



Broward County Chiefs of Police Association, Inc.

## ***Legal Update***

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### **MAY 2018 LEGISLATIVE/LEGAL UPDATE**

#### **LEGISLATIVE UPDATE**

An update containing all relevant Bills approved by the Governor will be coming in June.

#### **LEGAL UPDATE**

##### **RED LIGHT CAMERAS – THEY’RE BACK!**

Jimenez v. State, Case No. SC16-1976 (Fla. May 3, 2018)

The Florida Supreme Court was presented the following questioned certified by the Third District Court:

Does a local government have the authority under section 316.0083(1)(a), Florida Statutes (2014), to contract with a private third-party vendor to review and sort information from red light cameras, in accordance with written guidelines provided by the local government, before sending that information to a trained traffic enforcement officer who determines whether probable cause exists and a citation should be issued?

The FSC answered the question in the affirmative. The Court held that the Legislature as part of the express authorization to allow local governments to issue citations for traffic infractions captured by red light cameras, “the Legislature has permitted a local government's agent to review information from red light cameras for any purpose short of making the probable cause determination as to whether a traffic infraction was committed. In answering the certified question, the Court expressly disapproved the Fourth District’s decision in Arem to the extent that it is inconsistent with the Court’s opinion.

##### **DUI – FALSE ARREST/FALSE IMPRISONMENT**

City of Boca Raton v. Basso, 2018 WL 1617199 (Fla. 4<sup>th</sup> DCA April 4, 2018)

Facts: In the evening hours Basso was pulled over for an expired license tag. As the officer approached her vehicle, he saw a half-empty wine bottle, two unopened beer cans, and smelled alcohol on Basso's breath. Based on Basso’s performance on the roadside sobriety exercises, she was arrested for driving under the influence of alcohol. Basso was transported to the police department, where, around midnight, she was given a breathalyzer test that registered .000. Although the officer admitted that he had “no proof” that she was under the influence of any drugs and she appeared “lucid” while answering questions, Basso was not released from police custody until approximately 10:00 a.m. that morning.

Basso initially sued the City for false arrest and false imprisonment claim. After three days of trial, the jury found that while the City had probable cause for initially arresting Basso, it did not have probable cause for her continued restraint. As a result, the jury awarded Basso \$32,000 in damages. The city

appealed the judgment asserting that the .000 BAC did not “evaporate” the probable cause to arrest, since the roadside sobriety exercises demonstrated a level of impairment.

Holding: The District Court upheld the judgment finding that the probable cause was vitiated once Basso’s BAC registered .000, without the officer having any other evidence that Basso was under the influence of any other substance.

\*\*NOTE: While this case hinged on the officers testimony that he had no evidence that Basso was under the influence of a substance other than alcohol, it is a reminder for officers conducting DUI investigations to consider the possibility of other causes of impairment and document same in their reports.