FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

July – September 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)

***State v. Warble*, 26 Fla. L. Weekly Supp. 341a (Fla. 5th Cir. Ct. 2018)**

An officer saw the defendant weaving across the center line and onto the grass and saw illegal lights under his vehicle. He stopped the defendant and noticed indicia of impairment. The defendant twice refused to perform field sobriety exercises and was arrested, after which he provided blood and urine samples. He filed a motion to suppress, which the trial court granted because the officer had failed to advise the defendant of the consequences of refusing to submit to FSEs. But it also suppressed all evidence and testimony obtained by law enforcement after the arrest. The state appealed, and the circuit court, in its appellate capacity, reversed in part and remanded, stating that the trial court "properly suppressed evidence of [the defendant's] refusal to submit to FSEs but erred by suppressing any evidence and testimony made post-arrest, including the results of blood and urine testing." It held that the arresting officer provided sufficient testimony to show probable cause existed for the DUI arrest of the defendant, "thereby making any post-arrest evidence and testimony admissible."

***State v. Rockfeld*, 26 Fla. L. Weekly Supp. 14a (Fla. 18th Cir. Ct. 2018)**

An officer saw the defendant weaving within his lane several times and stopped him. The defendant had indicia of impairment, performed field sobriety exercises, and was arrested. He filed a motion to suppress, which the court granted because the officer did not testify as to the specific number of times he saw the defendant weave. The state appealed, arguing that the

officer had reasonable suspicion that the defendant was DUI. The circuit court, in its appellate capacity, reversed and remanded, stating that rather than just one single lane change, the defendant's driving pattern involved continuous weaving, which "presents an objective basis for suspecting that he . . . was under the influence."

II. Criminal Traffic Offenses

Delancy v. State, __ So. 3d __, 2018 WL 4519976 (Fla. 4th DCA 2018)

The defendant was convicted of, and sentenced to ten years for, high speed or wanton fleeing and resisting an officer without violence. He appealed, asserting that "his trial counsel was ineffective . . . by failing to object to the impeachment of his star witness based upon pending charges against that witness," and that his sentence was "based on a misapprehension of fact and violation of the equal protection clauses of the United States and Florida Constitutions." The appellate court affirmed, stating that "even if his counsel were ineffective, [he] has not shown that there was a reasonable probability that the result of the proceedings would have been different, given the other evidence presented. As to the sentence, while it is stiff, the sentence is within the maximum statutory limit, and it is neither based on a misapprehension of fact nor constitutionally infirm."
https://www.4dca.org/content/download/402581/3452282/file/170043_1257_09202018_09295446_i.pdf

Williams v. State, __ So. 3d __, 2018 WL 4353965 (Fla. 4th DCA 2018)

The defendant was convicted of willfully fleeing and attempting to elude a police officer in an authorized patrol vehicle, and resisting arrest without violence. He appealed, arguing that the trial court "erred in denying his motion for judgment of acquittal because the State failed to prove that the police were attempting to stop him in an authorized police vehicle which prominently displayed the agency insignia and other jurisdictional marking." The appellate court affirmed, citing *Dumais v. State*, 40 So. 3d 850 (Fla. 4th DCA 2010). But it reversed the $1,000 fine "because the State erroneously informed the court that the fine was mandatory. Section 316.1935(2), Florida Statutes (2016), under which appellant was prosecuted, does not include a mandatory fine. It is not clear that the court would have imposed the same fine had it known that the fine was not mandatory."
https://www.4dca.org/content/download/402394/3450568/file/170407_1709_09122018_09112711_i.pdf

Stringfield v. State, __ So. 3d __, 2018 WL 4167820 (Fla. 5th DCA 2018)

The defendant's probation was revoked, and he was sentenced to 15 years in prison, after the trial court found that "he committed a new law violation by driving a motor vehicle while his license was suspended." He appealed, and the appellate court reversed and ordered that his probation be reinstated, stating: "Because there was no evidence that [he] knowingly drove with a suspended or revoked license in violation of and as defined by section 322.34, Florida Statutes (2017), we find that the State failed to prove a willful, substantial violation of probation."
http://www.5dca.org/Opinions/Opin2018/082718/5D17-2798.op.pdf

Williams v. State, __ So. 3d __, 2018 WL 3911519 (Fla. 1st DCA 2018)

The defendant was charged with drug possession and knowingly driving while license suspended or revoked. He moved to strike a juror for cause, but the trial court denied the motion to strike and the defendant's motion for judgment of acquittal. The appellate court affirmed, stating that the juror's "employment with the state attorney's office nearly twenty-seven years earlier, and her husband's employment as an investigator with the state attorney's office, standing on its own, does not establish that [she] was partial to the State. . . . Further, [her] unequivocal statements that she would not be biased by any connections to the state attorney's office were sufficient to remove any reasonable doubt as to her impartiality." The court also stated that while it was "ill-advised" for the trial judge to (1) state that he knew the juror and that she was a respected attorney for many years, and (2) suggest a line of questioning to the prosecutor, "the actions did not constitute fundamental error."
https://edca.1dca.org/DCADocs/2017/0731/170731_1284_08162018_11060724_i.pdf

Koroly v. State, __ So. 3d __, 2018 WL 3911453 (Fla. 1st DCA 2018)

The defendant was charged with DUI manslaughter and DUI with serious bodily injury. He entered a plea, and after serving four years of his 13.25-year sentence he sought to withdraw his plea, arguing that "his counsel was ineffective for failing to retain an accident reconstruction expert to evaluate the road conditions that existed at the time of the crash." The trial court denied the motion to withdraw his plea, and the appellate court affirmed, stating: "Considering the minimum threshold for proving causation for the offenses of DUI manslaughter and DUI with serious bodily injury, [he] did not meet his burden of proving that his defense of defective road signage would have succeeded at trial in light of the overwhelming evidence of his intoxication," and that he "failed to establish either deficient performance or prejudice."
https://edca.1dca.org/DCADocs/2017/1381/171381_1284_08162018_11091509_i.pdf

Hutchinson v. State, 249 So. 3d 1327 (Fla. 1st DCA 2018)

The defendant was convicted in Hillsborough County of aggravated battery. He filed a petition for a writ of habeas corpus, arguing that a motor vehicle cannot be a deadly weapon under the aggravated battery statute. The circuit court in Calhoun County dismissed the petition as unauthorized, and the defendant appealed. The appellate court vacated the order dismissing the petition, stating that "[w]hile . . . a motor vehicle cannot be a deadly weapon under the aggravated battery statute . . . the circuit court should have transferred the petition to Hillsborough County in the Thirteenth Circuit for its consideration."
https://edca.1dca.org/DCADocs/2017/4787/174787_1283_08072018_10043488_i.pdf

Martinez v. State, 251 So. 3d 306 (Fla. 2d DCA 2018)

The defendant was convicted of (1) driving with a suspended license and causing death, (2) DUI manslaughter, and (3) failure to remain at the scene of a crash involving death. He appealed, arguing that his convictions for DUI manslaughter and failure to remain at the scene of a crash involving death violated Florida's "single homicide rule," which provides that a defendant can be punished only once for a death caused during one criminal episode. The

appellate court agreed and reversed, and it remanded for the trial court to vacate the conviction for the lesser, third-degree felony of driving with a suspended license and causing death. https://edca.2dca.org/DCADocs/2017/2888/172888_114_07132018_08261486_i.pdf

III. Civil Traffic Infractions

State v. Grate, __ So. 3d __, 2018 WL 3595263 (Fla. 5th DCA 2018)

The defendants were charged with driving with revoked licenses as habitual traffic offenders. The assistant public defender filed motions to modify adjudications of guilt in earlier civil traffic infraction cases, to remove predicate convictions necessary for habitual traffic offender sanctions. The state moved to strike the motions to modify, arguing that the public defender's office had no authority to represent the defendants in civil traffic infraction matters. The county court denied the state's motion to strike and modified the earlier adjudications of guilt to withheld adjudications. The state then filed a petition for a writ of quo warranto, challenging the authority of the public defender to intervene in civil traffic infraction cases. The circuit court denied the petition, and the state appealed. The appellate court treated it as a direct appeal and reversed. It noted that "the duties of public defenders, as enumerated in section 27.51, include representation of indigent defendants only in circumstances that threaten liberty interests, which do not include civil traffic infraction proceedings." http://5dca.org/Opinions/Opin2018/072318/5D18-683.op.pdf

State v. Skinner, 249 So. 3d 790 (Fla. 5th DCA 2018)

The state appealed the circuit court's order denying its petition for a writ of quo warranto, challenging the authority of the public defender's office to intervene in civil traffic infraction cases. Based on *State v. Grate*, __ So. 3d __, 2018 WL 3595263 (Fla. 5th DCA 2018), issued simultaneously with this opinion, the appellate court treated the matter as a direct appeal, reversed the circuit court's order, and remanded with instructions to grant the petition. http://5dca.org/Opinions/Opin2018/072318/5D18-685.op.pdf

State v. Office of the Public Defender, Eighteenth Judicial Circuit, Brevard County, 249 So. 3d 790 (Fla. 5th DCA 2018)

The state appealed the circuit court's order denying its petition for a writ of quo warranto, challenging the authority of the public defender's office to intervene in civil traffic infraction cases. Based on *State v. Grate*, __ So. 3d __, 2018 WL 3595263 (Fla. 5th DCA 2018), issued simultaneously with this opinion, the appellate court treated the matter as a direct appeal, reversed the circuit court's order, and remanded with instructions to grant the petition. http://5dca.org/Opinions/Opin2018/072318/5D18-686.op.pdf

Elmouki v. Department of Transportation, 251 So. 3d 290 (Fla. 1st DCA 2018)

The defendant challenged two citations he got while operating a commercial motor vehicle. The Commercial Motor Vehicle Review Board rejected his challenge to one of the citations, and he appealed. The appellate court dismissed the appeal because the defendant's notice of appeal was not timely filed.

https://edca.1dca.org/DCADocs/2018/0715/180715_1279_07092018_02044260_i.pdf

IV. Arrest, Search and Seizure

McCray v. State, __ So. 3d __, 2018 WL 4212159 (Fla. 4th DCA 2018)

After a traffic stop, the defendant was arrested and was convicted of possession of heroin. He appealed, and the appellate court reversed because the defendant "was not in actual possession of the heroin and the state failed to prove constructive possession." https://www.4dca.org/content/download/402129/3447978/file/172006_1709_09052018_09242270_i.pdf

T.T. v. State, __ So. 3d __, 2018 WL 4147894 (Fla. 4th DCA 2018)

After a traffic stop, an officer conducted a pat-down search for weapons on the defendant, a passenger in the vehicle. The defendant was arrested and convicted of possession of cannabis. The trial court denied his motion to suppress, and he pled no contest, reserving the right to appeal. On appeal the appellate court reversed the conviction, stating that the plain touch exception to the Fourth Amendment does not permit "an officer, without a warrant, to seize objects felt during a weapons search, when the objects are not weapons and there is insufficient evidence of contraband." https://www.4dca.org/content/download/402005/3446756/file/180442_1709_08292018_08590771_i.pdf

Coby v. State, __ So. 3d __, 2018 WL 4139310 (Fla. 1st DCA 2018)

Based on a BOLO, a deputy stopped the defendant. The defendant was arrested and charged with possession of a firearm by a convicted felon and possession of a controlled substance. He moved to suppress the evidence, alleging that the deputy did not have reasonable suspicion for the traffic stop that led to the discovery. The trial court denied the motion, and the defendant pleaded no contest, reserving the right to appeal the order denying his suppression motion. He appealed, but the appellate court affirmed, agreeing with the trial court that "the time of the stop (around 4:15 a.m.), the fact that there were no other cars on the road, the fact that [the defendant's] SUV matched the description (including having aftermarket bumpers), and the fact that [he] was traveling near the shooting (and just minutes afterward) together supported a conclusion that the traffic stop did not violate the Fourth Amendment." https://edca.1dca.org/DCADocs/2018/0306/180306_1284_08302018_10400886_i.pdf

Gould v. State, 251 So. 3d 1034 (Fla. 5th DCA 2018)

Officers surveilling a drug transaction observed the defendant's actions while she was driving around a parking lot, and the defendant was arrested for and convicted of conspiring to traffic and trafficking in cocaine. She appealed, arguing that the trial court "erred by (1) denying her motion for judgment of acquittal as there was insufficient evidence of a conspiracy and (2) allowing speculative testimony from a police officer that interpreted and explained her actions as consistent with the behavior of others involved in drug deals."

The appellate court affirmed regarding the trafficking charge, noting that the defendant's attorney did not move for a judgment of acquittal regarding that charge. But it reversed as to the conspiracy charge, stating that without proof that the defendant "participated in the planning of any aspect of this transaction, there is insufficient evidence to prove an agreement existed between [her] and the boyfriend to traffic in twenty-eight grams of cocaine. Without the presence of an agreement, there can be no conspiracy."
http://www.5dca.org/Opinions/Opin2018/073018/5D17-684.op.pdf

***Shannon v. State*, __ So. 3d __, 2018 WL 3595963 (Fla. 2d DCA 2018)**

The defendant was charged with drug offenses and filed a motion to suppress evidence seized during a search of his vehicle just before his arrest, arguing that under *United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987), the parking space his vehicle was in "was not within the curtilage of the motel rooms that were the subject of the search warrants." The trial court denied his motion, holding that the parking space was within the curtilage. The defendant appealed and the appellate court reversed, stating: "After *Dunn*, the Florida Supreme Court addressed the inconsistent, common law definition of curtilage, concluding that Florida's burglary statute, which must be strictly construed in favor of the defendant, requires 'some form of an enclosure in order for the area surrounding a residence to be considered part of the "curtilage."'" It noted that there was no evidence that the officers had probable cause to arrest the defendant before the search at issue, "and the drugs were found in his car, not on his person," while the officers did not have authority to search his vehicle.
https://edca.2dca.org/DCADocs/2016/4844/164844_39_07272018_09000106_i.pdf

***State v. Upshaw*, 251 So. 3d 1015 (Fla. 5th DCA 2018)**

Two police officers on foot patrol saw cannabis on a vehicle's passenger-side dashboard, seat, and floor. After about 15 minutes, two individuals entered the vehicle, and the officers stopped the vehicle and patted down the driver and the passenger (the defendant). Although no weapons were found, an officer reached into the defendant's pocket and found MDMA, and the defendant was arrested. He filed a motion to suppress, which the trial court granted, finding insufficient probable cause to arrest the defendant for possession of cannabis to begin with. The appellate court reversed, stating that the state had established that "the arresting officer reasonably believed the accused had dominion and control over the contraband and knowledge that it was within his presence," and therefore the inevitable discovery doctrine applied.
http://www.5dca.org/Opinions/Opin2018/071618/5D17-3611.op.pdf

***State v. Kepics*, 26 Fla. L. Weekly Supp. 357c (Fla. 2d Cir. Ct. 2018**)

The defendant was arrested for DUI, and the trial court granted her motion to suppress urine test results. The state appealed, arguing that there was no competent, substantial evidence that the defendant's consent to provide the sample was involuntary, and that, unlike for a blood test, the state is not required to obtain a warrant for a urine test. The circuit court, in its appellate capacity, agreed with the state and reversed the granting of the defendant's motion to suppress.

V. Torts/Accident Cases

Harvey v. GEICO General Insurance Co., __ So. 3d __, 2018 WL 4496566 (Fla. 2018)

Harvey was involved in an auto accident in which Potts died. GEICO, Harvey's insurer, resolved the liability issue against Harvey. A paralegal at the office of the attorney (Domnick) for Potts' estate asked Korkus, the GEICO claims adjuster, for a statement from Harvey regarding other possible coverage or assets that might be available to the estate. Korkus denied the request, and three days later GEICO tendered the full policy amount to Domnick. Domnick acknowledged receipt of the check and Korkus' refusal to make Harvey available for the requested statement. Korkus faxed the letter to Harvey, which was the first he heard that a statement had been requested. Harvey told Korkus he had hired his own attorney and would give Domnick a statement, but Korkus did not notify Domnick. A month after the initial request for a statement from Harvey, the estate returned GEICO's check and filed a wrongful death action against Harvey. The jury found Harvey 100% at fault and awarded the estate $8.47 million.

Harvey filed a bad faith claim against GEICO based on the judgment that exceeded his policy limits, the jury found that GEICO had acted in bad faith, and the trial court entered judgment in the amount of $9.2 million in Harvey's favor. GEICO appealed, and the appellate court reversed, concluding that Harvey had not offered sufficient evidence to support the bad faith claim, and that in any case "the insurer's actions did not cause the excess judgment rendered against the insured."

The supreme court quashed the appellate court decision and remanded with instructions to reinstate the final judgment in Harvey's favor, concluding that "the Fourth District erred in holding that the evidence was insufficient" and that it "misapplied our precedent when it stated that an insurer cannot be liable for bad faith 'where the insured's own actions or inactions . . . at least in part' caused the excess judgment. . . . Not only did the Fourth District misapply our well-established bad faith precedent but it relied, in part, on nonbinding federal cases that cannot be reconciled with our clear precedent."
http://www.floridasupremecourt.org/decisions/2018/sc17-85.pdf

State Farm Automobile Insurance Co. v. Ferranti, __ So. 3d __, 2018 WL 4649125 (Fla. 5th DCA 2018)

After Ferranti was rear-ended, he sued his insurer, State Farm, under his UM/UIM coverage. He moved for partial summary judgment on liability and causation, but State Farm disputed those issues. It argued that Ferranti's testimony established "issues of material fact regarding his pre-existing medical conditions" and therefore his motion for partial summary judgment was premature. The trial court granted Ferranti's motion, holding that "causation was established as a matter of law because 'the tortfeasor . . . was a legal cause of some loss, injury or damages.'" But the appellate court reversed, stating that "the trial court erred in granting partial summary judgment regarding causation and damages when Ferranti's deposition testimony revealed, and he himself later conceded, that there was overwhelming evidence of preexisting conditions which directly related to the issue of causation." The court remanded for a new trial and discussed other evidentiary issues that were likely to reoccur.
http://www.5dca.org/Opinions/Opin2018/092418/5D16-3980.op.pdf

GEICO Indemnity Co.v. Perez, __ So. 3d __, 2018 WL 4495557 (Fla. 3d DCA 2018)

Perez was injured in an automobile accident caused by an underinsured motorist. Four final judgments were entered against his insurer, GEICO. GEICO appealed the judgments and the trial court's interlocutory orders denying its motions for summary judgment on the issue of whether Perez was entitled to uninsured/underinsured motorist (UM) coverage under his GEICO policy. The appellate court affirmed the trial court's denial of GEICO's motions for summary judgment but reversed "for a new trial on UM coverage because the trial court erred by excluding probative, admissible evidence on the issue of whether Perez had made a knowing, written rejection of UM coverage."
http://www.3dca.flcourts.org/opinions/3D17-2514.pdf

21st Century Centennial Insurance Co. v. Walker, __ So. 3d __, 2018 WL 4151289 (Fla. 4th DCA 2018)

The defendant prevailed in a UM action, and also pursued a bad faith claim against his insurer. The trial court awarded him trial and appellate attorney's fees and costs, and expert witness fees. The insurer appealed, and the appellate court reversed the award of fees and costs and remanded "for further proceedings to consider an award pursuant to section 768.79 at the end of the parties' bad faith litigation." It noted that *Fridman v. Safeco Ins. Co. of Illinois,* 185 So. 3d 1214 (Fla. 2016), "established the appropriate protocol to follow if a plaintiff prevails in a UM action and then elects to pursue a bad faith claim. The Court held that any judgment entered should be for the full amount of the insured's damages, even though the insured must later proceed with a bad faith action to recover any amount in excess of the policy limits. . . . The Court also endorsed the 'preferable approach' of entering final judgment in these cases for the full amount of the verdict, while limiting execution of the judgment to the policy amount."

The court stated further:

> The import of the *Fridman* decision is clear. When a case involves a first-party bad faith claim alleging that an insurer is liable for an amount in excess of policy limits, the full application of such judgment against the insurer—including an award of attorney's fees and costs based on section 768.79—should not be considered by the trial court until the bad faith litigation is resolved. This is because an insurer is liable for bad faith damages for more than its policy limits provided two thresholds are met: (1) the plaintiff is awarded damages above the policy amount in the underlying tort suit, and (2) a jury determines the plaintiff proved bad faith claims conduct by the insurer.
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> Here, the trial court appropriately stayed execution against the insurer of any amount over the policy limits pending resolution of the bad faith case consistent with *Fridman*. . . . In doing so, the only enforceable judgment against the insurer at this time, or what is effectively the "net judgment" as section 768.79(6)(b) describes, is for the amount representing the policy limits of $20,000 per accident.

https://www.4dca.org/content/download/402004/3446747/file/172937_1709_08292018_08562695_i.pdf

***Valle v. Flory*, __ So. 3d __, 2018 WL 3862655 (Fla. 2d DCA 2018)**

Valle sued Flory after an auto accident. Final judgment was entered for Flory, and Valle appealed. The appellate court affirmed as to the final judgment without comment. Flory cross-appealed the denial of his motion for attorney's fees based on his proposal for settlement. The trial court had denied the motion, holding that the proposal was invalid because the certificate of service was not signed. On his cross-appeal Flory argued that the omission did not make the proposal invalid, and the appellate court agreed and reversed the denial of Flory's motion for attorney's fees and remanded.
https://edca.2dca.org/DCADocs/2016/2848/162848_114_08152018_08393959_i.pdf

***Key v. Almase*, __ So. 3d __, 2018 WL 3747786 (Fla. 3d DCA 2018)**

A high-speed chase resulted in a crime suspect causing a fatal collision. Four plaintiffs brought suit against two police chiefs and a city manager. The defendants moved to dismissed the complaint based on sovereign immunity under section 768.28(9)(a), Florida Statutes. The trial court denied the motion, but the denial order failed to state specifically that as a matter of law the defendants were not entitled to immunity. The defendants appealed the order, but the appellate court affirmed, joining the First District Court of Appeal in certifying the question "regarding the specificity with which a court must deny an immunity motion 'as a matter of law' to permit interlocutory appellate review[.]"
http://www.3dca.flcourts.org/Opinions/3D17-2161.pdf

***Moss v. Estate of Hudson by and through Hudson*, __ So. 3d __, 2018 WL 3595767 (Fla. 5th DCA 2018)**

Moss was driving a vehicle that struck and killed a bicyclist. Hudson, the personal representative of the cyclist's estate, sued Moss but wasn't able to personally serve her. Hudson tried to obtain substituted service under section 48.171, Florida Statutes, but Moss filed a motion to quash service. The trial court denied the motion, but the appellate court reversed, stating: "Actual knowledge of a suit does not cure insufficient service of process. . . . Moreover, counsel's appearance and the filing of a motion to quash insufficient service of process, without more, are not a waiver of the defense of lack of personal jurisdiction." It noted that Hudson's complaint "lacked any allegations that Moss was either a nonresident, a resident of Florida who subsequently became a nonresident, or a resident of Florida concealing her whereabouts."
http://5dca.org/Opinions/Opin2018/072318/5D17-3356.op.pdf

***Meyers v. Shontz*, 251 So. 3d 992 (Fla. 2d DCA 2018)**

Shontz was a passenger in a car that was rear-ended by a car owned by Fred Meyers and driven by Ninibeth Meyers. Shontz sued, and the jury returned a defense verdict. She filed a motion for a new trial, which the court granted. The Meyerses appealed, and the appellate court reversed "[b]ecause the trial court failed to apply the correct legal standard to the motion for new trial—which is whether the jury's verdict was against the manifest weight of the evidence."
https://edca.2dca.org/DCADocs/2017/1681/171681_39_07132018_08194767_i.pdf

***Swift Investments, Inc. d/b/a Fantastic Finishes of Palm Beach v. USAA Casualty Insurance Co.*, 26 Fla. L. Weekly Supp. 165b (Fla. 15th Cir. Ct. 2018)**

After an accident, USAA's insured took her vehicle to Fantastic Finishes for repairs. Fantastic Finishes submitted an estimate for $10,085.28, but the estimate USAA prepared was for $9,222.85. The policy provided that if a repair shop's estimate was higher than USAA's, USAA would tell the insured of at least one repair shop that would do the work at USAA's price. The insured did not request the name of such repair shop, and USAA paid the amount of its estimate. Fantastic Finishes sued USAA for breach of contract, and the trial court granted USAA's motion for summary judgment. Fantastic Finishes appealed, but the circuit court, in its appellate capacity, affirmed, noting: "USAA has a *policy* provision requiring approval for any estimates submitted by the insured or a third party. Moreover, unlike the insurer's language in [two other cases cited], USAA's language in its policy specifically provides the insured an opportunity to contact USAA if the insured cannot find a repair shop that will perform the repair work for the amount stated in USAA's estimate."

VI. Drivers' Licenses

Millan v. DHSMV, 26 Fla. L. Weekly Supp. 357b (Fla. 19th Cir. Ct. 2018)

DHSMV cancelled the defendant's license. The defendant sought review, which the circuit court, in its appellate capacity, granted, because DHSMV had failed to provide the statutorily required notice.

Do Prado v. DHSMV, 26 Fla. L. Weekly Supp. 357a (Fla. 19th Cir. Ct. 2017)

A hearing officer affirmed the suspension of the defendant's license, and the defendant sought review. The circuit court, in its appellate capacity, granted review and quashed the hearing officer's order, stating that it was "not supported by competent substantial evidence that the [defendant] used a false or fictitious name in any application for a driver license or identification card."

Indian River County Sheriff's Office v. DHSMV, 26 Fla. L. Weekly Supp. 354a (Fla. 19th Cir. Ct. 2018)

The defendant's license was suspended. DHSMV invalidated the suspension, and the sheriff's office sought review. The circuit court, in its appellate capacity, granted review, quashed the DHSMV decision to invalidate the suspension, and remanded for a new hearing, stating that DHSMV "mistakenly deleted the [sheriff's office] email with the DUI packet attached, yet did not concede to a new hearing. The Department's caviler attitude towards deleted evidence is disconcerting to this court. The Department failed to observe the essential requirements of law, and its decision to invalidate [the defendant's] driver's license suspension is not supported by competent substantial evidence. "

McClelland v. DHSMV, 26 Fla. L. Weekly Supp. 352a (Fla. 19th Cir. Ct. 2018)

After a crash, DHSMV suspended the defendant's license based on her refusal to submit to a breath test. The defendant sought review, arguing that the documents in her paper-only record were inconsistent. The circuit court, in its appellate capacity, granted review, stating that

"the hearing officer's order is not supported by competent substantial evidence and she departed from the essential requirements of law by not following binding precedent."

***Escobar v. DHSMV,* 26 Fla. L. Weekly Supp. 346a (Fla. 13th Cir. Ct. 2018)**

DHSMV suspended the defendant's license based on his obtaining it by fraud. The defendant sought review, arguing there wasn't competent substantial evidence to support the hearing officer's conclusion that he obtained his license by fraud because the relevant evidence (photographs on licenses taken under two different names) was redacted. He also argued that the statute of limitations barred the suspension. The circuit court, in its appellate capacity, denied review, holding that the defendant was not denied due process, because unredacted records were available to him to review before and during the hearing. As to the statute of limitations, the court noted that "civil and criminal statutes of limitations are inapplicable to administrative license revocation proceedings absent legislative authority."

***Hernandez v. DHSMV,* 26 Fla. L. Weekly Supp. 342b (Fla. 11th Cir. Ct. 2018)**

DHSMV suspended the defendant's license for DUI. The defendant sought review, arguing that the police did not have reasonable suspicion to stop him before the DUI investigation. The circuit court, in its appellate capacity, denied review, holding that it was proved by a preponderance of the evidence that the officers conducting a prostitution investigation had a reasonable suspicion to believe that the defendant "was committing or about to commit a crime (Solicitation of Prostitution). The reasonable suspicion for that crime quickly turned into reasonable suspicion of DUI. Additionally, there was competent substantial evidence that the arresting officer had probable cause to believe that the [defendant] was in actual physical control of his vehicle while under the influence of alcohol. It is undisputed that [he] had an unlawful breath-alcohol level of 0.08 or higher."

***Davidson v. DHSMV,* 26 Fla. L. Weekly Supp. 261b (Fla. 14th Cir. Ct. 2018)**

At about 1:30 a.m., a police officer saw the defendant stop in the middle of a road and flash her lights at an unoccupied vehicle parked off the road. He conducted a welfare check, and the defendant told him she was letting the other vehicle go in front of her. A second officer noticed indicia of impairment, the defendant admitted having had alcoholic beverages, and the defendant twice refused to perform a field sobriety test. After exiting the vehicle as requested, the defendant had trouble keeping her balance, and she was arrested for DUI and asked to submit to a breath test, which she refused. The defendant was taken to jail and her license was suspended for refusal to submit to a breath test. A hearing officer upheld the suspension, holding that the arresting officers had probable cause to conduct the stop. The defendant sought review, arguing that the stopping officer "did not articulate any basis that [she] had committed, was committing or was about to commit a crime" and that there was "absolutely nothing that would support a belief that a welfare check was necessary." The circuit court, in its appellate capacity, denied the petition for writ of certiorari, stating that the basis for the stop was "supported by competent, substantial evidence, and the hearing officer below properly observed all essential elements of the law."

***Park v. DHSMV,* 26 Fla. L. Weekly Supp. 261a (Fla. 13th Cir. Ct. 2018)**

The defendant's license was suspended for refusal to submit to a urine test. He sought review, arguing there was insufficient evidence to justify the detention leading to his arrest. The circuit court, in its appellate capacity, denied the petition for writ of certiorari, stating: "The alleged evidentiary conflict does not negate the Hearing Officer's decision where ample other evidence supports his conclusions. It is for the trier of fact to resolve evidentiary conflicts."

***Larsen v. DHSMV*, 26 Fla. L. Weekly Supp. 258a (Fla. 13th Cir. Ct. 2018)**

The defendant was stopped for having a defective taillight. Her license had a restriction requiring an ignition interlock device on her vehicle, but the vehicle she was driving did not have the device. She admitted having taken Xanax and she performed poorly on field sobriety exercises. She consented to a breath test, which showed a blood alcohol level under the presumption level for impairment. She was asked to provide a urine sample, which she refused to do. She was arrested for DUI and her license was suspended for refusal to submit to a urine test. A hearing officer upheld the suspension and the defendant sought review, alleging that DHSMV failed to give her a copy of the order upholding the suspension, as required within seven working days after the formal review hearing, which deprived her of due process. The circuit court, in its appellate capacity, found that the defendant was "unable to challenge findings she cannot review or that have not been reduced to writing. Regarding her ability to pursue further legal challenge, her due process rights are violated." Therefore it granted the petition for writ of certiorari in part, remanding for DHSMV to issue a written order and provide a copy to the defendant.

***Picard v. DHSMV*, 26 Fla. L. Weekly Supp. 157a (Fla. 4th Cir. Ct. 2017)**

The defendant's license was suspended for DUI. He sought review, arguing that there was not competent substantial evidence that the officer who inspected the Intoxilizer was properly certified. The circuit court, in its appellate capacity, denied review, stating that the issue had recently been decided in *Leavitt* (*see* below).

***Leavitt v. DHSMV*, 26 Fla. L. Weekly Supp. 155a (Fla. 4th Cir. Ct. 2017)**

The defendant's license was suspended for DUI. He sought review, arguing that there was not competent substantial evidence that the officer who inspected the Intoxilizer was properly certified. The circuit court, in its appellate capacity, denied review, stating that

> there is no dispute that the Criminal Justice Standards and Training Commission is "*within* the Department of Law Enforcement" as mandated by the legislature. . . . [The defendant] ingeniously seeks to treat the reference to a program, i.e., the Alcohol Testing Program, as an agency itself for the purposes of evaluating whether the testing regime is proper. Although [his] counselor refers to the alcohol testing program and the CJSTC as separate "entities" within his brief, they are not for rulemaking purposes. Instead, they are, in fact, both part of and *within* one agency, [FDLE]. The only limitation or guideline that the legislature imposed upon [FDLE], in Section 316.1932, Fla. Stat., was that it have an alcohol testing program "within the Department" which is exactly what it has done. Had the legislature wanted to establish another agency that could not work with other employees within the Department of Law Enforcement, it could have done so, but

instead it chose to delegate its rulemaking authority to the Department of Law Enforcement which was required to have an alcohol testing program *within* the Department of Law Enforcement.

VII. Red-light Camera Cases

***Kopelman v. City of Miami Gardens*, 26 Fla. L. Weekly Supp. 161a (Fla. 11 Cir. Ct. 2018)**

An administrative order upheld the defendant's red-light camera violation. He appealed, but the circuit court, in its appellate capacity, affirmed, stating that the defendant "slowed down as he attempted to effectuate a right hand turn, he failed to come to a complete stop prior to making the right hand turn at the red light and failed to make the turn in a careful and prudent manner."

VIII. County Court Orders

***State v. Lee*, 26 Fla. L. Weekly Supp. 444a (Brevard Cty. Ct. 2018)**

The defendant had been adjudicated guilty of driving while license suspended, revoked, or cancelled *without* knowledge, a few years later *with* knowledge, and, two years after that, *without* knowledge. After the third adjudication of guilt, he was deemed a habitual traffic offender and his license was revoked for five years. He filed a motion to modify the most recent adjudication of guilt so it would not be considered a third "conviction" within five years, claiming that he paid the fine for the latest ticket without realizing doing so would result in a strike against his license; that if he had realized it, he would have asked for a hearing before paying the fine, to request a withhold of adjudication. The court denied his motion, stating that it was clear that under section 318.14(4)(b), Florida Statutes, "payment of a ticket for a civil DWLS is deemed to be an admission, and therefore a 'conviction,' for the purpose of the habitual traffic offender statute." The court also dismissed the defendant's claim that the traffic rules provide for an extension of the time period he had to ask for a modification, based on excusable neglect. It stated not only that it would not find excusable neglect when a defendant claims to have been unaware of the consequences of paying the civil DWLS traffic ticket, but also that the defendant had used Florida Rule of Traffic Court 6.360 "in the past by requesting, and receiving, a modification of an adjudication of guilt to a withhold of adjudication in a case involving a civil DWLS. To now argue that he was unfamiliar with the Florida Rules of Traffic Court is not consistent with the record."

***State v. Ford*, 26 Fla. L. Weekly Supp. 443a (Seminole Cty. Ct. 2017)**

The defendants were arrested for DUI and filed motions to produce the source code for the breath test machine used in their cases, to explain anomalies their witnesses believed could be affecting the reliability of the machine. The court denied the motions, stating that, of the small number of alleged anomalies, "none relate to the breath tests that are the subject of the cases at bar. Furthermore, every alleged anomaly that the defense presented to the Court was reasonably and adequately explained by the State in rebuttal and on the record. None of these anomalies have been shown to impair the reliability of the Intoxilyzer 8000. Defendants charged with drinking and driving offenses are not entitled to a perfect breath test but, rather, to a reasonably

reliable one, and thus, it is not enough that defendants identify collateral irregularities with the breath test, but must show any such anomalies cause the machine to be reasonably unreliable."

The court stated further that "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."

***State v. Coleman*, 26 Fla. L. Weekly Supp. 440b (Brevard Cty. Ct. 2018)**

The defendant was arrested for DUI, and he filed a motion to suppress, arguing there was no valid legal basis for the stop or reasonable suspicion that he was DUI so as to justify a DUI investigation, and that "he was detained much longer than was necessary for a citation to be issued and that the deputies abandoned the mission of the stop by trying to determine whether there was reasonable suspicion to warrant a DUI investigation." The court denied the motion, stating that the officers had reasonably believed the defendant's tag lights were not illuminated, and after seeing that they were, they issued a traffic citation only for the defendant's failure to maintain a single lane, which they had observed. And the court found that the approximately 17 minutes between when the officers stopped the defendant and when they asked him to get out of his truck and perform field sobriety exercises was reasonable under the circumstances.

***State v. Austin*, 26 Fla. L. Weekly Supp. 440a (Seminole Cty. Ct. 2018)**

The defendant was arrested for DUI and filed a motion to suppress. The court granted it, stating that "an Officer's suspicion of consumption of alcohol does not justify detaining the Defendant. In order to lawfully detain there must have been an objectively reasonable suspicion of impairment." It noted that the officer's testimony "was limited to, at best, four indicators of possible impairment," and that he had "omitted from his probable cause affidavit two critical and material factors in his decision to remove the Defendant from his vehicle to conduct a criminal investigation."

***State v. Archer*, 26 Fla. L. Weekly Supp. 439b (Seminole Cty. Ct. 2017)**

The defendant filed a motion for production of the source code of Intoxilyzer 8000 software. The court denied it, finding that there was no competent substantial evidence that the state was "in possession of Intoxilyzer 8000 software containing readable or useful source code information," that "the mere possibility that the information sought by the Defendant may be helpful in its own investigation does not establish materiality for purposes of discovery," and that evidence of anomalies or irregularities retrieved from the FDLE-ATP public website did not suggest that the source code used by the device in this case was functioning improperly.

***State v. Page*, 26 Fla. L. Weekly Supp. 439a (Brevard Cty. Ct. 2018)**

The defendant was issued citations and arrested for DUI and DUI causing property damage, and the state prosecuted those charges using the citations as the charging documents. Nearly three years later the state filed an information charging DUI, DUI and causing damage or injury, and use or possession of drug paraphernalia. The defendant filed a motion to dismiss, arguing that the information was filed outside the statute of limitations period. He argued that "the filing of an information has the legal effect of dismissing the preceding charging document,

which in this case would be the criminal traffic citations. And, therefore, since the original charging documents (citations) are now dismissed, and the new charging document is a nullity, because it was filed after the statute of limitation period, the case must be dismissed since there are no legally filed and active charges." The court granted the motion to dismiss as to the drug charge, because it was not linked to the previously filed charges. But it denied the motion as to the other two counts, citing the "continuation principle": "A subsequently filed information, which contains language indicating that is a continuation of the same prosecution, timely commenced will not be considered an abandonment of the first information and therefore will not be barred by the statute of limitations. . . . However, where the state has brought a 'new charge, alleging a new and distinct crime with different elements, under a completely different statute' the statute of limitation requires dismissal of the new charge." It stated further: "Although the original charging documents in this case were criminal traffic citations and not an original information, the principle applies equally in that counts one and two of the information charge exactly the same crime as that charged in the citations."

***State v. Miller*, 26 Fla. L. Weekly Supp. 438a (Brevard Cty. Ct. 2018)**

The defendant filed two motions seeking to admit transcripts of witnesses' former testimony regarding the Intoxilyzer, and the court denied the motions. The court had previously rejected the defendant's argument that hearsay is admissible in such a discovery hearing or under the former testimony exception in section 90.803(22), Florida Statutes (*see State v. Miller*, 26 Fla. L. Weekly Supp. 436c (Brevard Cty. Ct. 2018), below). "However, the order did not address the Defendant's current argument that some of the testimony contained in the transcripts is admissible under the 'admission of party opponent' hearsay exception contained in § 90.803(18)(d). The Court has now considered this argument . . . and finds it to be misplaced." It held that this hearsay exception "does not contemplate the circumstances here and that the only proper mechanism for introducing former testimony of a witness is by compliance with the requirements of the former testimony exception contained in § 90.804(2)(a)."

***State v. Miller*, 26 Fla. L. Weekly Supp. 436c (Brevard Cty. Ct. 2018)**

The defendant was arrested for DUI. He filed motions to admit as evidence all testimony and exhibits from three other Orange County court cases, which, if granted, would allow the court to consider "transcripts of witnesses' former testimony at a scheduled hearing on defense motions for discovery concerning the Intoxilyzer." The state filed a motion to strike the defendant's motions, arguing that the transcripts were inadmissible hearsay, and that the motions were based on an unconstitutional statute. The court granted the state's motion in part.

The defendant cited the criteria for the state to obtain records regarding a defendant's medical condition, but the court held that those criteria were not applicable to this case.

The defendant also argued that the transcripts were admissible under the former testimony exception to the hearsay rule, section 90.803(22), Florida Statutes. But the court noted that the statute had been found to be an unconstitutional infringement on the rule-making authority of the Florida Supreme Court and denies due process "because it obviates and conflicts with section 90.804, Florida Statutes; and with Florida Rule of Civil Procedure 1.330." And the former testimony exception under section 90.804(2)(a) requires that "the witness is unavailable,

the State had a similar motive to develop the testimony, and compliance with the other requirements of § 90.804(2)(a) have been established," none of which was established by the defendant.

***State v. Leaton*, 26 Fla. L. Weekly Supp. 403b (Polk Cty. Ct. 2018)**

After a crash, the defendant was taken to a hospital. A deputy who had not witnessed the crash or made any observations at the scene went to the defendant's hospital room, smelled alcohol, and began a DUI investigation. The state attorney's office sought an investigative subpoena for the defendant's medical records. The defendant objected, and the court sustained his objection, stating: "In order for the State Attorney to use an investigative subpoena to compel disclosure of a patient's medical records, the State Attorney must give the patient notice before the issuance of the subpoena. If the patient objects, the State must then demonstrate to the Court the relevance of the requested records" and "demonstrate that a 'compelling governmental interest' warrants disclosure of a patient's private medical records." This burden "can be met if the State demonstrates that the records are relevant to an ongoing criminal investigation," which was not the situation in this case.

***State v. Leaton*, 26 Fla. L. Weekly Supp. 399b (Pinellas Cty. Ct. 2017)**

The defendant was arrested for DUI and filed a motion to suppress because there was not a 20-minute observation period between the two breath tests. The court denied the motion, stating it was "not inclined to reach the conclusion and stretch the language of the Rules that they require a second twenty minute observation period before one invalid test for an RFI detection and a second test beginning. . . . The common sense reading of the Rule as whole would lead the Court to believe that a new twenty minute observation period would only be required if one test is invalidated because the subject put something in their mouth or regurgitated, not for radio frequency interference being detected as is the case at bar."

***State v. Dorman*, 26 Fla. L. Weekly Supp. 399a (Duval Cty. Ct. 2017)**

The defendant was arrested for DUI and filed a motion to suppress blood test results because no search warrant had been obtained and the administration of a breath test was not impractical or impossible. The court granted the motion.

***State v. Vergara*, 26 Fla. L. Weekly Supp. 334b (Brevard Cty. Ct. 2018)**

The defendant was arrested for DUI. He and the state filed motions in limine concerning the admissibility of the single breath test sample. The defendant argued that the sample wasn't admissible because Florida Administrative Code Rule 11D-8.002(12) requires two breath samples. But the state's witness testified that "a single breath sample may still be validated if shown to be reliable" and that 16 states authorize single breath sample test results, which reinforced her opinion that a single breath sample can be scientifically validated. The court denied the defendant's motion and granted the state's motion, holding that the sample was admissible. It found no basis to exclude it and stated that it would be "up to the jury to determine the weight to be given the evidence."

***State v. Nevens*, 26 Fla. L. Weekly Supp. 316a (Sarasota Cty. Ct. 2018)**

The defendant was arrested for DUI. He filed a motion in limine, arguing that the Horizontal Gaze Nystagmus Test (HGN) was inadmissible. But the court denied his motion, finding *Daubert* to be the applicable standard, and that HGN has met the list of factors in *Daubert*: HGN has been tested, has been subject to peer review and publication, has an error rate (approximately 12%) that is "similar, or lower, error rate to such commonly used diagnostic tests as mammograms and the flu test," has controlling standards, and "is accepted as reliable in the relevant scientific communities." The defendant also argued that "the data in the 2007 NHTSA Robustness of the Horizontal Gaze Nystagmus Test (the 'Robustness Study') undermines the other findings of reliability of HGN which should therefore make it inadmissible under *Daubert*." But the court stated: "While the Robustness Study does show a number of false positives, the purpose of the Robustness Study . . . and the method of performing the study . . . [do] not affect the validity or reliability of other HGN studies or the admissibility of HGN under *Daubert*." It noted further that "[u]pon recently understanding the flawed methodology in the Robustness Study, the relevant technical and scientific committees retracted it from use finding that it should not be relied upon in any assessment of HGN."

***State v. Phillips*, 26 Fla. L. Weekly Supp. 315a (Sarasota Cty. Ct. 2018)**

The defendant was arrested for DUI and filed a motion to suppress all evidence collected after the traffic stop was initiated. The court denied his motion, finding that the deputy was "an experienced law enforcement officer who observed the defendant driving late at night, in a manner which his training indicated would identify an impaired driver, and in an overall unusual manner" and therefore "had founded suspicion to conduct a lawful and reasonable investigatory stop of the defendant."

***State v. Rowettewhite*, 26 Fla. L. Weekly Supp. 314a (Sarasota Cty. Ct. 2018)**

The defendants were arrested for DUI. They filed motions to suppress breath test results, alleging lack of substantial compliance with Florida Administrative Code Rule 11D-8 and sections 2.14 and 2.18 of FDLE's Alcohol Testing Program Procedures Manual, and that therefore the results of the Intoxilyzer 8000 breath test results weren't reliable. The court denied the motions, stating: "Specifically at issue is whether FDLE's failure to test its' [sic] cache of deionized water PRIOR to introducing same into the subject Intoxilyzer(s) 8000 through controlled blanks, and relying thereon for detection of any impurities or contaminants, resulted in scientifically unreliable or inaccurate Breath Test results. The Defense provided no such proof."

The defendants had also argued that Section 2.14 was "an unpromulgated rule, and thus an invalid exercise of delegated legislative authority, as well as lacking sufficient requirements to ensure reliable scientific evidence." But the court stated: "The rules adequately protect the reliability and consistency of breath testing as it relates to the issues raised by the Defendants. Substantial compliance is the standard and the Court finds the State has substantially complied with the promulgated rules and established procedures. Further, Section 2.14 (and 2.18) are not unpromulgated rules."

***State v. Richardson*, 26 Fla. L. Weekly Supp. 305 (Polk Cty. Ct. 2018)**

The defendants were arrested for DUI and filed motions to suppress, alleging their breath tests and results were scientifically unreliable and inadmissible. The court discussed the parties' testimony regarding the use of gas chromatography in approving alcohol reference solutions and denied the motions. It noted that "the initial burden of proof was on the defense to establish by preponderance of the evidence that the state failed to substantially comply with Florida Statute 316.1932 and Rule 11D-8," and that the state successfully rebutted such defense allegations.

***State v. Diemel*, 26 Fla. L. Weekly Supp. 303b (Orange Cty. Ct. 2018)**

After a hit-and-run accident, the defendant was located in an apartment and arrested for DUI. She filed a motion to suppress, which the court granted, stating:

> Florida courts have consistently held that law enforcement may not pursue a suspect into a residence based upon suspicion of a misdemeanor unless there are exigent circumstances. . . . Therefore, this court focuses on whether this encounter between law enforcement and the defendant was consensual based upon a "knock and talk" lawful investigation.
>
> Law enforcement may approach a residence and initiate a consensual encounter with the resident as a legitimate investigative procedure so long as the encounter does not evolve into a constructive entry. . . . A constructive entry occurs when the police, while not entering the house, deploy tactics that essentially force the individual out of the house. . . . The determination of this constructive entry is based upon the totality of the circumstances in that a reasonable person would have felt compelled to comply with the officer's requests. . . . It is not necessary that physical force be employed, but "if the circumstances would cause a reasonable person to conclude that he or she is not free to decline the officers' requests or otherwise terminate the encounter, then the encounter is a seizure."
>
> This Court finds, based upon the evidence presented, that the Defendant had standing to challenge the detainment and warrantless search and seizure. This Court also finds, based upon the totality of the circumstances, that the Defendant was unlawfully detained at the time the officers ordered her to exit her apartment and accompany them to the parking garage as no reasonable person would have felt free to disregard the officers' request.
>
> First, the officers attempt to use apartment employees as agents of the state to have the defendant exit her home. When that is unsuccessful, the officers next attempt to have the Defendant exit the home by informing her husband "you need to bring her immediately." Finally, the officers state "*you need to come with us*" directly to the Defendant. This command was made in the middle of the night, after three sets of persistent knocking, by officers in full uniform, and the officer's tone of speaking was neither conversational nor casual.

***State v. Quezada*, 26 Fla. L. Weekly Supp. 302a (Orange Cty. Ct. 2018)**

An officer stopped the defendant for speeding, tag light violation, and failure to maintain a single lane. The officer did not suspect the defendant was impaired until after he stopped her.

The defendant was arrested for DUI. She filed a motion to suppress, arguing that "the officer lacked reasonable suspicion to detain her for a DUI investigation and request that she submit to field sobriety exercises after being pulled over for a traffic violation." The court granted her motion, finding that although the initial stop for traffic violation was valid, her detention for a DUI investigation was not: "Before an officer can detain a driver for longer than what is necessary to write a traffic citation, he must have reasonable suspicion to believe the defendant has committed, is committing, or is about to commit a crime."

***State v. Barrick*, 26 Fla. L. Weekly Supp. 301b (Flagler Cty. Ct. 2018)**

A witness saw the defendant drive into a tree, and she had her passenger call 911. Officers arrived, and the defendant was arrested for DUI. The defendant filed a motion to suppress evidence, which the court granted, stating:

> The testimony at the hearing from the State's witness . . . certainly overcomes any issue regarding lack of actual physical control, since she was able to place the Defendant behind the wheel and explained that she communicated such to the officer on scene. However, there was no testimony whatsoever about the alleged statements that the Defendant made, which could have been subject to the corpus delicti argument. Furthermore, there was no testimony about what offense the Defendant was arrested for, or whether the deputy had any communication with the Defendant regarding the crash and DUI investigations.
>
> In addition, there was no testimony regarding any damage to the vehicle or tree involved. . . .
>
> A "traffic crash" has been defined as requiring "some observable result of forceful contact with another vehicle, person, or object before an investigation can be commenced, or a warrantless arrest made." . . . There is no competent, substantial evidence that a traffic crash occurred in this case. Based upon the lack of competent, substantial evidence that a traffic crash occurred, Florida Statute 316.645 is inapplicable. Due to the lack of evidence, there is no way for the Court to evaluate whether any crash or DUI investigation was conducted within legal parameters; and there is no evidence whatsoever of indicators observed by law enforcement leading to the Defendant's arrest for DUI.

***State v. Caraway*, 26 Fla. L. Weekly Supp. 297a (Santa Rosa Cty. Ct. 2018)**

The defendant was arrested for DUI. He filed a motion to suppress the breath test results, contending that the breath test instrument was not in substantial compliance with FDLE rules. The issues raised involved the "bench calibration," that the alcohol reference solution was not tested properly, the validation of the Gas Chromatograph instrument, and the signing of the certificate of assurance. But the court denied the motion, finding that the breath testing instrument was in substantial compliance with the rules.

***State v. Hanak*, 26 Fla. L. Weekly Supp. 238a (Monroe Cty. Ct. 2018)**

The state filed a motion in limine to admit a monthly Intoxilyzer inspection as a business record or public record. The court held that "for purposes of the Confrontation Clause of the Sixth Amendment, the monthly agency inspection reports are indistinguishable from the annual department inspection reports, which were held to be non-testimonial by the Court of Appeal, Fourth District, in *Pflieger v. State*, 952 So. 2d 1251 (Fla. 4th DCA 2007). . . . Accordingly, . . . the Confrontation Clause is no bar to the admission of the monthly agency inspection reports without testimonial evidence as to the actual monthly inspections in this case." It stated further:

> The State's motion appears to assume that the Confrontation Clause question necessarily resolves the hearsay question. Not so. The monthly agency inspection reports may well be admissible under the business records, § 90.803(6), Fla. Stat., or public records, § 90.803(8), Fla. Stat., exceptions to the hearsay rule. The State asserts these exceptions apply. However, until the State satisfies the evidentiary predicates for either of these hearsay exceptions . . . it is premature to hold that these exceptions apply to the monthly agency inspection records in this case. Accordingly, the Court reserves ruling on this issue until such time as the State attempts to satisfy the relevant evidentiary predicates.

***State v. Phillips*, 26 Fla. L. Weekly Supp. 234a (Monroe Cty. Ct. 2018)**

A motorist approached a police officer to report a gray pickup truck being driven "crazy." The officer spotted and stopped the defendant, who was not driving very carefully, was naked, and had indicia of impairment. Four minutes later another officer arrived to conduct a DUI investigation, and ten minutes later the defendant was arrested for DUI. At the detention center the defendant was first read his *Miranda* warnings and refused to provide a breath sample. He filed motions to suppress, arguing that (1) the tip the first officer received from a motorist was anonymous and uncorroborated; (2) the second officer lacked reasonable suspicion to ask the defendant to perform field sobriety exercises; (3) his statements to the officers during the traffic stop should be suppressed because they were made without the *Miranda* warnings; and (4) his statements, even if admissible, should be excluded "because their probative value is substantially outweighed by the risk of unfair prejudice." The court addressed each of the arguments and denied the motions.

***State v. Thomas*, 26 Fla. L. Weekly Supp. 232a (Sarasota Cty. Ct. 2018)**

After DUI arrests, the defendants filed motions to suppress breath test results, arguing that the Alcohol Testing Program (ATP) "improperly delegated its rulemaking authority under § 316.1932 to the Florida Criminal Justice Standards and Training Commission (CJSTC), and whether certain rules enacted by CJSTC relating to breath test operator and inspector certifications constitute an invalid exercise of delegated legislative authority." The court held there was no improper delegation of rulemaking or legislative authority and denied the motions.

***State v. Pierre-Pierre*, 26 Fla. L. Weekly Supp. 226b (Polk Cty. Ct. 2018)**

The defendant was stopped for having an inoperable tag light, and after smelling cannabis the deputy arrested him. The defendant filed a motion to suppress, which the court granted, stating that the state failed to meet its "burden to prove, by a preponderance of the evidence, that

sufficient probable cause existed to conduct a traffic stop on Defendant's vehicle for the civil traffic violation alleged." While testifying, the deputy could not remember whether one or both lights were out, or whether the issue was 50-feet visibility – only that the light "was inadequate." There was also conflicting testimony about whether the tag lights were working, especially as the deputy had allowed the defendant's sister to drive the vehicle away from the scene.

***State v. Berg*, 26 Fla. L. Weekly Supp. 223a (Duval Cty. Ct. 2018**)

The defendant was stopped for speeding, and he filed a motion to suppress evidence gathered after the stop. He argued that the trooper did not have probable cause to conduct a traffic stop because the state's only evidence was the trooper's testimony that he saw the defendant "travelling at a 'high rate of speed' and made a visual estimation" that the defendant was driving over the posted speed limit. The court granted the motion to suppress.