defendant refused and was arrested. He filed a motion in limine as to his refusal as the deputy testified that he did not advise the defendant of the adverse consequences of refusal. The state argued that the defendant's prior advisement of those consequences after a 2011 DUI extinguished his "ability to argue the 'safe harbor' doctrine." But the court granted the defendant's motion, stating that "the prior advisement . . . in 2011 does not absolve [the deputy in this case] of his obligation to notify the Defendant of some adverse consequence of refusal, in order for such refusal to be admissible in evidence. While the caselaw is clear that not all consequences must be advised . . . , the Court finds that the complete lack of advisement or conversation about the refusal to submit to field sobriety exercises whatsoever makes the Defendant's refusal not sufficiently probative of his consciousness of guilt as to be admitted into evidence."

***State v. Cooper*, 25 Fla. L. Weekly Supp. 1020a (Volusia Cty. Ct. 2017)**

The state filed a Notice of Intent to Subpoena Medical Records of the Defendant, which the court denied, noting that the court had issued a prior order granting the defendant's motion to suppress and stating that the state "failed to establish there was a reasonable founded suspicion to believe that the Defendant was driving while impaired by alcohol or controlled substances to overcome the Defendant's right to privacy in her medical records." It stated further that

> the only evidence of impairment contained in [the unsworn accident] report is . . . that the Defendant appeared "lethargic and spoke slowly" after the crash that sent her to the hospital. . . . [T]he Defense . . . point[s] out that "crash plus death" or "crash plus injury" does not always make the blood relevant as the State argues; that is not the law. The Defense is entirely correct. Absent some scintilla of evidence that the Defendant was impaired by alcohol or a controlled substance, the State has again fallen woefully short of its burden to demonstrate a compelling interest which exists where there is a reasonable founded suspicion that the materials contain information relevant to an ongoing criminal investigation to overcome the Defendant's right to privacy in her medical records.

***State v. Cooper*, 25 Fla. L. Weekly Supp. 1019a (Volusia Cty. Ct. 2017)**

An officer responding to a crash noticed the defendant "spoke slowly" and was "lethargic," and while the defendant was on a stretcher being put in an ambulance she consented to a blood test. There was no evidence that implied consent warnings were given and the officer did not state any other basis for his conclusion that alcohol was involved in the accident, and the defendant filed a motion to suppress. The court granted her motion, stating: "On redirect, the State belatedly asked [the officer] what happened to the 'blood kit' but all he could say was that he 'put it in evidence.' No other witnesses, exhibits or evidence was produced. The evidence presented by the State . . . falls woefully short of establishing probable cause to believe that the Defendant was driving while impaired . . . to lawfully request breath, blood or urine. . . . The State's offer of proof was completely inadequate."