FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

January – March 2019

[Editor's Note: In order to reduce possible confusion, the defendant in a criminal case will be referenced as such even though his/her technical designation may be appellant, appellee, petitioner, or respondent. In civil cases, parties will be referred to as they were in the trial court; that is, plaintiff or defendant. In administrative suspension cases, the driver will be referenced as the defendant throughout the summary, even though such proceedings are not criminal in nature. Also, a court will occasionally issue a change to a previous opinion on motion for rehearing or clarification. In such cases, the original summary of the opinion will appear followed by a note. The date of the latter opinion will control its placement order in these summaries.]

I. Driving Under the Influence (DUI)

Keene v. State, __ So. 3d __, 2019 WL 1302342 (Fla. 5th DCA 2019)

The defendant pled no contest to two counts of DUI with serious bodily injury. He was sentenced to time-served in jail and 12 months of community control followed by 42 months of probation on Count I, and 60 months of probation on Count II, consecutive to Count I. Four and a half years later he was arrested for DUI, and the state filed a violation of probation affidavit. The defendant entered a plea to the VOP, and the lower court revoked probation and sentenced him to 106.65 months in prison on both Counts I and II. The defendant sought postconviction relief, "arguing that the lower court lacked jurisdiction to revoke his probation and sentence him as to Count I, and that his counsel was ineffective for failing to object thereto," as he completed his sentence on that count a few weeks before his later arrest. Further, he argued that his scoresheet should have been calculated without adding points for violation of Count I.

The lower court summarily denied relief, stating that his probationary period had been tolled between the time the state filed an earlier VOP affidavit and an arrest warrant was issued, and three months later, when that affidavit was dismissed. But the appellate court reversed and remanded, stating that "the lower court erred in relying on the tolling provisions of section 948.06(1)(f) to conclude that his probationary period had not yet expired at the time of [the later] arrest. As [the defendant] pointed out below, while the filing of a violation of probation affidavit ordinarily tolls the probationary period, the dismissal of that affidavit nullifies the tolling

mechanism. . . . [I]t appears that he should have been credited all time tolled. . . . If [his] allegations are true, then the lower court was divested of all jurisdiction . . . as to Count I." https://edca.5dca.org/DCADocs/2018/3353/183353_1260_03222019_08224145_i.pdf

***Martinez v. State*, __ So. 3d __, 2019 WL 946205 (Fla. 4th DCA 2019)**

A trooper found the defendant passed out in his vehicle, and the defendant was arrested for DUI. He filed a motion to exclude statements he made about the president when he was being arrested, but the circuit court denied the motion, holding "that the statements were both relevant and probative to the D.U.I. charge and the resisting an officer with violence charge . . . and that the statements were not unduly prejudicial." He appealed, but the appellate court affirmed, stating that the defendant "does not dispute the relevancy or probative value of his statements to the D.U.I. charge. Instead, he argues the statements were not relevant to the resisting an officer with violence charge. But his own words contradict this argument. When he was being arrested, he specifically stated, 'I'm not resisting.' The remainder of his statements, quoted above, were also relevant to showing his state of mind." The appellate court also agreed with the circuit court that "the statements were not unduly prejudicial. . . . [The defendant] fails to explain how the mere reference to an elected official renders that evidence unduly prejudicial." https://www.4dca.org/content/download/430161/4670915/file/180638_1257_02272019_09093178_i.pdf

***Pierre v. State*, __ So. 3d __, 2019 WL 582047 (Fla. 4th DCA 2019)**

The defendant was convicted of refusal to submit to testing, driving with a suspended license, and reckless driving. He appealed, arguing, inter alia, that the trial court erred by imposing an excessive public defender lien. The appellate court reversed, stating: "The court asked a series of questions to ensure that appellant understood the terms of his sentence, but failed to inform him of his right to a hearing to contest the lien under section 938.29(1)(a), Florida Statutes. . . . [T]he trial court exercised discretion by assessing a $200 public defender lien against appellant [rather than the minimum $100] yet failed to consider any evidence establishing a reasonable hourly rate or the amount of time spent by the public defender on the case to support an amount exceeding the statutory minimum." It remanded for the trial court to "either reduce the amount to the statutorily required $100 or hold a hearing with proper notice to obtain evidence in support of a lien in an amount greater than the statutory minimum." https://www.4dca.org/content/download/429161/4659341/file/181198_1709_02132019_09365811_i.pdf

***Howitt v. State*, __ So. 3d __, 2019 WL 488750 (Fla. 5th DCA 2019)**

Howitt rear-ended and killed a person. He didn't stop, but he was pulled over nearby and refused field sobriety and breath tests. He moved to suppress the evidence of his refusals, as the officers had not read him implied consent law relating to breath tests or informed him of possible adverse consequences for refusing to perform the field sobriety tests. The trial court denied his motion to suppress, and he was convicted of leaving the scene of an accident with death, DUI causing damage to property or injury, and DUI causing death/failure to render aid. The appellate court reversed the convictions for DUI causing damage to property or injury and DUI causing death/failure to render aid and remanded for a new trial on those charges, stating "we cannot say

that the State met its burden of establishing that the admission of the refusal to take a breath test and perform the field sobriety tests constituted harmless error. . . . A reasonable possibility exists that evidence of Howitt's refusal to participate in both tests contributed to his convictions." https://edca.5dca.org/DCADocs/2017/2695/172695_1259_02082019_08253304_i.pdf

***State v. Fonseca*, __ So. 3d __, 2019 WL 318515 (Fla. 4th DCA 2019)**

An officer saw the defendant speeding and swerving across lanes. He tried to stop her, but she sped away, running a red light and hitting a valve box at the side of the road. The officer called in the defendant's auto tag and went to the address associated with it, saw the defendant exiting the driver's side of the car, noticed damage to the vehicle, and noticed indicia of intoxication. The defendant refused a breath test and was arrested and charged with aggravated fleeing or eluding (high speed), resisting police officer without violence, DUI with property damage, DUI, and leaving the scene of a crash (unattended property). She filed a motion to suppress her confession for lack of corpus delicti, which the trial court granted "because the officer identified the defendant's sister, not the defendant, as the driver of the car. . . . The judge emphasized that he granted the motion 'entirely . . . on the fact the arresting officer could not identify the defendant.'" The state appealed, and the appellate court reversed, stating:

> In the context of a DUI conviction, our supreme court defined *corpus delicti* as "'the fact that a crime has actually been committed, that someone is criminally responsible.'" *Burks v. State*, 613 So. 2d 441, 443 (Fla. 1993). . . . It further explained that "the identity of the defendant as the guilty party is not a necessary predicate for the admission of a confession." *Id.*
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> Significantly, the trial court based its ruling on *Burks*. But, *Burks* involved the appeal of a conviction, not a ruling on a motion to suppress. And, language in *Burks* actually conflicts with the trial court's ruling. In short, the case argued by the defendant, and relied upon by the trial court, is inapposite. *Burks*, 613 So. 2d at 443; *see also Franqui v. State*, 699 So. 2d 1312, 1317 (Fla. 1997) (proof of corpus delicti is required before a confession can be admitted, but the State is not required to identify the defendant to establish *corpus delicti*).

https://www.4dca.org/content/download/426856/4632935/file/173726_1709_01232019_09110887_i.pdf

***State v. Boston*, __ So. 3d __, 2019 WL 254904 (Fla. 2d DCA 2019)**

After being stopped for driving on the wrong side of the road, the defendant was arrested for DUI. He filed a motion to suppress, which the trial court granted. The state appealed, and the appellate court reversed, holding that the deputy "had probable cause to believe that [the defendant] committed a traffic infraction. Consequently, the deputy had an objectively reasonable basis for the traffic stop."
https://www.2dca.org/content/download/426557/4629895/file/174814_39_01182019_08263469_i.pdf

***Morell v. State*, 26 Fla. L. Weekly Supp. 883a (Fla. 17th Cir. Ct. 2018)**

The defendant appealed his DUI conviction, arguing that certain statements the prosecutor made in closing "improperly shifted the burden of proof to him and constituted fundamental error." The circuit court, in its appellate capacity, reversed and remanded, stating that some of the prosecutor's statements "implied that [the defendant] had an obligation to provide evidence and blamed him for [the state's] lack of evidence. Those statements went beyond simply arguing consciousness of guilt and invited the jury to convict [the defendant] for a reason other than that [the state] had proved its case beyond a reasonable doubt. Specifically, these statements invited the jury to convict [him] based on his failure to provide 'the best evidence.' Furthermore, these statements implied that the jury could infer [his] guilt from his failure to take affirmative steps to prove his innocence." The court noted further: "[C]omments which improperly shift the burden of proof to the defendant present a deprivation of the fundamental right to a fair trial serious enough to require reversal even in the absence of objection or preservation."

***Parajon v. State*, 26 Fla. L. Weekly Supp. 870a (Fla. 11th Cir. Ct. 2018)**

An officer saw the defendant's vehicle stopped, straddling two lanes in rush hour. During a DUI investigation the defendant refused to provide a breath sample, and he was convicted of violating section 316.1939, Florida Statutes. He appealed, arguing that "his own statements acknowledging that he was the driver of the car provided the dispositive proof of the missing element of the offense -- *viz.*, that he . . . had actually been driving while under the influence -- and that his statements were received in violation of the common-law *corpus delicti* rule." But the circuit court, in its appellate capacity, affirmed, stating that while there was a "bare possibility" that the defendant drove to the road he was found on and then parked and got drunk there, it was

> not a possibility sufficiently persuasive to defeat a finding of *corpus delicti*. . . . Alternatively, someone else could have driven [the] car, and then abandoned both the car and [the defendant] in the circumstances in which [the officer] found them. At trial, a defense witness offered testimony to that very effect. The jury was free to accept that testimony, and chose to reject it. But the issue on the present appeal is not the sufficiency of the prosecution's proof to support conviction -- it is the sufficiency of the *corpus delicti* at the time that [the defendant's] confession that he had been driving was received in evidence. The trial judge was obliged to make that sufficiency determination at the time [his] confession was offered during the prosecution case in chief. Contradictory testimony adduced later, during the defense case in chief, was irrelevant to the *corpus delicti* determination.
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> Even assuming, however, that receipt of this opinion testimony was error, [the defendant] is hard-pressed to show that the error was harmful.
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> But in any event there was, independent of this opinion testimony, ample circumstantial evidence to support a finding of *corpus delicti* and thus to justify

the admission [the defendant's] confession. That the evidence was circumstantial in nature does not detract from its probative force for this purpose.

***Alou v. State*, 26 Fla. L. Weekly Supp. 869a (Fla. 11th Cir. Ct. 2018)**

The defendant appealed his DUI conviction based on the cumulative effect of the prosecutor's alleged improper comments. The circuit court, in its appellate capacity, reversed, stating: "To warrant a new trial, the comments must either 1) deprive the defendant of a fair and impartial trial; 2) materially contribute to the conviction; 3) be so harmful or fundamentally tainted as to require a new trial; or 4) be so inflammatory that they might have influenced the jury to reach a more severe verdict than it would have otherwise. . . . The improper comments below are of such a nature as to warrant a new trial. The trial court abused its discretion when it denied the motion for mistrial."

***Brown v. State*, 26 Fla. L. Weekly Supp. 713a (Fla. 8th Cir. Ct. 2018)**

A police officer who had just left his shift was driven off the road by the defendant, who was driving in the wrong lane. Believing the defendant was a danger to public safety, the officer stopped him and notified the sheriff's office, a deputy arrived and conducted a DUI investigation, and the defendant was arrested for DUI. The defendant filed a motion to suppress because the police officer was outside his jurisdiction. The court denied the motion, and the defendant appealed. The circuit court, in its appellate capacity, affirmed, finding that there was competent, substantial evidence to support the findings that the off-duty police officer (1) "had the authority to conduct a private citizen's arrest . . . after observing a breach of the peace, specifically, [the defendant's] dangerous and erratic driving pattern," and (2) "did not act 'under color of office' when conducting the traffic stop, merely by the fact that he was in uniform and used his patrol vehicle's flashing lights to effectuate the stop." After stopping the defendant, the police officer conducted no investigation, did not write a police report, and only contacted the Hillsborough County Sherriff's [sic] Office in order to have deputies dispatched to the scene to conduct the investigation."

***State v. Riddle*, 26 Fla. L. Weekly Supp. 709b (Fla. 12th Cir. Ct. 2018)**

After an officer saw the defendant run a stop sign with an expired tag, the defendant was arrested for DUI. His breath samples showed BAC below the legal limit, but his urine sample showed cocaine. He filed a motion to suppress, arguing that the urine sample "was obtained by an unlawful warrantless search without proper consent." The trial granted the motion, and the state appealed. The circuit court, in its appellate capacity, reversed and remanded, stating that "the trial court erred in determining that [the defendant's] consent was involuntary because he was informed of the consequences of refusal under Florida's implied consent law."

II. Criminal Traffic Offenses

***Linen v. State*, __ So. 3d __, 2019 WL 1412563 (Fla. 2d DCA 2019)**

The defendant was convicted of felony leaving the scene of a crash with injury and misdemeanor leaving the scene of a crash with property damage in circuit court case number,

and his probation in another case was revoked. He appealed, and because the two convictions were "based on true inconsistent verdicts," the appellate court reversed the conviction and sentence for leaving the scene of a crash with property damage, but affirmed the conviction for leaving the scene of a crash with injury and the resulting revocation of probation. It stated:

> The evidence presented at trial established that [the defendant] willfully left the scene of a crash and that the victim suffered both physical injury to her person and property damage to her vehicle. As such, the evidence supports the jury's finding of guilt as to the leaving the scene with injury charge. But because the plain language of section 316.061(1) allows for a conviction under that section when the crash results only in property damage, a jury finding that the crash resulted in physical injury to the victim necessarily negates that required element of section 316.061(1); in other words, if the crash resulted in physical injury, it cannot have resulted only in property damage.

https://www.2dca.org/content/download/521338/5790236/file/163691_114_03292019_08360956_i.pdf

***Moreno v. State*, __ So. 3d __, 2019 WL 1053177 (Fla. 4th DCA 2019)**

The defendant's probation was modified because he was in possession of a firearm and marijuana. At sentencing, "the State presented a scoresheet identifying carrying a concealed firearm as the primary offense and driving in violation of a driver's license restriction as an additional offense. [The defendant's] lowest permissible sentence under the scoresheet was a non-prison sanction. Based on [the] scoresheet, the court found that prison time was inappropriate. However, because [the defendant] was found in possession of a firearm just six days after he was placed on probation for being in possession of a firearm, the court extended [his] probation by an additional three years." The defendant appealed, arguing, and the state conceded, that "driving in violation of a driver's license restriction, a misdemeanor, should not have been scored as an additional offense since [he] completed his sentence for that offense before the violation of probation occurred." However, "the record conclusively shows that [the] sentence would have been the same under a correct scoresheet. . . . While this in and of itself does not establish that the error was harmless, . . . the court's comments during sentencing establish that its sentence would have been the same with or without its consideration of the extra .2 points for the driver's license offense." Therefore the appellate court affirmed the defendant's sentence but remanded for the entry of a corrected scoresheet.
https://www.4dca.org/content/download/430520/4675070/file/181100_1257_03062019_09082316_i.pdf

***Sammons v. State*, __ So. 3d __, 2019 WL 985933 (Fla. 2d DCA 2019)**

The defendant was convicted of drug charges and driving with a suspended license. He had represented himself below, and on appeal he argued that the trial court erred in failing to renew the offer of counsel before proceeding with the sentencing hearing. The appellate court agreed and vacated the sentences and remanded for resentencing.
https://www.2dca.org/content/download/430373/4673400/file/171953_65_03012019_08170125_i.pdf

***Kempton v. McComb*, __ So. 3d __, 2019 WL 982849 (Fla. 5th DCA 2019)**

After an accident, Kempton sued McComb. The jury found Kempton 55% negligent, and the trial court held that therefore section 768.36, Florida Statutes ("Alcohol or drug defense"), barred recovery by Kempton. Kempton appealed, arguing that "the trial court erred in applying section 768.36 because the jury's verdict did not indicate, as required by subsection (2)(b), whether [Kempton] was more than 50 percent at fault '[a]s a result of the influence of [an] alcoholic beverage.'" The appellate court agreed and reversed. Although the jury found that Kempton was more than 50% at fault and that his blood alcohol level was 0.08 or higher at the time of the accident, it did not find that his "fault was '[a]s a result of . . . [an] alcoholic beverage' as required by subsection (2)(b)."
https://edca.5dca.org/DCADocs/2017/3272/173272_1259_03012019_08521851_i.pdf

***Funderburk v. State*, __ So. 3d __, 2019 WL 719138 (Fla. 4th DCA 2019)**

The defendant was charged with driving while license revoked – habitual offender, but after entering a negotiated plea his judgment and probation order showed a conviction for driving while license suspended – habitual offender. He appealed his conviction and sentence, arguing that he had pled to a nonexistent crime that was not charged in the information. The appellate court affirmed the sentence, but remanded with instructions to correct the scrivener's error.
https://www.4dca.org/content/download/429402/4662000/file/181667_1257_02202019_09294832_i.pdf

***Armstrong v. State*, __ So. 3d __, 2019 WL 654356 (Fla. 1st DCA 2019)**

The defendant pled to DUI with property damage (count III) and leaving the scene of an accident involving unattended property (count IV). After a jury trial, he was adjudicated guilty of DUI manslaughter (count I) and leaving the scene of an accident with property damage (count II). He was sentenced to 15 years in prison on count I, time served on counts II and IV, and one year of probation on count III. The sentences on counts I and III were to run consecutively. After the defendant served four years on count I, the trial court granted his 3.850 motion and vacated his judgment and sentence as to count I. He was released on bond and ordered to report to state probation for supervision on count III. He appealed, arguing that the trial court should have granted his motion to correct an illegal sentence, as he had served his probation on count III. Meanwhile, over a year after the trial court vacated the judgment and sentence on count I, the state "amended the information, essentially substituting a count of vehicular homicide for the DUI manslaughter count." The defendant pled nolo contendere to the new count in exchange for a sentence of over nine years in prison followed by five years' probation. But in its order of probation the court sentenced the defendant on count III to another year on probation. Because the defendant had already completed the probationary sentence on count III, the appellate court reversed and remanded for the trial court to grant the defendant's motion to correct his illegal sentence and vacate the new sentence on count III, stating: "The trial court . . . improperly resentenced [the defendant] for count III three months after he completed his sentence, violating [his] right to be free from double jeopardy."
https://www.1dca.org/content/download/429343/4661326/file/174528_1287_02182019_10472121_i.pdf

***Wall v. State*, __ So. 3d __, 2019 WL 136989 (Fla. 1st DCA 2019)**

After a crash, the defendant was convicted of DUI manslaughter, DUI causing serious bodily injury, and two counts of driving with a suspended and revoked license. He appealed, arguing that the trial court erred in admitting the statement of his girlfriend, to an officer who responded to the crash, that the defendant was the driver of the vehicle. He argued that the statement was neither a statement of identification nor an excited utterance. But the appellate court noted that the issue had not been preserved for review.

The defendant also argued that "the judgment of conviction erroneously indicates he went to trial on four counts when in fact he pled no contest to the two charges of driving with a suspended or revoked license." The appellate court agreed, and while it affirmed the defendant's convictions, it remanded for correction of the judgment and sentence.
https://www.1dca.org/content/download/425810/4589573/file/155881_1284_01082019_03004818_i.pdf

***State v. Valle*, 26 Fla. L. Weekly Supp. 798a (Fla. 5th Cir. Ct. 2018)**

The defendant was stopped for speeding and was charged with, inter alia, driving while license suspended. He filed a motion to suppress, which the trial court granted. The appellate court reversed the order granting the motion to suppress as to that charge, stating: "There is no substantial competent evidence to support those factual findings, particularly concerning any 'fabricated evidence.' Further, the trial court's suppression of all evidence was too broad. The initial stop of the vehicle for speeding was valid. The Defendant was driving the vehicle, and a check of the Defendant's driver's license revealed that it was suspended."

***State v. Jackson*, 26 Fla. L. Weekly Supp. 716b (Fla. 17th Cir. Ct. 2018)**

In 2007 the defendant received a citation for driving while license suspended with knowledge. He pled no contest and adjudication was withheld. In 2016 he filed a petition to vacate conviction, judgment, and sentence, arguing that there was an "inequity" because DHSMV waited until 2016 to enter the disposition onto his record, and that his plea was not knowingly and voluntarily entered, because he was unaware that a conviction would cause him to be classified as a habitual traffic offender and lose his license for five years. The trial court granted the defendant's motion to vacate plea and stated that the conviction date would be reissued to show 2016, and thus it would be outside the five-year time period. The state appealed, arguing that the defendant's claim was time barred because the conviction became final in 2007, and the two-year period to file a timely motion for post-conviction relief had passed. The circuit court, in its appellate capacity, agreed with the state and reversed. The court stated further that "these circumstances do not present the type of manifest injustice that would justify the relief granted by the trial court. The suspension of Defendant's driver's license was merely delayed and Defendant has actually benefited, in part, from the delay as he has been able to drive on a valid license for the duration of this delay."

(The court noted that Florida Rule of Criminal Procedure 3.172 has since been amended to require that a defendant be informed of this collateral consequence of a plea, but it does not apply retroactively.)

III. Civil Traffic Infractions

IV. Arrest, Search and Seizure

Gomillion v. State, __ So. 3d __, 2019 WL 1271162 (Fla. 2d DCA 2019)

After a hit-and-run accident, the defendant was charged with leaving the scene of an accident and carelessly or negligently causing serious bodily injury while driving on a canceled, suspended, or revoked license. The state notified him that it planned to subpoena his medical records from treatment he received after the crash. He objected to the subpoena of his toxicology records, but the trial court denied his objection. He sought review, which the appellate court granted, and it quashed the order as it related to that part of the subpoena seeking the toxicology records, stating that "the State failed to prove that the toxicology records are relevant to an ongoing criminal investigation—in this case, the only way in which it could overcome [the defendant's] constitutional privacy right."
https://www.2dca.org/content/download/431206/4682526/file/181640_167_03202019_08330796_i.pdf

Peterson v. State, __ So. 3d __, 2019 WL 1050892 (Fla. 2d DCA 2019)

After a traffic stop, the defendant was arrested on drug charges. She filed a motion to suppress, arguing that (1) the deputy lacked probable cause for the stop "based solely on her failure to maintain a single lane of traffic where her conduct did not create a reasonable safety concern," and (2) information a jail visitation clerk gave the deputy about a conversation between the defendant and an inmate did not provide a reasonable suspicion that the defendant had committed or was about to commit a crime. The appellate court agreed and reversed.
https://www.2dca.org/content/download/430537/4675264/file/171324_39_03062019_08410941_i.pdf

State v. Pettis, __ So. 3d __, 2019 WL 1050891 (Fla. 2d DCA 2019)

An officer saw the defendant fail to make a complete stop at a stop sign and followed him. When the defendant parked, left his vehicle, and went to his mother's front porch, several other officers arrived, saw in his vehicle a bottle with baggies containing a powder substance, and said they wanted to speak to the defendant. He refused, and after a scuffle he was arrested, officers took his car keys from his pocket, and an officer drove the defendant's car to the police station, where contents of the baggies tested positive for heroin. The trial court granted the defendant's motion to suppress, stating "there was neither hot pursuit nor any other exigent circumstance that would justify the warrantless entry into [the defendant's] locked car and the seizure of heroin," and in announcing its ruling the trial court orally stated the car was "on the curtilage" of the defendant's mother's house. The state appealed, and the appellate court reversed and remanded for the trial court to conduct a suppression hearing and address whether the defendant had a close enough connection to his mother's house to challenge the search of his car under "the Fourth Amendment protections afforded to a house and its curtilage."
https://www.2dca.org/content/download/430541/4675312/file/172973_39_03062019_08424491_i.pdf

V. Torts/Accident Cases

Sentz v. Tracy, __ So. 3d __, 2019 WL 1412412 (Fla. 5th DCA 2019)

Sentz rear-ended Tracy's boat trailer. In the ensuing lawsuit, Sentz refused Tracy's requests for admission "that asked her to broadly concede negligence, causation, and damages." After a final judgment awarding Tracy attorney's fees pursuant to Florida Rule of Civil Procedure 1.380(c), Sentz appealed, arguing that the trial court erred in awarding fees for Sentz's denial of the requests for admission "because the requests went to issues for which there was a bona fide dispute." The appellate court agreed and reversed, stating that the requests "went to the ultimate issues in the case rather than relevant facts. Moreover, the issues were hotly contested at trial. . . . In our view, awarding attorney's fees under these circumstances would render rule 1.380(c) a prevailing party fee provision rather than an exception to the rule that the individual parties bear their own fees."
https://edca.5dca.org/DCADocs/2018/0964/180964_1260_03292019_08483334_i.pdf

Rierson v. Deveau, __ So. 3d __, 2019 WL 1271006 (Fla. 3d DCA 2019)

Final judgment was entered against Rierson in an automobile accident case. The trial court denied her motion for a new motion and she appealed, The appellate court reversed, stating that the trial court erred in overruling Rierson's objection to statements made by the defendant in closing argument that the trooper "had not 'rendered a single opinion about fault in [the] accident' and had not formulated opinions regarding negligence or the propriety of Deveau's lane usage were improper, as the reasonable inference to be drawn was that Deveau was not cited for causing the accident," and that the error was not harmless as "the issue of liability was vigorously disputed."
http://www.3dca.flcourts.org/Opinions/3D18-0246.co.pdf

Law Office of Michael B. Brehne, P.A. v. Porter Law Firm, LLC, __ So. 3d __, 2019 WL 1212362 (Fla. 5th DCA 2019)

A final summary judgment was entered in favor of two insurers, finding that they had not impaired the plaintiff's former law office's charging lien on the settlement proceeds they paid to the plaintiff and her newly retained counsel. The law office appealed, but the appellate court affirmed, stating that "although the Insurers had notice of Law Office's charging lien, they paid the settlement proceeds to the newly retained counsel who agreed to hold, and has continued to hold, the disputed funds in trust. Because the funds are in trust, Law Office's lien has not been impaired. However, should that situation change in the future, the Insurers cannot avoid liability for the attorney's fees subject to Law Office's lien simply because [they] transferred the funds to a third party."
https://edca.5dca.org/DCADocs/2017/3850/173850_1257_03152019_08395535_i.pdf

Conti v. Auchter, __ So. 3d __, 2019 WL 1212357 (Fla. 5th DCA 2019)

Conti rear-ended Auchter's car. Auchter sued for injuries, and his wife sued for loss of consortium. Auchter served Conti a proposal for settlement for his claim, and Conti served Auchter's wife a proposal for settlement for her claim. Neither party accepted the settlement proposals. The jury found that Auchter did not suffer a permanent injury and therefore did not

award his wife damages for loss of consortium. Conti moved for attorney's fees for defending both claims, arguing that Auchter's injury claim "was inextricably intertwined with" his wife's loss of consortium claim. The trial court denied Conti attorney's fees, finding that "the claims were not inextricably intertwined because the loss-of-consortium claim is derivative." The appellate court held this was error and reversed in part and remanded with instructions for the trial court to hold an evidentiary hearing. It stated: "The derivative nature of a loss-of-consortium claim, while being a separate cause of action, supports the conclusion that the instant claims are inextricably intertwined. . . . Both claims were based on a core set of facts and the determination of the permanency issue was dispositive in the consortium claim. . . . Therefore, when, like here, a defendant successfully defeats a loss-of-consortium claim by proving a lack of permanency of the plaintiff spouse's injury, then the claims are inextricably intertwined."
https://edca.5dca.org/DCADocs/2018/0696/180696_1259_03152019_08512632_i.pdf

***Restal v. Nocera*, __ So. 3d __, 2019 WL 1086585 (Fla. 5th DCA 2019)**

Restal rear-ended Nocera, and Nocera sued. After a jury verdict in favor of Nocera, the trial court entered final judgment in her favor. Restal appealed, arguing that "the trial court erred in granting partial summary judgment on the issues of liability and causation." The appellate court agreed in part, finding there were issues of material fact that overcame the presumption that Restal was solely at fault. It affirmed the summary judgment as to Restal's negligence, but reversed on the issue of Nocera's comparative negligence and remanded for a new trial.
https://edca.5dca.org/DCADocs/2017/0002/170002_1259_03082019_08364738_i.pdf

***Bellezza v. Menendez*, __ So. 3d __, 2019 WL 1053134 (Fla. 4th DCA 2019)**

Bellezza was walking his bicycle along a street when he collided with a vehicle owned by a law firm and driven by the firm's employee. Bellezza sued the driver and the law firm for negligence and vicarious liability. The jury apportioned 57½% fault to Bellezza and 42½% to the vehicle driver, and Bellezza sought a new trial, "arguing the trial court erred in permitting the defense to admit evidence and elicit testimony regarding payments from his attorney's trust account to the treating physicians." The trial court denied the motion and entered final judgment for the defendants. Bellezza appealed, arguing that "the trial court's errors in admitting irrelevant financial information concerning the treating physicians, requiring his attorney to testify, and excluding similar evidence concerning the defendant law firm, entitle him to a new trial." The defendants argued "any error was harmless because the plaintiff's attorney's limited testimony on these issues could not have impacted the verdict." The appellate court reversed, noting "after discovery, but before trial, the Supreme Court of Florida held that 'the financial relationship between a plaintiff's law firm and the plaintiff's treating physician is [not] discoverable.' *Worley*[*v. Central Florida Young Men's Christian Ass'n, Inc.*], 228 So.3d [18] at 22."

The appellate court also found "error in the trial court compelling the plaintiff's attorney to testify at trial. While the plaintiff's attorney was initially identified as the person with the most knowledge of the financial records, the firm identified an alternative individual who could testify prior to the deposition. In compelling the plaintiff's attorney's testimony, the court forced her . . . to testify to the prejudice of her own client."
https://www.4dca.org/content/download/430514/4674998/file/173277_1709_03062019_08562920_i.pdf

***Harper v. GEICO General Insurance Co.*, 263 So. 3d 250 (Fla. 2d DCA 2019)**

After an accident, the trial court entered an order on November 14, 2017, and Harper filed a notice of appeal. Despite the "clear language of finality" in the order, GEICO filed a motion asking the trial court to enter a "final judgment." While the appeal was pending, the trial court held a hearing and determined that because the November 14 order was not titled a "final judgment," it was not really final; and it entered a second judgment on April 2, 2018. Harper filed a notice of appeal from that judgment too and filed a motion asking the appellate court to determine whether the November 14, 2017, order was "sufficiently final to support jurisdiction over the appeal." On May 17, 2018, the appellate court issued an order stating that the language in the November 14 order contained "sufficient words of finality" and that it would review that order on its merits.

Harper then filed a motion asking the trial court to vacate the second (April 2, 2018) judgment as being improper and duplicative. The trial court never ruled on that motion, and the appellate court, finding the first judgment had "sufficient words of finality to constitute a final appealable judgment," held the April 2 judgment was improper and duplicative, and reversed it and remanded with directions to strike it on remand.
https://www.2dca.org/content/download/430389/4673604/file/174987_39_03012019_08294648_i.pdf

***Lake Worth Surgical Center, Inc. v. Gates*, __ So. 3d __, 2019 WL 946224 (Fla. 4th DCA 2019)**

After a car accident, the plaintiff sued the Rulemans. The plaintiff had been treated at Lake Worth Surgical Center (LWSC), and the Rulemans disputed the charges for an arthroscopic knee surgery and for the supplies used during that surgery. The trial court issued an order allowing "discovery of alleged proprietary and trade secret information" and denied LWSC's request for a confidentiality order. LWSC sought review, which the appellate court granted as to some information and denied as to other information. Applying trade secret and case law, it held that "the trial court properly declined to impose confidentiality restrictions on information regarding the amounts paid for services rendered to Plaintiff on two different dates and the approximate percentage of [LWSC's] practice of treating patients who are involved in a pre-suit claim or personal injury litigation over a three-year period. . . . However, [it] erred in failing to grant [LWSC's] request for confidentiality protection for information regarding the two examples of contracted reimbursement rates by private health insurance carriers for the surgery received by Plaintiff." It quashed the order that denied confidentiality protection for the latter information and remanded "for the trial court to stay the discovery until the parties have an opportunity to negotiate a confidentiality agreement as to that information. In the event the parties are unable to agree, the trial court shall narrowly tailor any order requiring disclosure in such a way as to protect [LWSC's] trade secret interests."
https://www.4dca.org/content/download/430163/4670939/file/182774_1702_02272019_09143274_i.pdf

***Younkin v. Blackwelder*, __ So. 3d __, 2019 WL 847548 (Fla. 5th DCA 2019)**

In an automobile negligence action, the trial court ordered the defendant's attorney to disclose how much money it had paid its expert witness, and how many times it had hired him, over the last three years. The defendant sought review, which the appellate court denied, stating that "there has been no departure from the essential requirements of law." But it certified the following question:

> WHETHER THE ANALYSIS AND DECISION IN *WORLEY*[*v. CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASS'N, INC.*, 228 So. 3d 18 (Fla. 2017)] SHOULD ALSO APPLY TO PRECLUDE A DEFENSE LAW FIRM THAT IS NOT A PARTY TO THE LITIGATION FROM HAVING TO DISCLOSE ITS FINANCIAL RELATIONSHIP WITH EXPERTS THAT IT RETAINS FOR PURPOSES OF LITIGATION INCLUDING THOSE THAT PERFORM COMPULSORY MEDICAL EXAMINATIONS UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.360?

https://edca.5dca.org/DCADocs/2018/3548/183548_1254_02222019_09293066_i.pdf

***Dade Truss Co. Inc. v. Beatty*, __ So. 3d __, 2019 WL 453491 (Fla. 3d DCA 2019)**

Sookdeo was driving a tractor-trailer owned by his employer, Dade Truss Co., when he collided with Beaty and Stauss. Beaty and Strauss sued, and the defendants listed private investigator Boggs as a fact witness. The defendants made preliminary discovery objections with regard to documents claimed to be protected from disclosure by the work-product privilege, which the trial court overruled. The defendants sought review, but the appellate court denied review, stating that the defendants "failed to properly preserve objections to certain documents and the trial court has not yet been presented with a privilege log."
http://www.3dca.flcourts.org/Opinions/3D18-2253.pdf

***Al Batha v. Agency for Health Care Administration*, __ So. 3d __, 2019 WL 178103 (Fla. 1st DCA 2019)**

The decedent was injured in a car accident. Some of his medical bills were paid for by Florida's Medicaid program, which is administered by AHCA, and AHCA therefore had an automatic lien against a claim in which a third party was liable. The decedent's personal representative (PR) and spouse sued another party and eventually entered into a confidential settlement with that party. Then the PR and the decedent's spouse filed a petition with DOAH to contest the amount of AHCA's Medicaid lien. AHCA filed a motion to dismiss, "alleging that the PR and the decedent's spouse could not challenge the lien because they were not 'recipients.'" The ALJ agreed, and the PR and the decedent's spouse appealed. The appellate court affirmed the ALJ's dismissal as to the decedent's spouse but reversed as to the PR, stating: "Since a personal representative is the person authorized to prosecute a deceased person's claims, then a personal representative qualifies as a 'recipient' providing the deceased person qualifies as a 'recipient.'"
https://www.1dca.org/content/download/426138/4593255/file/170828_1286_01142019_09153111_i.pdf

***First Student, Inc. v. Williams*, __ So. 3d __, 2019 WL 116460 (Fla. 1st DCA 2019)**

The defendants in a traffic accident lawsuit sought a writ of certiorari, claiming "the trial court erred in compelling them to answer interrogatories that seek irrelevant information." The appellate court dismissed the petition, stating: "A trial court's error in granting discovery is ordinarily not a basis for certiorari relief. . . . Here, Petitioners make no showing of privilege or other special basis that would overcome the general rule. We therefore conclude that Petitioners have not shown irreparable harm, meaning we lack jurisdiction to grant relief."
https://www.1dca.org/content/download/425761/4589189/file/181847_1279_01072019_03123955_i.pdf

VI. Drivers' Licenses

Flanagan v. State, __ So. 3d __, 2019 WL 1233369 (Fla. 1st DCA 2019)

The defendant was convicted of drug charges and violating a prior probation order. She was sentenced to a prison term and ordered to pay costs and fines. After she failed to pay the costs and fines, her driver license was suspended. She enrolled in a payment plan, but she challenged its reasonableness, arguing that amounts her mother paid on the home the defendant lived in rent free should not be considered income. But the appellate court affirmed, stating: "The presumption . . . regarding a person's ability to pay does not limit what a trial court may consider in determining the reasonableness of a payment plan. In this case [the defendant] has benefited from substantial recurring family support in addition to receiving social security disability benefits. Regular support from family as well as social security benefits are matters which are to be considered in determining whether a party is indigent under section 27.52. That such assets may also be considered by a trial court in assessing the reasonableness of a payment plan is consistent with the statutory scheme."
https://www.1dca.org/content/download/431088/4681334/file/175290_1284_03182019_10055515_i.pdf

Department of Highway Safety and Motor Vehicles v. Davis, __ So. 3d __, 2019 WL 581642 (Fla. 4th DCA 2019)

Police responded to a call that an SUV had crashed into a residential yard, and they found the defendant slumped over the steering wheel, unresponsive and smelling of alcohol. The defendant was taken to the hospital and consented to a blood draw, which showed a BAC of .412. The defendant's license was suspended, but he sought review on the issue of whether the officer informed him he could refuse a blood draw. The circuit court appellate panel granted the petition and quashed the suspension, and DHSMV sought review, "arguing that the circuit court erred by substituting its own findings of fact for those of the hearing officer and . . . failed to apply the correct precedent." The appellate court granted review, quashed the circuit court order, and remanded, stating that "a blood draw is legislatively authorized when a suspect is in a hospital and voluntarily consents. . . . In that setting, an officer is not required to advise a suspect of the consequences of refusal. . . . We recently reiterated that the implied consent law does not apply when a suspect voluntarily consents to a blood draw while in a hospital. *State v. Meyers*, [261 So. 3d 573] (Fla. 4th DCA . . . 2018). In such a case, the impracticality of a breath or urine test is not a necessary precondition for obtaining a blood draw."
https://www.4dca.org/content/download/429166/4659401/file/182772_1704_02132019_09540955_i.pdf

***Berrocales v. State*, __ So. 3d __, 2019 WL 384961 (Fla. 4th DCA 2019)**

The defendant was charged with alcohol-related driving offenses after an accident in which the other driver became paralyzed. The defendant entered a plea, but he later filed a motion to withdraw the plea, arguing it was involuntary because neither the trial court nor his attorney told him it would result in mandatory driver license revocation. The trial court denied the motion without holding an evidentiary hearing. The appellate court reversed "[b]ecause the record does not conclusively refute the allegation that he was not informed of the mandatory license revocation before his plea."
https://www.4dca.org/content/download/428470/4651881/file/180476_1709_01302019_09244038_i.pdf

***Department of Highway Safety and Motor Vehicles v. Morrical*, 262 So. 3d 865 (Fla. 5th DCA 2019)**

An officer saw the defendant in his parked car with the engine running and lights on. He called for a backup officer, who blocked the defendant's car from moving. The first officer opened the driver's side door, which woke up the defendant, asked if the defendant was okay, told him to exit the car, and conducted a DUI investigation. The defendant's license was suspended, and he sought review. The circuit court, in its appellate capacity, quashed the suspension, holding that the encounter was an investigatory stop, and that there was no competent substantial evidence to support a finding (1) of "a reasonable suspicion that [the defendant] either did, was, or was about to commit a crime, as would be necessary to justify [the] investigatory stop," or (2) that the officer was "acting in a 'community caretaking capacity' or 'pursuant to a welfare check.'" DHSMV sought review, but the appellate court denied it, stating that "the circuit court sufficiently identified the applicable legal issues and principles. Consistent with our standard of review, we do not reach the 'correctness' of the circuit court's decision or whether we would have made the same decision; thus, we avoid converting the instant proceeding into a second appeal. . . . [W]e conclude that the circuit court's decision did not result in a miscarriage of justice."
https://edca.5dca.org/DCADocs/2018/2589/182589_1254_01112019_08310488_i.pdf

***Dixson v. DHSMV*, 26 Fla. L. Weekly Supp. 730a (Fla. 18th Cir. Ct. 2018)**

After being stopped for driving over 35 mph above the speed limit, the defendant was arrested for DUI and refused a breathalyzer test. His license was suspended, and he sought to invalidate the suspension, arguing that (1) he was held at the traffic stop longer than necessary to issue the citation; (2) the reasonable suspicion of a crime was not transferred to the deputy who conducted the investigation; and (3) he was not advised of the consequences for refusing to perform the field exercises. The hearing officer denied the motions, and the defendant sought review, arguing that the hearing officer erred in finding that (1) the stopping deputy had sufficient reasonable suspicion of DUI to justify a detention longer than necessary to write a traffic citation; (2) the fellow officer rule was sufficiently complied with; and (3) the defendant's refusal to perform field sobriety exercises gave the investigating deputy sufficient probable cause to arrest him. The circuit court, in its appellate capacity, granted review, agreed with the defendant, and quashed the suspension.

***Meadows v. DHSMV*, 26 Fla. L. Weekly Supp. 699a (Fla. 4th Cir. Ct. 2018)**

After being stopped for running a red light, the defendant was arrested for DUI and refused a breathalyzer test. His license was suspended, and he filed a motion to recuse any Bureau of Administrative Review hearing officer. The motion was denied, the hearing officer upheld the suspension, and the defendant sought review. The circuit court, in its appellate capacity, denied review, stating with regard to the motion to recuse/due process: "Understandably, the Department's dual role has at times created concern among drivers who appear before a Department hearing officer. To date, however, Florida courts have rejected the assertion that this administrative procedure is constitutionally infirm. Florida is not the only state to have reached this conclusion." The court also rejected the defendant's challenge to the sufficiency of the evidence.

VII. Red-light Camera Cases

***Emergency Physicians, Inc. v. United Services Automobile Association*, 26 Fla. L. Weekly Supp. 893c (Fla. 7th Cir. Ct. 2018)**

In an accident case, the defendant filed a motion to dismiss for lack of venue, or in the alternative, motion to transfer venue for failure to comply with mandatory forum selection clause. The court granted the motion, stating that although the forum selection clause was floating, it was mandatory and "tie[d] the forum selection to mutable and knowable facts." The plaintiff argued that the defendant waived enforcement of the clause by participating in discovery and by serving a proposal for settlement on the plaintiff. But the court stated: "Limited participation in discovery does not constitute waiver of the right to enforce a forum selection clause," and noted that because the plaintiff did not accept the proposal for settlement, "the parties did not enter into a settlement and venue was not waived."

***State of Florida by and through City of Aventura v. Stein*, 26 Fla. L. Weekly Supp. 842a (Fla. 11th Cir. Ct. 2018)**

The defendant was issued a red-light camera citation and filed an amended motion to dismiss and a motion to declare the municipalities' red light program invalid and other relief. He argued that "argues that the City's creation and use of a Business Rules Questionnaire ("BRQ") violates Florida Statutes by making local traffic rules and regulations without legislative authority, and further that the BRQ violates section 316.0076, Florida Statute (2010), which expressly preempts all regulation of red-light cameras to the state (the 'BRQ/Preemption Issue')." The court granted the amended motion to dismiss and certified the following questions of great public importance:

> Did the Florida Supreme Court's opinion in *Jimenez v. State*, 246 So. 3d 219 (2018) address the non-uniformity caused by the application of different rules and regulations chosen by the various municipalities in their BRQs, or did the Court focus solely upon the scope of the review process itself?
>
> Does the Florida Supreme Court's opinion in *Jimenez v. State*, 246 So. 3d 219 (2018) . . . preempt the use of different rules and regulations chosen by the

various municipalities in their BRQs, when such rules and regulations differ from municipality to municipality and from state law?

***City of Tamarac v. Avendano*, 26 Fla. L. Weekly Supp. 726a (Fla. 17th Cir. Ct. 2018)**

The defendant's red-light camera ticket had been dismissed based on *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). But the state appealed, and the circuit court, in its appellate capacity, reversed and ordered that the citations be reinstated, noting that the Florida Supreme Court, in *Jimenez v. State*, 246 So. 3d 219, 228 (Fla. 2018), stated that section 316.0083(1)(a), Florida Statutes, "allows a local government's authorized agent to review images from red light cameras for any purpose short of making the probable cause determination to issue a traffic citation."

***City of Fort Lauderdale v. Weselowski*, 26 Fla. L. Weekly Supp. 720a (Fla. 17th Cir. Ct. 2018)**

The defendants' red-light camera tickets had been dismissed based on *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). But the state appealed, and the circuit court, in its appellate capacity, reversed and ordered that the citations be reinstated, noting that the Florida Supreme Court, in *Jimenez v. State*, 246 So. 3d 219, 228 (Fla. 2018), stated that section 316.0083(1)(a), Florida Statutes, "allows a local government's authorized agent to review images from red light cameras for any purpose short of making the probable cause determination to issue a traffic citation."

***City of Sunrise v. Sandoval-Medina*, 26 Fla. L. Weekly Supp. 718b (Fla. 17th Cir. Ct. 2018)**

The defendant's red-light camera ticket had been dismissed based on *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). But the state appealed, and the circuit court, in its appellate capacity, reversed and ordered that the citations be reinstated, noting that the Florida Supreme Court, in *Jimenez v. State*, 246 So. 3d 219, 228 (Fla. 2018), stated that section 316.0083(1)(a), Florida Statutes, "allows a local government's authorized agent to review images from red light cameras for any purpose short of making the probable cause determination to issue a traffic citation."

VIII. County Court Orders

***State v. Golden*, 26 Fla. L. Weekly Supp. 833a (Fla. 4th Cir. Ct. 2018)**

An officer stopped the defendant after seeing him speed and drifting in lanes. The officer did not issue a traffic infraction, but the defendant was arrested for DUI. The defendant filed a motion to suppress, which the court granted, stating: "There was no . . . testimony offered regarding facts or circumstances that would necessitate a welfare check," and that "the Defendant's driving pattern was not egregious or unusual enough to warrant a traffic stop. There is no evidence that his actions were prolonged, and it was only that he crossed into a turn lane and then back within his lane. There was no pedestrian or vehicle traffic that were effected [sic]. There certainly is a reasonable explanation for getting into a turn lane and then deciding not to

make a turn. The testimony offered regarding the circumstances and facts surrounding the pace-clock are insufficient to establish probable or reasonable suspicion to initiate a traffic stop."

***State v. Valentin*, 26 Fla. L. Weekly Supp. 793d (Fla. 18th Cir. Ct. 2015)**

Responding to an accident, an officer saw the defendant in the driver's seat of a vehicle that had hit a bus shelter. He tried to conduct an accident investigation, but the defendant had to be taken to a hospital. Eventually the officer concluded the accident investigation and began a criminal investigation and advised the defendant of his constitutional rights. The officer told the defendant "I'll leave if you don't want to talk to me. Just tell me to stop and I'll stop." In response, the defendant stated "Stop." Then the officer asked the defendant, "Do you want to speak to me?" The defendant replied, "I can't." The officer nevertheless asked the defendant numerous questions and the defendant made several incriminating statements. The defendant filed a motion to suppress, which the court granted, stating that "the Defendant's statement of 'stop' cannot be seen as anything but a clear indication that [he] wished to invoke his right to remain silent. While it may have been a literal response to the Officer's statement, it is still a clear statement of the Defendant's intent to invoke his rights. Anything less, would not give the Defendant the full protection of the dual provisions of the right to remain silent."

***State v. Valentin*, 26 Fla. L. Weekly Supp. 793c (Fla. 18th Cir. Ct. 2016)**

In a criminal case after an accident, the state filed a motion to issue a subpoena duces tecum for the defendant's medical records, arguing the records fell under the exception to the confidentiality of medical records under section 395.3025(4), Florida Statutes ("upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative"). The court denied the state's motion, finding that the state did not meet its burden to show the relevancy of the requested records, and that its request was overbroad.

***State v. Wright*, 26 Fla. L. Weekly Supp. 790a (Fla. 17th Cir. Ct. 2018)**

After a crash, the defendant was transported to a hospital, and the deputy, believing a breath test to be impractical or impossible, read the defendant the Florida Implied Consent law and asked for a blood test. The defendant refused, but hospital personnel told the deputy the defendant's BAC was 0.36. The state served a subpoena duces tecum on the hospital's records custodian for the defendant's medical records under section 395.3025(4), Florida Statutes. The defendant filed a motion to suppress, stating that there was no proposed subpoena attached to the notice, and that in any case service of the notice was improper because the defendant allegedly was intoxicated. The court denied the motion, finding that "notice was provided to the defendant and that . . . such notice was reasonable and proper." It noted that the defendant "did not object to the issuance of the subpoena until the filing of its motion on September 6, 2018, well after the State issued the subpoena, and certainly not within 10 days of the notice being provided to the defendant" as required by Florida Rule of Civil Procedure 1.351(b).

***State v. Lopez*, 26 Fla. L. Weekly Supp. 786a (Fla. 17th Cir. Ct. 2018)**

After the defendant was stopped and his breath test did not show an unlawful BAC, a urine test showed the presence of controlled substances and he was arrested for DUI. He filed a

motion to suppress, arguing that "law enforcement was required to obtain a warrant for the urine sample." The court denied the motion, discussing case law and stating: "Clearly, in the context of alcohol impairment, a breath test is naturally a less-invasive alternative to a blood test -- but not in the context of drug impairment for which a breath test does not provide any evidence."

***State v. Weingarten*, 26 Fla. L. Weekly Supp. 783a (Fla. 17th Cir. Ct. 2018)**

The defendant was arrested for DUI and DUI causing injury or property damage. He filed a motion to suppress urine request and results, which the court denied. Applying the *Birchfield* analysis, the court stated that the urine test "is not physically intrusive, based on the record and totality of circumstances," that "there are protections for the defendant if the results were to yield other medical information not relevant to a DUI case, such as in camera review by the courts, suppression or in limine hearings, or redaction of the records," and that nothing in the record suggested that submission to a urine test was "embarrassing to the point that the sample provided should be suppressed." It noted further that "refusing to submit to a request for chemical testing in the State of Florida is not a crime for a first refusal, although it could be for a second refusal -- every defendant is told that."

***State v. Niemi*, 26 Fla. L. Weekly Supp. 775a (Fla. 17th Cir. Ct. 2018)**

After an officer found the defendant unconscious in his running vehicle on a sidewalk, after apparently hitting a house, the defendant was arrested for DUI. He filed a motion to suppress for lack of probable cause and a motion to suppress/exclude confessions, admissions, and statements, claiming the accident report privilege. The court denied his motions, stating that "the State is not attempting to use statements made by the Defendant *while completing a traffic investigation*. The Court finds that the accident privilege has not been violated. [The officer who initially found the defendant] testified only as to her observations and actions and did not testify to any statements made by the Defendant. . . . Additionally, [the officer who conducted the DUI investigation] only testified as to the observations of the other officers. [He] did not testify to any statements attributed to the Defendant that were repeated to him by [the other officers]."

***State v. Wunder*, 26 Fla. L. Weekly Supp. 773a (Fla. 18th Cir. Ct. 2018)**

After an accident, the defendant was arrested for DUI and filed motions to suppress. The court granted the motions, stating that although a witness identified the defendant to the first officer to arrive at the scene and at the hearing, there was no competent evidence that this information was communicated to the officer who initiated the DUI investigation. "[T]here must be some communication of the pertinent information to the law enforcement officer performing the investigation for the Fellow Officer Rule to apply."

***State v. Profetto*, 26 Fla. L. Weekly Supp. 769a (Fla. 12th Cir. Ct. 2018)**

After an accident, a judge signed a search warrant for the defendant's blood sample based on a police detective's affidavit that there was probable cause to believe the defendant was DUI "Causing Death or Serious Bodily." After investigating, the state filed an information charging the defendant with misdemeanor DUI with property damage and/or personal injury. The defendant filed a motion to suppress, arguing that a warrant cannot be issued solely for a misdemeanor DUI and that there was no proof of serious bodily injury. The court denied the

motion, noting as to the injury that the individual injured in the crash had a laceration on top of his head, exposing his skull, was classified as a Trauma Alert, and was life-flighted to a hospital. It gave "great deference" to the prior judge's determination of probable cause and issuance of the search warrant. As to the defendant's claim that a warrant cannot be issued solely for a misdemeanor DUI, it stated: "If the State was proceeding under the felony DUI charge, it would be a question for the jury whether Defendant's negligent operation of her vehicle caused the serious bodily injury to the victim. However, after investigation, the State filed an Information charging Defendant with misdemeanor DUI with property damage and/or personal injury in this case. This Court finds that substantial evidence supported [the judge's] determination of probable cause when he signed the search warrant."

***State v. Hodne*, 26 Fla. L. Weekly Supp. 768a (Fla. 12th Cir. Ct. 2018)**

An officer was flagged down by individuals in a parking lot who directed him to an RV that was backing up, with the defendant at the wheel. The officer told the defendant to stop, approached the defendant, smelled alcohol, and recognized the defendant from a previous DUI investigation. The defendant was arrested, and he filed a motion to suppress, arguing that the stop was not lawful because it was the "result of anonymous tips by a crowd of people." But the court denied the motion, finding that "[b]ased on the totality of the circumstances, the [officer] had reasonable suspicion to stop Defendant's vehicle. [The officer] has fifteen years of experience as a law enforcement officer. He was flagged down by a group of concerned citizens pointing out Defendant's RV in a crowded parking lot. He testified that they were 'frantically waving' at him to get his attention. . . . The information he had gave him far more than a 'hunch' that the Defendant had committed or was about to commit a crime."

***State v. Morea*, 26 Fla. L. Weekly Supp. 756a (Fla. 7th Cir. Ct. 2018)**

The defendant was arrested for DUI and filed a motion to suppress urine test. The court denied the motion. Applying the *Birchfield* analysis, the court found that a warrant was not necessary and that the search was incident to a lawful arrest. Disagreeing with Minnesota and North Dakota supreme court opinions, it held that there was no testimony that FDLE could test for any medical conditions, and that the defendant, as an arrestee, had a diminished expectation of privacy. It stated further that "the Defendant's privacy interests do not outweigh the State's need for evidence of an impaired driver's use of chemical or controlled substances."

***State v. Cummins*, 26 Fla. L. Weekly Supp. 753a (Fla. 6th Cir. Ct. 2018)**

Responding to assist a fire department regarding a motorcycle accident, an officer ran the motorcycle's tag and, discovering that the motorcycle was registered to the home she was at, knocked on the door. A woman opened the door, and the officer could see the defendant with "visible fresh injuries." The woman gave the officer permission to come into the house, and the officer told the defendant she was beginning a criminal investigation and read him *Miranda* warnings. The defendant was arrested and filed a motion to suppress, arguing that the warrantless entry into his home was unreasonable and unconstitutional. The court denied his motion, stating that in this case there was "an objectively reasonable basis . . . for the officer to believe that there is an immediate need for police assistance for the protection of life or substantial property interests." The court noted that it was unclear whether the officer was aware whether the

defendant had received any treatment for his injuries, and that she did not know who lived at the residence. When the woman gave consent for the officer to enter, the defendant was sitting about 20 feet away from the door and did not indicate that the officer could not come in.

The defendant also argued that the statements he made before invoking his *Miranda* rights should be suppressed. But the court stated: "There is no evidence . . . that law enforcement did anything to coax and/or coerce an incriminating statement out of the Defendant during the FSE's. Additionally, there is no evidence . . . that this decision was not voluntary, knowing, and intelligent. . . . It is clear from the question asked by [the officer] that the Defendant was given a choice whether to continue to speak and waive his rights or not and he chose to."

***State v. Byrne*, 26 Fla. L. Weekly Supp. 751b (Fla. 4th Cir. Ct. 2018)**

The defendant was stopped for speeding and was arrested for DUI. She filed a motion to suppress, arguing that the field sobriety exercises were invalidated because of her weight and physical condition and were not administered in strict compliance with NHTSA standards. The court denied her motion, stating that her "speeding, difficulty in retrieving her driver's license, bloodshot, watery eyes, slurred speech, flushed face, uneasy exit from her vehicle, strong odor of alcohol, swaying, and admission that she had been drinking, were, standing alone, sufficient to provide probable cause for her arrest. Her poor performance of the field sobriety exercises only provided additional probable cause for the arrest."