FLORIDA TRAFFIC-RELATED APPELLATE OPINION SUMMARIES

April – June 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)

Cuciak v. State, __ So. 3d __, 2019 WL 2364338 (Fla. 4th DCA 2019)

The defendant was charged with two counts of felony DUI, possession of marijuana, and possession of paraphernalia. He entered a negotiated plea and received five years of probation. His attorney moved to withdraw from the case, and within 30 days of sentencing the defendant filed a pro se motion to withdraw plea and appoint counsel. The trial court granted the attorney's motion to withdraw and ordered the state to respond to the defendant's pro se motion to withdraw plea. While the defendant was unrepresented, the trial court summarily denied his motion to withdraw plea, and he appealed, arguing that "a motion to withdraw plea proceeding is a critical stage at which criminal defendants enjoy the right to counsel." The appellate court agreed and reversed, concluding that "the trial court erred in considering [the defendant's] motion to withdraw plea without first appointing conflict-free counsel." https://www.4dca.org/content/download/526588/5850327/file/180437_1709_06052019_09104996_i.pdf

Gissendanner v. State, __ So. 3d __, 2019 WL 2063253 (Fla. 5th DCA 2019)

The defendant was convicted of DUI manslaughter and DUI resulting in injury to person or property. She appealed, and the appellate court affirmed in all respects except it reversed the imposition of $8,752 in investigative costs and remanded for a new hearing, stating that the award "was not supported by competent, substantial evidence."

https://www.5dca.org/content/download/524845/5830673/file/180150_1259_05102019_08135719_i.pdf

***Ford v. State*, 27 Fla. L. Weekly Supp. 142a (Fla. 18th Cir. Ct. 2019)**

The defendants were arrested for DUI, and they filed various motions "contesting the validity of the breath tests administered to them by challenging the sufficiency of the rulers promulgated by [FDLE]." The trial court (at 27 Fla. L. Weekly Supp. 211a) "exercised its discretion under the doctrine of primary jurisdiction and directed the parties to address the matter with the DOAH," and the defendants sought review. The circuit court, in its appellate capacity, denied review, stating that while the defendants argued that a petition for writ of certiorari is the appropriate vehicle to challenge a change in venue over a petitioner's objection,

> the State did not request a change in venue in these cases. Rather, the State requested that the [defendants'] motions challenging the FDLE rules be heard by the DOAH as a more proper forum. . . . The trial court, in applying the doctrine of primary jurisdiction, merely postponed consideration of the motions until those motions have been presented to the DOAH. . . . Only those issues presented in [the defendants'] motions will be heard by the DOAH, and venue for [their] DUI cases will remain in the trial court. In other words, [the] cases will still be heard by a jury in the county where the crimes were committed.

The court further noted that the defendants had an adequate remedy by appeal, and stated: "Finally, [the defendants] contend that the trial court relied on cases that 'are by no means precedential authority.' However, the trial court noted in its order that this issue of primary jurisdiction was a matter of first impression for the court, but that the issue had been previously litigated in criminal matters throughout the State. Without binding precedent on this issue, it was certainly reasonable for the court to look to its sister courts for instruction. Likewise, this Court finds the rulings of those other circuit and county courts to be instructive and agrees with their holdings."

***State v. Pratt*, 27 Fla. L. Weekly Supp. 133a (Fla. 15th Cir. Ct. 2019)**

The defendant was convicted of DUI causing or contributing to injury to person or property. He appealed, arguing that "the trial court erred by (1) improperly commenting on the evidence during voir dire; (2) improperly limiting defense counsel's questioning of the venire during voir dire; (3) improperly limiting Defendant's testimony at trial; (4) failing to remain neutral and impartial at trial; and (5) improperly denying defense counsel's cause challenge of a prospective juror." The circuit court, in its appellate capacity, reversed based on ground 5 but found that the trial court committed other errors and addressed them as well.

***State v. Saisa*, 27 Fla. L. Weekly Supp. 119a (Fla. 10th Cir. Ct. 2019)**

The defendant was arrested for DUI, and he filed a motion for admission to the Veterans' Pretrial Intervention Program. The state objected, arguing the defendant could not be admitted without its consent per Administrative Order 2-73.7 (creating the Polk County Behavioral Health Court). The trial court (at 27 Fla. L. Weekly Supp. 184a) granted the defendant's motion, holding that the AO conflicted with section 948.16(2)(a), Florida Statutes, that the terms of the statute

controlled, and that the defendant could be admitted to the program without the state's consent. The state sought review, which the circuit court, in its appellate capacity, denied, stating that the lower court's order was proper.

***State v. Mead*, 27 Fla. L. Weekly Supp. 110a (Fla. 6th Cir. Ct. 2019)**

The defendant was arrested for DUI, and she filed a motion in limine as to statements she had made to the police, arguing that the state's proffered evidence did not establish that she had actual physical control of the vehicle. The trial court granted her motion, and the circuit court, in its appellate capacity, affirmed, stating: "Because the [state] failed to adduce any evidence to establish corpus delicti during the motion in limine, the [defendant's] motion in limine should have been granted on that ground rather than granted based upon the merits of the parties' arguments. Therefore, the trial court's order granting the motion in limine is affirmed under the tipsy-coachman doctrine."

***Nilsen v. DHSMV*, 27 Fla. L. Weekly Supp. 37a (Fla. 11th Cir. Ct. 2019)**

The defendant was convicted of DUI, and although the judgment stated that her license was revoked for 364 days, a "special sentence" provision stated that she was "prohibited from attaining a hardship license from the DMV during the 5 year license revocation period as a condition of this case." She appealed, and the circuit court, in its appellate capacity, reversed. The defendant correctly contended, and the state conceded, that revocation for a first DUI conviction is authorized for a maximum of one year, and while revocation is authorized for five years for a second DUI conviction within the previous five years, it was undisputed that that defendant had not had a DUI conviction within the previous five years.

***Howell v. State*, 27 Fla. L. Weekly Supp. 17a (Fla. 11th Cir. Ct. 2019)**

An officer responding to a minor car accident saw the defendant leaning against the driver's side of the vehicle, and another person standing on the passenger side. After field sobriety exercises, the defendant was arrested for and convicted of DUI. She appealed, and the circuit court, in its appellate capacity, reversed, stating that the record did not support a finding that she was driving or in actual physical control of the vehicle.

***Lopez v. DHSMV*, 27 Fla. L. Weekly Supp. 1b (Fla. 5th Cir. Ct. 2019)**

The defendant was arrested for reckless driving with alcohol. The trial court denied in part her motion to suppress all evidence obtained after an off-duty police officer from another jurisdiction detained her, and she was convicted. She appealed, and the circuit court, in its appellate capacity, affirmed, stating:

> A law enforcement officer outside of his jurisdiction has the same power to arrest a person for a felony or a breach of the peace occurring within his presence as any other private citizen. . . . However, a law enforcement officer may not make a citizen's arrest under the color of their office. . . . An off-duty officer does not act under the color of office by identifying himself as a law enforcement officer. . . . However, a law enforcement officer who conducts a DUI investigation . . . acts

> under color of office because a private citizen would not have been able to conduct such an investigation.
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> Here, [the stopping officer] observed [the defendant] driving in a manner that made him concerned for [her] wellbeing. [He] followed [her] into a . . . parking lot, approached her, and identified himself as a law enforcement officer. Although [he] identified himself as a law enforcement officer, he did not use the power of his office to observe activity not readily available to a private citizen; [he] observed activity that any private citizen driving on the road at that time could have observed. Because [he] observed [the defendant] as any other private citizen could have, he did not act under the color of his office and he could legally detain and arrest [her] pursuant to a citizen's arrest. Therefore, the trial court erred in finding the detention . . . to be illegal.
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> Although the trial court erred in granting in part [the defendant's] motion to suppress, this error does not affect [her] conviction for reckless driving with alcohol.

***Sarmiento v. State*, 26 Fla. L. Weekly Supp. 948a (Fla. 15th Cir. Ct. 2019)**

The defendant was convicted of DUI. He appealed, based on the trial court's failure to conduct a *Richardson* hearing after the state's discovery violation (one of its witnesses provided expert testimony although the state hadn't listed him as an expert witness). The circuit court, in its appellate capacity, reversed and remanded for a new trial.

***Mazariegos v. State*, 26 Fla. L. Weekly Supp. 947a (Fla. 15th Cir. Ct. 2019)**

The defendant was convicted of DUI causing or contributing to injury to person or property. He appealed, arguing that the trial court abused its discretion in determining that he wasn't prejudiced by the state's discovery violation (it failed to disclose before trial the defendant's admission that he was driving the vehicle). The circuit court, in its appellate capacity, reversed and remanded for a new trial. It stated:

> During opening statements, defense counsel explicitly told the jury that the evidence would be consistent with the conclusion that [the defendant's] son was driving the vehicle, which was an affirmative and explicit announcement that [the defendant's] defense would be that he was not the driver. . . . While it may be reasonable for [the defendant] to assume the State would argue otherwise in attempting to prove the elements of the crime charged, "[a] failure to deny simply does not carry the same evidentiary weight as an outright admission."
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> Although the trial court issued a curative instruction, we find . . . that instruction insufficient. The focus of the harmless error analysis is whether the defendant was procedurally prejudiced by the discovery violation. As the Florida Supreme Court held in *Schopp*, "[t]he question of 'prejudice' in a discovery context is not dependent upon the potential impact of the undisclosed evidence on the fact finder but rather upon its impact on the defendant's ability to prepare for trial." . . . Had [the defendant] known the investigating officer would testify that [he] admitted to

driving the vehicle, there is a reasonable possibility that [his] defense theory or preparation would have been different.

II. Criminal Traffic Offenses

Franklin v. State, __ So. 3d __, 2019 WL 2608528 (Fla. 4th DCA 2019)

The defendant was convicted of fleeing or attempting to elude causing serious bodily injury, leaving the scene of a crash involving serious bodily injury, resisting an officer without violence, leaving the scene of a crash involving property damage, and driving while license suspended. He appealed, among other things challenging Florida Standard Jury Instruction (Crim.) 3.6(k)6 as applied to his affirmative defense of duress. The appellate court affirmed, stating that the defendant "not only failed to object to the now challenged element of the jury instruction, he affirmatively agreed to the entire instruction— with the addition of one sentence which was included at his request. Thus, any error in the instruction was waived, and we affirm on this issue. We nonetheless address [his] contention that the inclusion of element 6 in instruction 3.6(k) is in derogation of the common law with respect to the defense of duress. No Florida statute authorizes 'duress' as a defense to any of the crimes with which [he] was charged. Thus, courts must look to the common law."
https://www.4dca.org/content/download/527871/5864600/file/181410_1257_06262019_09142757_i.pdf

Hegele v. State, __ So. 3d __, 2019 WL 2607543 (Fla. 4th DCA 2019)

The defendant was a deputy who responded to a BOLO at over 100 mph without using his lights or siren. He hit another vehicle and was charged with reckless driving causing serious bodily injury to another. The state argued that "opening remarks by the defense, and the unique facts of the case, necessitated a special instruction . . . addressing the ability of emergency vehicles to breach traffic laws during emergencies." The trial court gave the jury the special instruction. The defendant was convicted and appealed based on, among other arguments, that "the trial court improperly instructed the jury that law enforcement officers are not relieved from the duty to drive with 'due regard' for the safety of all persons." The appellate court affirmed, stating: "We find no error—let alone, harmful error. A police officer, even when responding to an emergency, must drive with due regard for the safety of other drivers."
https://www.4dca.org/content/download/527870/5864588/file/180835_1257_06262019_09112238_i.pdf

Hayes v. State, __ So. 3d __, 2019 WL 2305869 (Fla. 5th DCA 2019)

The defendant was stopped for a traffic infraction and charged with driving while license permanently revoked. He filed a motion for acquittal, arguing that "at most he was driving without a valid license, the lesser-included charge, because he never had a license to permanently revoke." The trial court denied his motion, but the appellate court reversed, holding that the state had "failed to establish that he possessed a license that could be permanently revoked. . . . Rather, at most, the State proved that he had a learner's permit that expired in 1976."
https://www.5dca.org/content/download/526314/5847655/file/181110_1260_05312019_08005125_i.pdf

Jones v. State, __ So. 3d __, 2019 WL 2275000 (Fla. 4th DCA 2019)

The defendant was convicted of possession of cannabis, resisting arrest without violence, driving with a suspended license, and high speed or wanton fleeing. He appealed, and the appellate court reversed and remanded for a new trial, stating that where the defendant "was transported to the county just five days before trial, [the defendant] became aware of that trial date only a few days before trial, and [his] counsel of choice appeared on the day of trial requesting a two- to three-day continuance, the trial court erred in not granting the brief continuance for appellant to retain counsel of choice." The court stated further that the trial court "did not make 'proper findings' that the state would be prejudiced by the delay, that the request for continuance was made in bad faith, or that the trial court's schedule would not permit a continuance."
https://www.4dca.org/content/download/526029/5844479/file/180656_1709_05292019_08443365_i.pdf

Lee v. State, __ So. 3d __, 2019 WL 2134477 (Fla. 1st DCA 2019)

The defendant was convicted of aggravated assault on a law enforcement officer and appealed, arguing that his attorney was "was ineffective for failing to request a jury instruction on reckless driving as a lesser included offense." The appellate court affirmed, stating that the defendant "failed to establish an inconceivable tactical explanation for trial counsel's action of not requesting the instruction at issue, especially in light of the fact that she sought a reckless driving instruction as a lesser included offense on another of [the defendant's] charged crimes. Indisputable prejudice has also not been established."
https://www.1dca.org/content/download/525087/5833403/file/181842_1284_05162019_10325678_i.pdf

Breland v. State, __ So. 3d __, 2019 WL 2121104 (Fla. 4th DCA 2019)

The defendant was convicted of four counts of leaving the scene of an accident involving property damage. He appealed, arguing that the multiple convictions violated his double jeopardy rights. The appellate court affirmed, noting that the defendant's "actions resulted in three separate crashes, seconds apart, at different locations in and near a parking lot. Each crash was a distinct criminal act, so no double jeopardy protection was triggered."
https://www.4dca.org/content/download/525015/5832539/file/180537_1257_05152019_08432363_i.pdf

Kemp v. State, __ So. 3d __, 2019 WL 2083045 (Fla. 4th DCA 2019)

The defendant was convicted of five counts of vehicular manslaughter, and he appealed. The appellate court reversed, stating:

> At trial, the principal issue was whether [the defendant] operated "a motor vehicle . . . in a reckless manner likely to cause the death of, or great bodily harm to, another." § 782.071, Fla. Stat. (2012). A key factual dispute on this issue was whether [he] was in control of the car at the time of the crash. To prove this disputed element, the State relied on expert opinion testimony that [the defendant] had applied the brakes before the crash. The expert's braking opinion was based

solely on his visual observation of crush damage to the victims' car. We reverse and remand this case with directions to the trial court to conduct a *Frye* hearing to determine the admissibility of this expert opinion testimony.

https://www.4dca.org/content/download/524822/5830448/file/153472_1709_05092019_02183501_i.pdf

***Kiley v. State*, __ So. 3d __, 2019 WL 2062376 (Fla. 5th DCA 2019)**

The defendant was convicted of vehicular manslaughter and sentenced to ten years in prison. He appealed, but the appellate court affirmed, stating that "the trial court did not err in its analysis as to whether or not it had the ability or authority to impose a downward departure sentence in this case. We also hold that the trial court did not abuse its discretion in declining to impose a departure sentence."
https://www.5dca.org/content/download/524844/5830661/file/173314_1257_05102019_08101789_i.pdf

***Daniel v. State*, __ So. 3d __, 2019 WL 1986209 (Fla. 1st DCA 2019)**

An officer tried to pull the defendant over for running a stop sign, and the defendant led the officer on a high-speed chase, eventually crashing into a minivan and killing the driver and injuring several other people. The defendant was charged with, among other offenses, vehicular homicide and fleeing or eluding. His defense at trial was that he was not driving the car that collided with the minivan, but he was convicted on all counts. He appealed, arguing that "his dual convictions for vehicular homicide and fleeing or eluding [were] barred by the judicially-created 'single homicide rule' because due to how the jury was instructed on the fleeing or eluding count, both convictions were necessarily based on the death of the minivan's driver and 'there can be but one penalty imposed for causing the death of a single victim.'" The appellate court agreed and vacated the first-degree fleeing or eluding conviction and remanded "for entry of a judgment of conviction on the lesser included offense of second-degree fleeing or eluding."
https://www.1dca.org/content/download/524561/5827609/file/180516_1287_05062019_02361109_i.pdf

***Tolbert v. State*, 268 So. 3d 947 (Fla. 1st DCA 2019)**

After crashing Shoenfeld's vehicle, the defendant was charged with aggravated fleeing and eluding of a law enforcement officer and DUI causing property damage. He entered a negotiated plea, and as restitution was ordered to pay Schoenfeld her outstanding loan balance, $11,892.76. The defendant appealed, and the appellate court reversed, stating: "Restitution is designed to compensate a victim for a loss incurred as a result of a defendant's criminal conduct. The task of making of victim whole, however, is constrained by the legal requirements that a victim not receive a windfall and that a defendant not pay in excess of the damage he caused. While it may seem unfair . . . , Tolbert's responsibility lies as far as his damage to the vehicle [which amount] is reflected by the vehicle's fair market value."
https://www.1dca.org/content/download/523757/5818748/file/173240_1287_04222019_09283968_i.pdf

***Young v. State*, 270 So. 3d 471 (Fla. 1st DCA 2019)**

A deputy tried to stop the defendant for a faulty headlight, but the defendant drove off at over 100 mph, turned off his headlights, and swerved into a tree. The deputy asked what happened and whether anyone else was in the car. The defendant was charged with felony fleeing or attempting to elude an officer, driving without a valid driver's license, possession of cannabis, and possession of paraphernalia. The trial court denied his motion to suppress his alleged statements in response to the questions "on the ground that he was subjected to custodial interrogation and had not been read his *Miranda* rights," and he appealed his convictions. The appellate court affirmed, agreeing with the state that the defendant "was not subjected to custodial interrogation and the deputy asked the questions for officer safety reasons" and noting that "a person who is detained based on reasonable suspicion . . . is not necessarily in custody for purposes of *Miranda*. . . . Nor is an investigatory stop automatically converted into an arrest when an officer draws a weapon and directs the suspect to lie on the ground. . . . Further, a traffic stop or investigatory stop is not transformed into a custodial interrogation or formal arrest when police ask the person if he or she has any weapons or drugs—such inquiry is permissible." https://www.1dca.org/content/download/523120/5811929/file/175245_1284_04092019_08145538_i.pdf

***Lacy v. DHSMV*, 27 Fla. L. Weekly Supp. 129b (Fla. 11th Cir. Ct. 2019)**

The defendant pled no contest to driving while license suspended, and the trial court ordered restitution for damages. She appealed, and the circuit court, in its appellate capacity, reversed, stating that "the State failed to prove a sufficient causal connection between the order of restitution and the offense of driving while license suspended."

***Dupuis v. DHSMV*, 27 Fla. L. Weekly Supp. 115a (Fla. 6th Cir. Ct. 2019)**

The defendant pled no contest to driving while license suspended or revoked, and her license was suspended permanently. She appealed, and the circuit court, in its appellate capacity, reversed, stating: "Neither the misdemeanor Driving While License Suspended or Revoked statute nor the sentencing statutes provide for permanent suspension of a driver license by a trial court. The trial court's imposition of such suspension constituted an illegal sentence."

***Hart v. DHSMV*, 27 Fla. L. Weekly Supp. 1a (Fla. 5th Cir. Ct. 2019)**

The defendant was convicted of reckless driving. He sought review, arguing that the trial court erred by denying his motion to dismiss "on the basis that the driver of another vehicle was firing a weapon at him." The circuit court, in its appellate capacity, denied review, stating that to claim "stand your ground" immunity a defendant must make a prima facie showing that he or she meets the criteria.

III. Civil Traffic Infractions

IV. Arrest, Search and Seizure

***Mitchell v. Wisconsin*, __ U.S. __, 139 S.Ct. 2525 (2019)**

After a preliminary breath test, the defendant was arrested for DUI. By the time he was transported to the police station for a more reliable breath test, he was "too lethargic" to take the breath test so he was driven to a hospital. Upon arrival he was unconscious, and his blood was drawn pursuant to the Wisconsin implied-consent statute. He was charged with DUI and filed a motion to suppress, which the trial court denied, and he was convicted. He appealed, and "the intermediate appellate court certified two questions to the Wisconsin Supreme Court: first, whether compliance with the State's implied-consent law was sufficient to show that Mitchell's test was consistent with the Fourth Amendment and, second, whether a warrantless blood draw from an unconscious person violates the Fourth Amendment." The Wisconsin Supreme Court affirmed the convictions, and the United States Supreme Court granted certiorari "to decide '[w]hether a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement.'"

The United States Supreme Court held that when a driver is unconscious and can't be given a breath test, "the exigent circumstances rule almost always permits a blood test without a warrant." It did remand for further proceedings, stating: "We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. Because Mitchell did not have a chance to attempt to make that showing, a remand for that purpose is necessary."
https://www.supremecourt.gov/opinions/18pdf/18-6210_2co3.pdf

***Weakley v. State*, __ So. 3d __, 2019 WL 2399697 (Fla. 1st DCA 2019)**

Responding to a 911 call about a suspicious person with a motorcycle, officers saw the defendant trying to flee past them on a motorcycle. They stopped the defendant, discovered the motorcycle was stolen, and found stolen items. The defendant was arrested and moved to suppress the contraband, but the trial court denied the motion, finding that the officers had reasonable suspicion to stop him. The defendant entered a plea to four charges, reserving the right to appeal the denial of his motion to suppress, and he appealed. The appellate court affirmed, finding that the defendant "has not met his burden of proving the trial court's ruling incorrect."
https://www.1dca.org/content/download/526799/5852826/file/172727_1284_06072019_11204563_i.pdf

***Milliron v. State*, __ So. 3d __, 2019 WL 2399620 (Fla. 1st DCA 2019)**

After a traffic stop, the defendant was arrested. He filed a motion to suppress, which the trial court denied, finding that the stop was legal. He was convicted, pursuant to a plea, of possession of methamphetamine possession of a firearm by a convicted felon, battery on a law enforcement officer, resisting an officer with violence, and possession of paraphernalia. The defendant had reserved his right to appeal the dispositive motion to suppress, and he appealed. But the appellate court affirmed, stating that the appeal was "unauthorized because the order denying the motion to suppress is not dispositive as to two of appellant's convictions - battery on a law enforcement officer and resisting arrest with violence. . . . Thus, because [the defendant] has not asked to proceed only on the counts for which the order is dispositive and because doing

so would contradict the purpose of the rule limiting appeals to dispositive orders, this appeal is procedurally barred."
https://www.1dca.org/content/download/526797/5852802/file/163889_1284_06072019_11133032_i.pdf

***Nugent v. State*, __ So. 3d __, 2019 WL 2399572 (Fla. 2d DCA 2019)**

Detectives conducting a drug investigation followed the defendant, and one of them stopped him for failing to completely stop at a stop sign. The defendant gave the detective a rental agreement showing his girlfriend had rented the car, and after a K-9 unit alerted to the driver's door, the defendant was arrested on drug charges. He was convicted of trafficking in oxycodone, possession of a controlled substance (Alprazolam), and possession of drug paraphernalia, and he appealed. The appellate court reversed, holding that the state failed to prove the defendant had constructive possession of any of the contraband.
https://www.2dca.org/content/download/526781/5852604/file/173169_39_06072019_09023749_i.pdf

***Alsubaie v. State*, 268 So. 3d 1013 (Fla. 1st DCA 2019)**

A deputy stopped the defendant for running a red light. The defendant told the deputy he did not have a valid driver license and that there was marijuana under his seat. The deputy searched the defendant and found cocaine. The defendant filed a motion to suppress, arguing that the traffic stop was unlawful. The trial court denied the motion, the defendant entered a plea of no contest and reserved the right to appeal the ruling on his motion to suppress, and the appellate court affirmed. The lower court withheld adjudication on the felony cocaine possession count and sentenced and adjudicated the defendant guilty on the two misdemeanor counts. Later, the defendant received a notice to appear from the U.S. Department of Homeland Security "stating that he was removable from the United States due to his convictions for possession of cocaine and possession of marijuana." He filed a motion for postconviction relief, arguing that his counsel was ineffective in failing to advise him of the deportation consequences of his no contest plea. The trial court denied the motion, but the appellate court reversed, stating that the defendant "has shown a reasonable probability that he would have rejected the plea and proceeded to trial had he been adequately informed of the plea's deportation consequences."
https://www.1dca.org/content/download/524179/5823341/file/173517_1287_04292019_09260581_i.pdf

***State v. Wilson*, 268 So. 3d 927 (Fla. 5th DCA 2019)**

A deputy saw the defendant's SUV drifting across the land divider, causing another vehicle to have to brake to avoid collision. The deputy stopped the defendant, and the defendant was arrested and charged with trafficking in a controlled substance and possession of cannabis with intent to sell. He filed a motion to suppress, "arguing that law enforcement had no probable cause to conduct a traffic stop for failure to maintain a single lane." The trial court granted his motion and the state appealed. The appellate court reversed, stating: "The failure to maintain a single lane alone cannot establish probable cause when the action is done safely. . . . Nevertheless, [it] may be justified when the vehicle is being operated in an unusual manner."

https://www.5dca.org/content/download/523712/5818213/file/182117_1260_04182019_08334286_i.pdf

V. Torts/Accident Cases

***Dodgen v. Grijalva*, __ So. 3d __, 2019 WL 2608343 (Fla. 4th DCA 2019)**

After an automobile accident, Dodgen was sued. He filed a motion for protective order, but the trial court denied it and ordered him to "provide discovery on the relationship between (1) his insurer and expert witnesses, and (2) the law firm defending him and the expert witnesses, for the last three years." He sought review, which the appellate court denied. In the opinion that followed, the appellate court stated that it

> explains the basis for that denial and suggests the need for further consideration of the disparate treatment of plaintiffs and defendants in the discovery arena. Further, we join the fifth district in certifying a question as one of great public importance on this point. . . .
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> > WHETHER THE DECISION IN *WORLEY V. CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASS'N.*, 228 SO. 3D 18 (FLA. 2017), SHOULD BE APPLIED TO PROTECT A DEFENDANT'S INSURER THAT IS NOT A PARTY TO THE LITIGATION FROM HAVING TO DISCLOSE ITS FINANCIAL RELATIONSHIP WITH EXPERTS RETAINED FOR PURPOSES OF LITIGATION, INCLUDING THOSE THAT PERFORM COMPREHENSIVE MEDICAL EXAMINATIONS UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.360?

https://www.4dca.org/content/download/527879/5864688/file/191010_1703_06262019_10280572_i.pdf

***Strong v. Underwood*, __ So. 3d __, 2019 WL 2552841 (Fla. 5th DCA 2019)**

Underwood was driving her motorcycle when she collided with Strong's SUV. Underwood and her husband sued Strong and her husband, and the jury found Strong 50% at fault. Strong appealed, raising, among other issues, "that the trial court erred in refusing to admit a medical record containing a statement made by Mrs. Underwood to her treating physician concerning how the accident occurred." The appellate court agreed and reversed for a new trial on liability.
https://www.5dca.org/content/download/527652/5862013/file/173586_1260_06212019_08281726_i.pdf

***Ross v. City of Jacksonville*, __ So. 3d __, 2019 WL 2441853 (Fla. 1st DCA 2019)**

Ross was injured when his vehicle was struck by a fleeing suspect evading a law enforcement officer. He sued the sheriff's office, but the city was granted summary judgment based on immunity. Ross appealed, but the appellate court affirmed, stating that the city "was not

liable under section 768.28(9)(d), Florida Statutes. Based on the undisputed facts, no reasonable jury could have found that the officers acted recklessly or with such a lack of care as to demonstrate a disregard for human life, safety or property. Thus, summary judgment was proper because sovereign immunity was not waived based on these facts."
https://www.1dca.org/content/download/527117/5856134/file/182994_1284_06122019_10481733_i.pdf

***Arias v. Porter*, __ So. 3d __, 2019 WL 2273585 (Fla. 2d DCA 2019)**

After an automobile accident, Arias sued Porter and Flores. The jury awarded Arias damages for past and future medical expenses but no past or future noneconomic damages, which were alleged to consist mainly of pain and suffering. Arias appealed, challenging the trial court "order denying his motion for additur based on grounds that the jury's zero verdict on noneconomic damages—both past and future—was inadequate." The appellate court reversed the zero verdict for past noneconomic damages, holding that verdict inadequate as a matter of law. It affirmed as to future pain and suffering, however, "because the trial court was within its discretion to conclude that the jury fairly resolved that question against Mr. Arias based on the disputed evidence at the trial."
https://www.2dca.org/content/download/526047/5844707/file/174469_114_05292019_08370140_i.pdf

***GEICO Indemnity Co. v. Perez*, __ So. 3d __, 2019 WL 2202545 (Fla. 3d DCA 2019)**

Attorney's fees and costs had been awarded in a judgment as to uninsured/underinsured motorist coverage. However, the final judgment was reversed. The appellate court held, and the appellees conceded, that "the attorney's fees and costs judgments that were predicated on the reversed final judgment cannot stand," and the appellate court reversed those awards.
http://www.3dca.flcourts.org/Opinions/3D18-0629.pdf

***Progressive American Insurance Co. v. Pawelczyk*, __ So. 3d __, 2019 WL 2111951 (Fla. 2d DCA 2019)**

Pawelczyk was injured in an accident involving an underinsured/uninsured motorist while she was a passenger in a rental vehicle driven by her sister, who was insured by Progressive. A final summary judgment was entered in Pawelczyk's favor, and Progressive appealed. The appellate court reversed, stating: "Because the rental vehicle was not a 'covered auto,' as defined in the UM section of the policy, Ms. Pawelczyk is not an 'insured person' covered by her sister's policy."
https://www.2dca.org/content/download/525035/5832791/file/181651_39_05152019_08245916_i.pdf

***Bellezza v. Menendez*, __ So. 3d __, 2019 WL 2019284 (Fla. 4th DCA 2019)**

Bellezza was walking his bicycle along the street when he was hit by the defendant law firm's vehicle, which was being driven by one of its employees. Bellezza sued the driver and the law firm for negligence and vicarious liability. The trial court entered final judgment for the defendants and Bellezza appealed, "arguing the trial court erred in two ways: (1) admitting attorney-client privileged evidence; and (2) excluding similar evidence concerning the defendant

law firm." The appellate court reversed and remanded, agreeing on the first issue, and therefore holding the second issue was rendered moot.
https://www.4dca.org/content/download/524706/5829286/file/173277_1709_05082019_08504384_i.pdf

Restal v. Nocera, 268 So. 3d 270 (Fla. 5th DCA 2019)

Nocera's vehicle was rear-ended by Restal's vehicle, and Nocera sued Restal. The trial court entered a partial summary judgment in favor of Nocera on the issues of liability and causation, and Restal appealed. The appellate court affirmed as to Restal's negligence, but it reversed on the issue of Nocera's comparative negligence and remanded for a new trial, finding that "there were issues of material fact that overcame the presumption that [Restal] was solely at fault for the vehicle collision."
https://www.5dca.org/content/download/523706/5818141/file/170002_1259_04182019_08141248_i.pdf

Weiner v. Maulden, 267 So. 3d 1045 (Fla. 4th DCA 2019)

After an automobile accident, Maulden and Holzberg sued Weiner. Weiner moved to consolidate the cases, which the trial court granted. Maulden moved for reconsideration of the consolidation or, in the alternative, for the court to impanel two separate juries. While Maulden's motion for reconsideration was pending, the defendant served separate proposals for settlement on Maulden and Holzberg. Maulden failed to accept the proposal for settlement within 30 days, and the jury returned a verdict in favor of Maulden for $21,320, which was later reduced to $5,497.20 after setoffs. Weiner then moved for entitlement to attorney's fees, which the trial court denied. He appealed, and the appellate court reversed, stating:

> There is no dispute that the amount awarded to Maulden following trial was sufficient to trigger [Weiner's] entitlement to fees under section 768.79(1). However, Maulden claims that [Weiner's] proposal for settlement failed to apportion the total amount between her and Holzberg, thus leaving her reasonably uncertain whether her acceptance would extinguish Holzberg's claims in light of the consolidation. Maulden argues this proposal was a statutorily ambiguous "joint offer" that failed to apportion the damages amount among the offerees, thus making it invalid. We disagree.
>
> * * *
>
> Maulden's argument fails because the trial court consolidated the cases for two specific purposes: discovery and trial. Her claims did not merge with Holzberg's claims under the consolidation orders because "[w]here cases are consolidated for discovery and trial, they do not lose their individual identities as distinct, separately filed actions." . . . As expressly stated in the consolidation orders, the parties' cases against [Weiner], *and not their individual claims*, were consolidated. Maulden and Holzberg each retained their independent causes of action.

> Further, the proposal explicitly stated that acceptance would resolve all damages "in this action." This language refers to the case number and the named parties identified in the proposal. [Weiner's] proposal did not mention any other pending claims, cases, or parties that would be affected by her acceptance. . . . Because the express terms of [Weiner's] proposal only addressed Maulden and her claims, its language created no ambiguity as to what would be settled. Nor would a reasonable reading of its terms create doubt about whether Maulden's acceptance of the proposal would also settle Holzberg's claims.

https://www.4dca.org/content/download/523199/5812887/file/182170_1709_04102019_09191906_i.pdf

***Jiménez v. Granada Insurance Co.*, __ So. 3d __, 2019 WL 1549013 (Fla. 3d DCA 2019)**

Martinez was injured when his bicycle collided with a vehicle driven by Jiménez. Martinez sued Jiménez's employer (Ben Auto) and the vehicle owner (Henry Auto). Ben Auto was an insured through Granada Insurance Company (Granada). Granada filed a declaratory judgment action against Ben Auto and Martinez, seeking a declaration that Granada was not required to defend and indemnify Ben Auto because the accident allegedly did not occur in the course and scope of Jiménez's employment. The following year Granada served nonparty subpoenas for production of documents without deposition on Infinity Auto (Jiménez's insurer) and Western Heritage (Henry Auto's insurer). The nonparty subpoenas sought information from the insurers' claims files regarding statements Jiménez made with respect to claims made in connection with the accident. Jiménez moved for a protective order, arguing that the claims files were privileged work product. The trial court ordered that Granada modify the nonparty subpoenas to reflect that the requested documents be produced to Jiménez's counsel "so that counsel can: (i) provide all non-privileged documents to Granada; and (ii) prepare and file a privilege log with respect to the remaining objected-to documents so that the trial court can conduct an *in camera* inspection." Jiménez sought review of that order, which the appellate court denied, stating that "an insurer's 'claims file is the insurer's work product' and that 'the work-product privilege belongs solely to [the insurer].' Neither of the subpoenaed insurers . . . have objected to the non-party subpoenas in the lower court; nor is either insurer a participant in the instant petition. We therefore . . . lack certiorari jurisdiction because Mr. Jiménez does not have the requisite standing to assert the work product privilege on behalf of the two subpoenaed insurers; without standing, [he] cannot establish the requisite irreparable harm." http://www.3dca.flcourts.org/Opinions/3D19-0118.pdf

***Anderson v. Mitchell*, __ So. 3d __, 2019 WL 1496258 (Fla. 2d DCA 2019)**

Mitchell filed a negligence complaint alleging that Anderson struck her with his vehicle in a crosswalk. During depositions, Anderson's attorney objected to questions about statements the Andersons made to the officers at the scene, asserting that "the statements were protected from discovery under the accident report privilege in section 316.066(4)." The trial court entered an order compelling the witnesses to answer questions regarding those statements, and Anderson sought review. The appellate court denied review, concluding that "the current version of section 316.066(4) does not create a true privilege precluding the disclosure of statements of individuals involved in an accident for the purpose of completing a crash report. Instead, it is a law of

admissibility that precludes the use of these statements at trial. Thus, the trial court did not depart from the essential requirements of the law by ruling that statements made by the Andersons for the purpose of completing a crash report are discoverable."
https://www.2dca.org/content/download/523076/5811428/file/182864_118_04052019_08324337_i.pdf

VI. Drivers' Licenses

Figueredo v. State, __ So. 3d __, 2019 WL 2651137 (Fla. 5th DCA 2019)

The defendant entered a plea to trafficking in methamphetamine. He was sentenced to seven years imprisonment as a habitual felony offender (HFO) and his driver license was suspended for five years. He filed a motion to correct illegal sentence, which the trial court denied. He appealed, and the appellate court reversed, noting that under section 322.055, Florida Statutes, the revocation period based on a conviction involving a controlled substance is "1 year or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by [DCF]" and that "[t]he trial court offered no explanation for the length of the suspension other than to suggest it was lawful based on [the defendant's] designation as an HFO."
https://www.5dca.org/content/download/528041/5866461/file/183120_1260_06282019_08554053_i.pdf

Bubb v. DHSMV, 27 Fla. L. Weekly Supp. 118a (Fla. 7th Cir. Ct. 2018)

The defendant was arrested for DUI, and his license was suspended. He sought review, which the circuit court, in its appellate capacity, granted, stating: "The records show that [the defendant] was unlawfully arrested outside of the arresting agency's jurisdiction without just cause (i.e. fresh pursuit, mutual aid, etc.). Therefore the court finds that the [DHSMV] Field Hearing Officer departed from the essential elements of the law" in upholding the suspension.

Martirone v. DHSMV, 27 Fla. L. Weekly Supp. 109b (Fla. 4th Cir. Ct. 2019)

The defendant was arrested for DUI and his license was suspended. He sought review, challenging the lawfulness of the breath test. The circuit court, in its appellate capacity, denied review, stating:

> The argument in the Petition challenging the cleanliness of the breath test instrument is speculative, and does not rise to the level of establishing noncompliance. . . . Furthermore, Section 316.1932(1)(b)2, Fla. Stat. states that "Any insubstantial differences between approved techniques and actual testing procedures in any individual case do not render the test or test results invalid." To the extent the [defendant] argues that remnants of car exhaust from 13 passing vehicles somehow interfered with the results of the breath test and dirties the instrument, this is not enough to demonstrate noncompliance [and] is the exact type of speculative and theoretical assertion courts have determined is insufficient to exclude evidence of breath test results. . . . Similarly, the [defendant] did not demonstrate that the instrument was not kept in a secure environment.

***Koppold v. DHSMV*, 27 Fla. L. Weekly Supp. 109a (Fla. 4th Cir. Ct. 2018)**

The defendant was arrested for DUI and his license was suspended based on his refusal to submit to a breath, urine, or blood test. The suspension was for 18 months rather than the usual 12 months for a first infraction, because he had a prior suspension on the same basis. He sought review, arguing (1) a lack of evidence that he had such prior suspension, and (2) that the lower tribunal erred when it failed to grant his motion to recuse the hearing officer. But the circuit court, in its appellate capacity, denied review, citing the evidence and stating that the assertion regarding recusal of the hearing officer "has been rejected by this and many other Courts under like circumstance."

***Murray v. DHSMV*, 27 Fla. L. Weekly Supp. 34a (Fla. 4th Cir. Ct. 2019)**

The defendant was stopped by a trooper because of his driving pattern, and his license was suspended for refusal to submit to a breath test. The defendant had a subpoena duces tecum issued for the DVD from the in-dash camera, but rather than the trooper providing a certified copy as required by the subpoena, someone at the Florida Highway Patrol sent an email stating that "the DVD was being sent to BAR for the hearing." The hearing officer sought to remedy the problem by asking the trooper to authenticate the DVD, which he did, but the trooper was not present and admitted that he had not viewed the DVD. The defendant sought review, which the circuit court, in its appellate capacity, granted, and it quashed the suspension, stating: "There was no way for the Trooper to even know that the DVD admitted at the hearing was the actual recording of his stop and arrest. . . . Also, it became apparent that the DVD possibly could not be played because of technical issues. Of particular concern . . . , even if the DVD could have been played, there apparently was no way for all of the participants to view the video together."

The hearing officer had offered the defendant a continuance for the video to be viewed before the hearing, which he rejected. But the court noted that not only was the defendant entitled to review the evidence before the hearing began, he was also entitled to "the opportunity for meaningful cross examination of witnesses concerning the evidence. . . . Even if the continuance had been accepted, it is at best unclear whether [the defendant] would have been afforded this opportunity at a subsequent hearing," and therefore he was denied due process.

***Cepero v. DHSMV*, 27 Fla. L. Weekly Supp. 18b (Fla. 11th Cir. Ct. 2019)**

The defendant was issued a citation and his license was suspended, and he sought to set aside the suspension because he was incarcerated at the time of the citation. The circuit court, in its appellate capacity, granted review and quashed the suspension.

***Genninger v. DHSMV*, 26 Fla. L. Weekly Supp. 931a (Fla. 6th Cir. Ct. 2018)**

An officer saw the defendant falling asleep, and swerving, behind the wheel of a vehicle matching the description of the vehicle in a DUI BOLO, and the officer stopped him. The defendant's license was suspended for refusal to submit to a urine test. He sought review, arguing that the officer did not have a reasonable suspicion to perform an investigatory stop based on the commission of a crime. But the circuit court, in its appellate capacity, denied review, noting that the officer had received tips from two other drivers that the defendant was sleeping at the wheel and swerving. The officer followed the defendant and saw him park

straddling two spaces. Upon checking on the defendant, the officer determined that he was not in medical danger "but may be impaired." Therefore, the stop was a lawful welfare stop, and the arrest was lawful. The defendant also argued that because one officer arrived after the first one, "there were actually two stops, . . . thus requiring both [officers] to have their own basis for initiating a lawful stop. . . . However, this argument is without merit as it is clearly not supported by the record evidence.

The defendant also argued it was fundamental error for the officer to ask him to submit to a urine test because (1) the officer did not know that the defendant was impaired by an illegal substance, and (2) a urine test requires a warrant. But the court held both arguments were without merit.

***Amburgey v. DHSMV*, 26 Fla. L. Weekly Supp. 929a (Fla. 6th Cir. Ct. 2018)**

After a motorcycle accident, the defendant's license was suspended for his refusal to submit to a blood test. He sought review, contending that the "record did not contain the necessary preponderance of the competent substantial evidence that breath and urine tests were impossible or impractical." The circuit court, in its appellate capacity, denied review, noting that the officer had stated that the defendant "wasn't going to get released at 8:55 [pm]. It was going to be some time way down the road, [i]f at all."

The defendant also challenged the admissibility of a "warrantless blood draw requested pursuant to the Implied Consent warnings without exigent circumstances." But the court stated that the defendant "relied on *Birchfield v. North Dakota*, which held in part that a state cannot impose criminal penalties for refusal to submit to a blood test under implied-consent laws. 136 S. Ct. 2160, 2185-86 (2016). . . . This argument is misplaced. *See id.* at 2185 ('Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply . . . and nothing we say here should be read to cast doubt on them.'"

***Nuss v. DHSMV*, 26 Fla. L. Weekly Supp. 926a (Fla. 6th Cir. Ct. 2018)**

An officer stopped the defendant for speeding, noticed signs of impairment, and requested a DUI unit. After an investigation, the defendant's license was suspended for refusal to submit to a breath test. He sought review, raising two issues: "first, whether [he] was unlawfully detained for a DUI investigation; and second, whether the testimony proves that [the investigating officer] conducted an improper twenty-minute observation and filed a false affidavit." The circuit court, in its appellate capacity, denied review, noting that (1) reasonable suspicion existed to detain the defendant for a DUI investigation, and (2) although the officer "could not confirm the exact amount of time that he personally observed [the defendant] because the observation was 'shared' between himself and [another officer]," the law does not require that the observation be conducted by only one individual. "By signing the Affidavit, [the officer] was only attesting to the fact that [the defendant] was observed for at least twenty minutes, not that he personally observed him. Accordingly, a hopeless conflict does not exist in the record, and [the officer] did not file a false affidavit."

***Bhatia v. DHSMV*, 26 Fla. L. Weekly Supp. 924a (Fla. 6th Cir. Ct. 2018)**

Officers heard a "loud disturbance/domestic argument" coming from a car the defendant was driving out of a parking space. After an investigation, the defendant's license was suspended for his refusal to submit to a breath test. He sought review, arguing "the evidence at the hearing failed to establish that the officers had the requisite reasonable suspicion to believe that a crime was occurring or about to occur." The circuit court, in its appellate capacity, denied review, noting that the reporting officer narrative stated: "Concerned for the individuals inside of the vehicle due to the loud argument, the officers made contact with the subjects to check on their welfare and determine if a crime had been or was about to be committed." Therefore, there was competent, substantial evidence to support the hearing officer's finding that the defendant "was lawfully stopped based on the officers' legitimate concern for the safety of everyone involved."

***Kornhouser v. DHSMV*, 26 Fla. L. Weekly Supp. 923a (Fla. 4th Cir. Ct. 2019)**

The defendant's license was suspended for a year for unlawful breath-alcohol level. He sought review, alleging that DHSMV's order "was not supported by competent, substantial evidence and failed to comply with the essential requirements of the law when the hearing officer found [the sergeant] to be properly '*certified*' for purposes of administering the breath test. More specifically, . . . that the Florida Legislature gave exclusive authority to the Alcohol Testing Program to the make rules for regulating the collection of breath test samples" and that because "the ATP allegedly improperly delegated authority to renew the permit for breath test instructors to the Criminal Justice Standards and Training Commission, the officer at issue was not properly certified pursuant to legal rule making authority and the resulting test of petitioner is thus invalid because the officer at issue was not legally certified." The circuit court, in its appellate capacity, denied review, stating that "the flaw in the [defendant's] argument is the conflation of the ATP with an '*agency*'. The applicable statute merely requires the creation of an ATP within the FDLE." It stated further: "It is important to note that the FDLE is the Agent that promulgated the challenged Rule regarding breath test instructor certification as issued by the Commission. ***Rule 11D-8.010, F. A. C.*** However, the FDLE is not a party to this action. The procedure to properly challenge the invalid rule of a state agency is found in ***Section 120.56(1) and (3), Florida Statutes***. In such a proceeding, the FDLE would be a party defending its own rule rather than the DHSMV. Such challenges are properly raised before the Division of Administrative Hearings."

VII. Red-light Camera Cases

VIII. County Court Orders

***State v. Kelly*, 27 Fla. L. Weekly Supp. 210a (Seminole Cty. Ct. 2019)**

After being stopped for running a stop sign, the defendant was arrested for DUI. He filed a motion to suppress, arguing the officer who stopped him did not provide "sufficient reasonable articulable suspicion to his fellow officer . . . such that [the fellow officer] could prolong the seizure of the defendant." The court granted the motion, stating that the general statement from the first officer to the second – that the defendant ran a stop sign – was insufficient; "There is no evidence that [the first officer] suspected [the defendant] was impaired and that he was requesting [that the second officer] conduct a DUI investigation."

***State v. Zavala*, 27 Fla. L. Weekly Supp. 204a (Broward Cty. Ct. 2019)**

After stopping the defendant for "wide right hand turn," an officer smelled alcohol and noticed the defendant's "eyes were bloodshot and glossy, and his speech was slightly slurred," and the defendant admitted to having had two drinks. The defendant's verbal responses were "coherent and appropriate," and his performance on sobriety exercises was "solid," yet he was charged with DUI. He filed a motion to suppress, which the court granted, stating that although "the officer had reasonable suspicion to stop the Defendant's vehicle based on his observations of the driving pattern," the driving pattern, the odor of alcohol, and the defendant's admission to having had two drinks "failed to establish reasonable suspicion to warrant the continued detention of the Defendant to conduct a DUI investigation. The totality of the evidence in this case fails to establish 'reasonable suspicion' to conduct a DUI investigation." It stated further that "there was insufficient probable cause to arrest the Defendant for DUI based upon the totality of the circumstances in this case. . . . The evidence is insufficient to establish that the Defendant's faculties were diminished in some material respect."

***State v. McFarland*, 27 Fla. L. Weekly Supp. 200a (Broward Cty. Ct. 2017)**

After being stopped for running a red light and performing field sobriety exercises, the defendant was arrested for DUI. He filed a motion to suppress, arguing that the deputy "had 'reasonable suspicion' and not 'probable cause', at the time he instructed [the defendant] to perform the exercises." The court granted the motion, noting "a clear split of authority in this jurisdiction as to when an officer can compel performance of the exercises" and stating:

> The standard for lawfully requesting field sobriety exercises in a DUI investigation is "reasonable suspicion". . . .
>
> The standard for lawfully compelling field sobriety exercises is "probable cause". . . .
>
> The evidence in this case is clear. As a factual matter, this Court finds that the defendant's performance of the field sobriety exercises was not voluntary. The defendant was instructed to perform the exercises, and he complied with [the deputy's] command.
>
> Having found that the exercises were not voluntary, it is necessary to determine whether [the deputy] had probable cause at the time he made the statement to the defendant. This Court adopts the line of cases holding that an officer must have probable cause for a DUI arrest before he can compel performance of the field sobriety exercises.
>
> The Court finds that the above facts gave rise to reasonable suspicion to conduct a DUI investigation [and not] probable cause.

[The circuit court, in its appellate capacity, affirmed at 26 Fla. L. Weekly Supp. 546a.]

***State v. McSwain*, 27 Fla. L. Weekly Supp. 185a (Polk Cty. Ct. 2019)**

After an accident, the defendant was taken to a hospital. She was charged with DUI, and the state subpoenaed medical records regarding blood/urine chemical analyses. The defendant objected, but the court issued an order overruling her objection. She filed a motion to suppress medical records "because the records were obtained pursuant to subpoena and not a search warrant" and the subpoena was overbroad. The court denied the motion, stating: "The case law relied upon by the defendant to support this proposition is not applicable to a subpoena for medical records pursuant to s. 395.3015(4)(d), F.S." As to the investigative subpoena, the court said it was "specific as to toxicology reports for a very limited period of time."

***State v. Huntley*, 27 Fla. L. Weekly Supp. 182a (Polk Cty. Ct. 2019)**

After being arrested for DUI, the defendant agreed to provide breath samples and was charged with DUI. She filed a motion to suppress, arguing an "outside tolerance" reading for a monthly agency inspection of the Intoxilizer 8000 "indicated an undetected problem with the Intoxilyzer 8000." The court denied the motion, stating that

> [t]he simulator was sent for repair bu[t] there is no record whether the simulator for the 0.20 reading was malfunctioning; without such record the question is whether the problem with that reading, or any other reading, demonstrates that the issue was in fact the Intoxilyzer.
>
> The second issue is whether the simulator is part of the Intoxilyzer and subject to the same regulatory requirements as the Intoxilyzer, such that failure by the agency inspector to adhere to those standards should result in lack of evidentiary use of such instruments by the court. Included in that question is whether the regulations are reasonable as applied to simulators." The court held that "the law does not require simulators to have a FDLE inspection after preventive maintenance.

***State v. Troutner*, 27 Fla. L. Weekly Supp. 177b (Columbia Cty. Ct. 2019)**

After being stopped for swerving into the wrong lane, the defendant was charged with DUI. She filed a motion to suppress, arguing the stop was unlawful. The court denied the motion, stating that "even if there is an innocent explanation for the activity that caused the officer to have reasonable suspicion that the driver was committing or about to commit a crime, the reasonable suspicion existed and the officer had [the] right to act on that suspicion."

***State v. Regis*, 27 Fla. L. Weekly Supp. 177a (Escambia Cty. Ct. 2019)**

After being stopped for speeding and being detained for 16 minutes, the defendant was charged with DUI. She filed a motion to suppress, arguing the detention was unlawful. The court denied the motion, stating that the length of the detention was not unreasonable based on the totality of the circumstances presented.

***State v. Gutu*, 27 Fla. L. Weekly Supp. 97a (Escambia Cty. Ct. 2019)**

The defendant was arrested for DUI and provided breath samples but filed a motion to dismiss or exclude certain evidence for discovery violations, arguing that stability checks run by

the FHP intoxilyzer inspector did not comply with the agency inspection procedures, and that the trooper's failure to preserve printouts of the results of the stability checks constituted a *Brady* violation requiring exclusion or dismissal. The court denied the motion, explaining that the printouts "are not *Brady* material," and stating that the defendant was "not without a means to argue against the reliability of the machine at trial. If the stability checks had been performed, and even if they could somehow be viewed as potentially exculpatory, the Court does not find that [the trooper] acted in bad faith by failing to print and preserve them."

***State v. Hebert*, 27 Fla. L. Weekly Supp. 96c (Brevard Cty. Ct. 2019)**

The defendant got a non-criminal citation for driving while license suspended without knowledge in 2012. About a year and a half later he paid the fine and was adjudicated guilty. Because this was his third DWLS conviction within a five year period, his license should have been revoked as a habitual traffic offender for five years, but it wasn't until five years later that DHSMV issued a notice of HTO license revocation. The defendant filed a motion to vacate and set aside the conviction and withhold adjudication of guilt, which the court granted, stating: "Given these unique circumstances, the State has stipulated, and this Court agrees, that pursuant to the recently amended version of Fla. R. Traf. Ct. 6.490(b)(2), there is good cause to reduce the penalty in this case from an adjudication of guilt to a withholding of adjudication of guilt."

***State v. Garcia*, 27 Fla. L. Weekly Supp. 86a (Hillsborough Cty. Ct. 2019)**

Based on a 911 call about a reckless driver, a deputy stopped the defendant and arrested her for DUI. Breath samples did not indicate the presence of alcohol, and the deputy asked the defendant for a urine sample, which the defendant provided. The defendant later filed a motion to suppress, challenging the reasonableness of the deputy's request for both a breath and urine test. But the court denied the motion, finding that the deputy had "reasonable cause to believe that Defendant was impaired by a chemical or controlled substance."

***State v. Fischer*, 27 Fla. L. Weekly Supp. 85a (Sarasota Cty. Ct. 2019)**

An officer stopped the defendant for driving at night without his lights and asked him to take field sobriety exercises. The defendant did and was arrested for DUI and filed a motion to suppress, claiming that he did not voluntarily agree to do the exercises but rather performed them "because of the threat of being arrested." But the court denied the motion, stating: "'The officer never threatened the Defendant or raised his voice. He did not command that the exercises were performed. The officers' guns were not drawn and physical force was not used. [The stopping officer] stated that Defendant would be arrested in response to Defendant's question of 'What happens if I'm not (capable of performing the exercises)?' This was an accurate statement. . . . None of the officer's statements incorrectly stated the law, misled the Defendant, or coerced him into performing the field sobriety exercises."

***State v. Salvador*, 27 Fla. L. Weekly Supp. 74a (Polk Cty. Ct. 2019)**

Based on the defendant's driving pattern, an officer stopped him and the defendant was arrested. He filed a motion to suppress, challenging the validity of the stop. But the court denied the motion, finding "precedent to establish that a law enforcement officer may stop a vehicle

under the facts stated here due to suspicions of DUI or concerns about the driver. This concern was also reasonable due to the time of day."

***State v. Bockman*, 27 Fla. L. Weekly Supp. 67b (Alachua Cty. Ct. 2019)**

The defendant was arrested for DUI, and the state filed a motion in limine to exclude "any argument from the Defendant, lay witness, and/or expert on the passenger's breath test results, exclude the expert from testimony regarding field sobriety exercises and impairment based on field sobriety exercise observations, and exclude the expert from testifying to an area outside of his area of expertise." The court granted the state's motion in limine as to (1) the passenger's breath test result (lack of legal relevance, and any probative value would be "substantially outweighed by the danger of unfair prejudice, confusion of issues, and the likelihood of misleading the jury on the issue of Defendant's breath alcohol result"); (2) the defense expert's opinion on the defendant's appearance and behavior at the time of the stop; (3) the defense expert's comments on the defendant's performance on the field sobriety exercises; and (4) any reference by any party or witness to the defendant's impairment or lack thereof at the time of the traffic stop (such references were excluded "based on the State's decision to prosecute Defendant solely under a theory of DUBAL").

The court denied the state's motion "as to its request to exclude the defense expert's testimony regarding Defendant's use of an inhaler containing alcohol and its effect on the Breath Test Results. Assuming that the defense lays the proper predicate through admissible evidence that Defendant used an alcohol-containing inhaler close to the time of the traffic stop, the defense expert may opine on the effect of that inhaler on Defendant's breath test result."

***State v. Smith*, 27 Fla. L. Weekly Supp. 65a (Volusia Cty. Ct. 2019)**

Based on a 911 call from a convenience store manager about a possible sexual battery in a vehicle, an officer found the subject vehicle and the defendant was arrested for DUI. He filed a motion to suppress, arguing that while the 911 call was made by a citizen informant, the information he reported did not establish reasonable suspicion of a crime. But the court denied the motion, finding that "the 911 call created a reasonable suspicion that Defendant had committed a sexual battery on a 'physically helpless' or 'physically incapacitated' victim. . . . The police were duty-bound to stop Defendant's vehicle for further investigation when they encountered it a short distance down the road from the [convenience store]."

***State v. Latham*, 27 Fla. L. Weekly Supp. 63a (Duval Cty. Ct. 2019)**

After seeing the defendant fail to stop at a stop sign, an officer stopped him, and a DUI investigation was conducted. The defendant was arrested and filed a motion to suppress evidence, which the court granted. It stated that while the stop was proper, "the State did not present sufficient facts to justify the detention of Defendant to conduct a DUI investigation. In this respect, an officer must have more than a hunch that someone is engaged in criminal conduct in order to detain them for purposes of conducting a criminal investigation."

***State v. Priester*, 27 Fla. L. Weekly Supp. 60a (Duval Cty. Ct. 2019)**

The defendant challenged the results of his breath alcohol test "because, in his view, FDLE's rules governing breath testing in Florida are invalid." The court denied the motion.

***State v. Grant*, 27 Fla. L. Weekly Supp. 57b (Escambia Cty. Ct. 2019)**

The defendant was arrested for DUI and took a breath test and provided a urine sample. He filed a motion to suppress the results of the urine test based on the absence of a warrant. The court denied the motion, stating: "There was no evidence . . . that Defendant suffered any embarrassment in providing a urine sample, let alone experienced a significant enhancement in embarrassment."

***State v. Nguyen*, 27 Fla. L. Weekly Supp. 57a (Escambia Cty. Ct. 2019)**

The defendant was arrested for DUI and took a breath test and provided a urine sample. He filed a motion to suppress the results of the urine test based on coercion or the absence of a warrant. The court denied the motion, finding no merit in the defendant's arguments.

***State v. Steele*, 26 Fla. L. Weekly Supp. 988b (Manatee Cty. Ct. 2019)**

The defendant drove off the road and stopped partly in a private yard. The man whose yard she was in found her to be "pretty well intoxicated" and offered to drive her home, but she could not remember her name or address, so he took the keys and his wife called 911. Deputies arrived, and the defendant performed poorly on field sobriety exercises and was arrested for DUI. She filed a motion to suppress, arguing that "the officers had no legal authority to make a warrantless arrest since they did not see the Defendant in control of the motor vehicle." The court denied the motion, concluding as a matter of law that "the Defendant was involved in a 'traffic crash,' . . . and therefore her arrest for DUI was lawful." Further, the man who took her keys thereby "placed her under a citizen's arrest. By depriving the Defendant of her car keys, which were subsequently transferred to the responding [officers], [the] private citizen . . . effected a citizen's arrest of the Defendant whose custody was transferred to the officers."

***State v. Perez*, 26 Fla. L. Weekly Supp. 972b (Duval Cty. Ct. 2018)**

The defendant filed a motion in limine regarding her refusal to perform field sobriety exercises. The state conceded the motion's merits, and the court granted the motion, stating that "the officer failed to advise the Defendant that her refusal could be held against her or that there were other negative consequences related to the refusal. Therefore, . . . the danger of undue prejudice in admitting the Defendant's refusal outweighs the probative value of [her] consciousness of guilt."