

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR HILLSBOROUGH COUNTY

Case No. CT-006523-XEP

STATE OF FLORIDA

vs.

DUI

CHARLES P. CAMPBELL, JR.

N O L L E   P R O S E Q U I

TO THE CLERK OF THE ABOVE-STYLED COURT:

You will please enter a Nolle Prosequi as to CHARLES P. CAMPBELL, JR., in the above-entitled case for the reason that the circumstances surrounding the events of this incident will not support prosecution.

Dated:

7/29/13

By

Bernie McCabe  
BERNIE MCCABE

Specially Assigned State Attorney  
for the Thirteenth Judicial Circuit  
of the State of Florida, Prosecuting  
for said State pursuant to  
Executive Order No. 13-29.  
P.O. Box 5028, Clearwater, FL 33758  
Florida Bar # 0325491.

BL/clee



**OFFICE OF THE STATE ATTORNEY  
SIXTH JUDICIAL CIRCUIT OF FLORIDA  
PASCO AND PINELLAS COUNTIES**

**BERNIE MCCABE**  
State Attorney

July 29, 2013

The Honorable Rick Scott  
Governor, State of Florida  
The Capital, Room 209  
Tallahassee, FL 32301

Re: Executive Order #13-29  
State V. Charles P. Campbell, Jr.

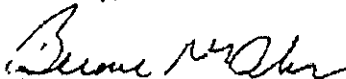
Dear Governor Scott:

On February 8, 2013 pursuant to Executive Order #13-29 this office was assigned to investigate the allegations of driving while under the influence against Charles P. Campbell, Jr. occurring in Hillsborough County. The reason for the conflict was because State Attorney Mark Ober had testified in legal proceedings in which Mr. Campbell was the lawyer.

As a result of our assignment we have conducted an investigation as set forth in detail in the attached memorandum. Our investigation concluded based on the circumstances surrounding the events that occurred on January 23, 2013 we would be unable to sustain a successful prosecution and as a result a Nolle Prose was entered terminating the charges.

Having completed the duties assigned I respectfully request to be released from any further responsibility in this matter.

Sincerely,

  
BERNIE MCCABE  
State Attorney

BMC:BB/cel

MEMORANDUM

*DL*  
*Del House*  
*C. Case*  
*W*

TO: BERNIE McCABE  
FROM: WILLIAM LOUGHERY  
RE: DUI INVESTIGATION OF C. PHILIP CAMPBELL  
DATE: JULY 26, 2013

-----  
On February 8, 2013, Governor Scott assigned this Office to investigate the DUI arrest of CHARLES PHILIP CAMPBELL that occurred in Tampa, Florida, on January 23, 2013.

Pursuant to that Order, we have conducted the following:

- Reviewed Tampa Police Department reports concerning the arrest.
- Reviewed transcript from the Motion for Mistrial in the trial titled Todd Schnitt and Michelle Schnitt, Plaintiffs, v. Cox Radio, Inc., and Bubba Radio Network, Inc. and Bubba Clem, Defendants, (Schnitt v. Bubba) held on January 25, 2013.
- Reviewed the police video associated with the arrest.
- Interviewed and transcribed testimony from the following people:

- Sgt. Raymond Fernandez
- Officer Timothy McGinnis
- Vanessa Fykes
- Melissa Personius

Joshua Moore

Jonathon Ellis

Michael Trentalange

- Reviewed Affidavits of Joshua Moore, Stephen Diaco and Melissa Personius
- Spoke with attorneys and employees of Shumaker, Loop, and Kendrick law firm, (SLK).
- Interviewed various employees from Malio's Prime Steakhouse
- Invited the following attorneys employed by Adams and Diaco (A & D) to be interviewed, but they declined:
  - Adam Filthaut, Stephen Diaco, Brian Motroni, and Robert Adams
- Subpoenaed, received and reviewed cell phone records of the following people:
  - Sgt. Raymond Fernandez
  - Adam Filthaut
  - Melissa Personius
  - Stephen Diaco
  - Robert Adams
  - Brian Motroni
- Received subscriber information on other time relevant phone numbers that appeared on the above cell phone records.

- Reviewed security video associated with the Sykes building, where Malio's is located, interior and exterior.
- Reviewed Phil Campbell's and Melissa Personius' credit card receipts from Malio's on 1/23/13.
- Received a rough draft memorandum prepared by SLK, for potential mistrial Motion.

To assist in the understanding of what happened, the locations, subjects involved, and their relevance will be briefly described.

- Locations

**Bank of America** building located in downtown Tampa on Ashley Street. In that building are the law offices of SLK and A & D.

**Malio's Prima Steakhouse**, located in the Sykes building, also addressed on Ashley, cross corners north of the Bank of America building.

**Skypoint Condominiums**, where C. PHILIP CAMPBELL resides, also on Ashley, two blocks north of Malio's.

**Ashley and Cass Street** - location of traffic stop and arrest of CAMPBELL, one block north of Skypoint Condominiums.

- Subjects

C. Philip Campbell, 65, attorney employed at SLK. At the time of arrest, Campbell was involved in the Schnitt v. Bubba trial being held at the Circuit Courthouse in downtown Tampa, which was in its second week. The case had been pending approximately five years. Campbell represented Schnitt and the law firm of A & D represented Bubba Clem. During the pendency of the case, A & D had tried to have Campbell removed from representing Schnitt with a number of legal motions which had all been denied, even taking one ruling to the Second DCA. In any event, there appears to exist an animosity between the lawyers, which went beyond typical advocacy. Campbell normally walked to work and the courthouse, as he did on the day of this incident. He used a trial briefcase on wheels. Occasionally, he went to Malio's, which is between his office and condo, along his walking route. On January 23, 2013, he walked to Malio's after court, with his rolling trial briefcase.

Campbell appeared voluntarily and was interviewed without a court reporter in the presence of his attorney, John Fitzgibbons.

**Jonathan Ellis**, an attorney employed at SLK, co-counsel with Campbell in the Schnitt v. Bubba case. After court on

January 23, 2013, he met Campbell at Malio's, and was present for much of the evening. He left prior to Campbell. **Michael Trentalange**, a local attorney who happened to be in Malio's that evening, was present from approximately 8:30 p.m. until 9:30 p.m., leaving prior to Campbell.

**Joshua Moore**, the valet at Malio's on 01/23/13. No connection to any other witnesses.

**Vanessa Fykes**, 24, social acquaintance of Melissa Personius, who had previously worked with Personius at A & D. Met with Personius the evening of 01/23/13 to socialize. Present at Malio's, in the company of Personius and Campbell, left prior to Personius.

**Melissa Personius**, 32, employed as legal assistant at A & D, works almost exclusively for Robert Adams. Gave sworn transcribed testimony pursuant to subpoena. ~~Appeared~~ heavily coached in her answers, and attitude, she was consistent with other testimony where she couldn't deny but ~~cited~~ memory loss on almost everything important. Did exhibit selective memory. On 01/23/13, was driving a Nissan registered to her mother.

**Adam Filthaut**, attorney employed at A & D, had some background involvement with the Schnitt v. Bubba case. Doesn't have a working relationship with Personius of any significance. Close personal friends with Sgt. Raymond

Fernandez employed at Tampa Police Dept. (T.P.D), Filthaut was the communication liaison between Personius and Sgt. Fernandez. Invited to give testimony but declined.

**Stephen Diaco**, attorney, partner at A & D, apparently monitoring the Schnitt v. Bubba trial, but not seated at the trial table. Invited to give testimony but declined. At the previous Motion for Mistrial, took the 5th Amendment on any issues involving the DUI investigation, conveniently forgot to bring his cell phone to Court and couldn't recall his cell phone carrier.

Shortly after the DUI arrest of Campbell, the trial concluded with a jury verdict in Bubba Clem's favor. Although winning attorneys' fees close to \$1,000,000.00, A & D agreed to walk away in exchange for Schnitt not seeking a new trial. The arrest of Campbell resulted in allegations of unethical behavior by A & D lawyers, as well as the potential for an indirect Contempt of Court finding if the Court believed that the circumstances of Campbell's arrest were designed to create a strategic advantage in the ongoing trial. These issues would have been the main focus in SLK's Motion for New Trial.

**Robert Adams**, attorney, partner at A & D, not directly involved with Schnitt v. Bubba trial. Supervised Personius, whose job description was to assign A & D



lawyers to new cases. Invited to give testimony but declined.

**Brian Motroni**, attorney, associate at A & D, was involved in Schnitt v. Bubba trial as an assistant to Jay Diaco, was often present in the courtroom. Picked up Personius after DUI arrest of Campbell and drove her car to her home in Brandon. Next day involved with return of Campbell's trial briefcase. Invited to testify but declined.

**Sgt. Raymond Fernandez**, a sergeant at the T.P.D., in charge of the DUI squad; a close friend of Filthaut. Made the stop on 01/23/13 on a car driven by Campbell, allegedly observed signs of impairment, called back-up Ofc. McGinnis to conduct a DUI investigation. Gave sworn transcribed testimony.

**Officer Tim McGinnis**, officer at Tampa Police Department, working in Sgt. Fernandez's DUI Squad, was back-up to Sgt. Fernandez, conducted DUI investigation (mostly on video) and made arrest of Campbell. Gave sworn transcribed testimony.

#### FINDINGS

On January 23, 2013, after the trial concludes that day, Campbell and Ellis decide to stop at Malio's for dinner and drinks. Ellis gets there first and opens a tab at 5:19 p.m.

Shortly thereafter, at approximately 5:30 p.m., Campbell walks to Malio's wheeling his trial case and joins Ellis and they are seated side by side at the crowded bar. By 7:03 p.m., Ellis has ordered two vodka drinks and two appetizers. Campbell has ordered three vodka drinks and two appetizers. Presumably, Campbell consumes the food and alcohol.

Personius and Fykes go to Malio's around the same time; 5:15 - 5:30 p.m.. They each park in the parking garage. The bar is too crowded and they are seated in an area where they can't see the bar. They leave after a glass of wine, and drive to the Fly Bar nearby.

Personius says she observed Campbell at the bar when they were walking out. She claims she is "shocked" that Campbell would be having a drink during a trial, and is also aware he has a previous DUI. She said that after getting to the Fly Bar, she called her employer, Robert Adams, to tell him about Campbell. Per the timeline, this would be at 6:29 p.m. This is the first cell voice call that she has made to Adams all day. Fykes confirms that Personius was communicating with someone on her cell phone upon getting to the Fly Bar.

In her communication with Adams, Personius says she offers to just go back (to Malio's) if they need anything." When asked "the reason you offered to go back was to do what?" her memory eludes her.

Despite being the recipient or author of 108 text messages or voice calls from 6:29 p.m. to 8:13 a.m. the following morning, Personius has little or no memory as to the substance of these communications - not even a general recollection of the subject matter.

Under the totality of the circumstances and the importance of her behavior as it relates to the evening's later events, any reasonable person would conclude this "memory loss" is suspect and perhaps designed to subvert the truth finding process.

The cell phone records are verified by documents from the individuals' cell providers and have been used to create a timeline, which is attached to this memo. This timeline indicates when text messages and voice calls were sent between the parties. The voice calls include the length of the call in seconds. Unfortunately there is no text message content. This timeline reveals a pattern of communication between these parties that would leave no doubt in any reasonable mind as to their motives and intentions. When the timeline is compared and contrasted to the actual events that are transpiring, there appears to be a collaboration involving Personius, Adams, Draco, Filthaut, Sgt. Fernandez and Ofc. McGinnis, to effectuate the arrest of Campbell on 1/23/13.

After Personius calls Adams at 6:29 p.m. informing him about Campbell, Adams immediately texts Filthaut, the connection

to Sgt. Fernandez. Filthaut immediately calls Diaco, but gets no answer. In that same minute (6:31 p.m.), Filthaut calls Sgt. Fernandez, also no answer. This is the first time Filthaut has tried to contact Sgt. Fernandez by cell since 8:40 a.m. Sgt. Fernandez starts his shift at 7:00 p.m. In the next 12 minutes there are numerous calls/texts between Adams/Diaco, Filthaut/Diaco and Adams/Personius.

At 6:43 p.m., Sgt. Fernandez returns the calls and texts from Filthaut with a 111 second voice call. At 6:48 p.m., Filthaut texts Personius. At 6:51 p.m., Filthaut now calls Personius for a 95 second voice call. This is the first cell communication between those two in three days or more. The only logical conclusion is that Filthaut is setting up the connection between Sgt. Fernandez and Personius, with himself as the liaison. It is reasonable to assume that Adams and Diaco were aware of this organized effort to try to effectuate the future arrest of Campbell for DUI.

To illustrate this surge of communication, the cell phone usage by Personius is isolated to the previous two days, which were a Monday and Tuesday. On Monday, January 21, she had six texts with Adams, all during the early morning business hours. On Tuesday, January 22, she had zero cell communications with Adams. However, on January 23, not counting business hours, but during the relevant times between 6:29 p.m. and 8:13 a.m.

January 24, there were 13 voice calls and 44 texts between Personius and Adams. Personius received three voice calls from Stephen Diaco on Monday, January 23, and one call from him shortly after noon on Tuesday, January 22. On January 23, between 6:29 p.m. and 8:13 a.m., there was one voice call and 11 texts between Personius and Diaco. There was no cell contact whatsoever between Personius and Filthaut on Monday or Tuesday, which considering their work relationship, would be expected. After the voice call from Filthaut to Personius at 6:51 p.m. on 1/23/13, there is intense texting between the two. ~~Twenty-nine~~ texts are exchanged up until Campbell's stop/arrest at 9:57 p.m. After the arrest, there are only two texts, one at 10:35 p.m. and one at 11:35 p.m. There are three voice calls, all from Personius to Filthaut, occurring at 9:42 p.m., 9:43 p.m. and 9:45 p.m., which, as will be pointed out later, is when Personius is trying to get Campbell into her car.

According to Sgt. Fernandez, he has been friends with attorney Adam Filthaut for many years, as their wives have been best friends since high school. Filthaut is the godfather of one of Sgt. Fernandez's children. On a previous occasion, about a month before, Sgt. Fernandez had been called by Filthaut with information regarding Campbell driving drunk when leaving Malio's, however on that evening, Sgt. Fernandez was unable to

pull Campbell's D.A.V.I.D. information and nothing occurred on that night.

Sgt. Fernandez says Filthaut called him on January 23, 2013, around the time he would have gone to work, at 7:00 p.m. That call is confirmed by cell phone records (actually it's at 6:31 p.m.). Sgt. Fernandez says Filthaut spoke to him about Campbell, telling him that Campbell was back in Malio's, drunk and was going to drive, and wanted Sgt. Fernandez to investigate him for DUI. In reality, Campbell was likely having his first drink and would later be walking home. Filthaut wasn't in Malio's but was getting the information from Personius to pass on to Sgt. Fernandez. Ultimately, Sgt. Fernandez pulled Campbell over at 9:57 p.m., driving Personius' Nissan, almost three hours after Filthaut had first called. During this time period, and shortly after Campbell's arrest, 92 text messages were exchanged between Filthaut and Sgt. Fernandez.

Sgt. Fernandez, who testified he accidentally erased his text messages the next day, was surprised at the number of texts. He did state that many of them were Filthaut updating him on Campbell's activity in Malio's, while Sgt. Fernandez essentially lay in wait most of the three hours.

Sgt. Fernandez, believing Campbell had his car parked at the Bank of America lot, posted Ofc. McGinnis at the parking lot

exit, supposedly awaiting Campbell to drive away from that location. However, Campbell wasn't driving that night.

After the apparent arrangement with Sgt. Fernandez is set in place, Personius goes back to Malio's, urging Fykes to join her. Fykes has testified that while at the Fly Bar, Personius had multiple exchanges on her cell phone, which resulted in them hurriedly leaving the Fly Bar. Personius told her she had to go back to Malio's because Campbell was there. Fykes, not knowing who Campbell was, assumed it was a young man in which Personius had some interest. They both drove to Malio's, but this time parking in valet at the insistence of Personius. Personius even offered, and did pay for, Fykes' valet parking. This was done presumably to facilitate a quicker arrival.

Personius and Fykes went to the bar and sat in the two seats that opened next to Campbell. Personius sat right next to Campbell. Personius and Fykes ordered a glass of wine but apparently couldn't get the bartender's attention. Campbell intervened after Personius made a comment to him, and he opened a tab at 7:05 p.m. with only the two wines on it.

Melissa Personius immediately lies to Campbell about where she works, stating she is a paralegal at a well-known Tampa law firm. She maintains this lie in numerous conversations. This is confirmed by Campbell, Fykes, Trentalange and Personius, herself, in a later affidavit. Personius, in the sworn

affidavit, claims she lied because she is afraid of stalkers, which is ~~totally~~ preposterous under the facts of this incident. Obviously, Campbell would have had nothing to do with her if she had been honest and said she worked at A & D, the law firm which he was currently in litigation. Also, considering the recent communications she had had with Adams, Diaco and Filthaut, it is clear that Personius was in an "undercover" role, using subterfuge to facilitate the arrest of Campbell by Sgt. Fernandez.

At 7:19 p.m., Personius opens a tab at Malio's, where two appetizers are ordered for her and Fykes. Between 7:05 p.m., when Personius has just sat next to Campbell, and 7:19 p.m., the following summarizes the communications in this fourteen-minute span:

Personius calls Adams (28-second call), Personius texts Filthaut, Personius texts Diaco. Adams calls Diaco, (21-second call). Diaco calls Filthaut (likely no answer, 7 seconds), Diaco calls Adams (58-second call), Diaco texts Personius. Filthaut texts Sgt. Fernandez four times, Filthaut texts Personius twice, and calls her five times. Filthaut calls Adams twice. Sgt. Fernandez texts Filthaut four times.

This illustrates and typifies the extraordinary amount of time and effort being spent on communications between the A & D attorneys, Personius, and Sgt. Fernandez. The timeline confirms



that this degree of involvement occurs throughout the evening up to the time of arrest, during the arrest, after the arrest, and into the early morning hours. There is only one reasonable interpretation of these events. All the parties knew exactly what was transpiring virtually minute by minute between Personius and Campbell. We asked Personius to provide us with the texts but she had replaced her cell phone and didn't have them. She had already been put on notice in the Motion for New Trial heard on 1/25/13 of the importance of those texts. Apparently these texts contained information she did not want to reveal. To suggest that Personius was acting alone or without direction strains common sense based upon the circumstances.

As mentioned above, there is a flurry of texts/calls by Personius after she gets back to Malio's and seats herself next to Campbell. Once she's safely engaged in conversation with Campbell, and drinks are bought by Campbell for her and Fykes, a 44-second voice call is made by Personius to Filthaut at 7:23 p.m. After that, there is much less communication from Personius. She texts Diaco at 7:50 p.m., texts Adams at 8:12 p.m., texts Diaco at 9:28 p.m., and texts Filthaut at 9:29 p.m. However, between 7:22 and 9:30 p.m., Personius is sent three texts from Filthaut, three texts from Diaco, and two texts from Adams. All witnesses agree Personius was using her cell phone while in the bar.

Personius opened a tab at 7:19 p.m. and her credit card is swiped at 8:50 p.m., closing it. During this one hour and thirty-one minute time period, Personius buys a vodka drink for Campbell. She also buys a Southern Comfort shot for her and Campbell. Apparently, she has gotten over her "shock" of seeing Campbell drinking. Contrary to Personius' testimony, Fykes says the shots were not bought for her and Personius. Fykes testified that Personius was clearly flirting with Campbell at this time, and Personius is instigating the round of shots. Fykes has stated she didn't understand at the time why Personius would be flirting with such an older man. In retrospect, she believes Personius was engaged in a "set-up" of Campbell.

By 8:50 p.m., when Personius pays for her tab, Fykes has left, as well as Ellis. At 8:52 p.m., Campbell opens a new tab with just a wine for Personius and a vodka drink for him. All told throughout the course of the evening, Campbell orders and presumably consumes five vodka drinks and one Southern Comfort shot. Personius orders and presumably drinks 2-3 wines purchased by her, and 2 wines bought by Campbell, as well as one Southern Comfort shot and also eats an appetizer.

At around 9:30 p.m., Campbell is seen by security cameras walking in the hallway, which is consistent with Personius and Campbell being on the move and being outside of each other's presence at times. The evidence would suggest that it is around

this time that Personius realizes that Campbell is walking, not driving. Campbell says Personius and he were leaving about the same time, and that he had taken her valet ticket to see if her car could be left, because he felt due to her drinking she shouldn't drive. His actions are confirmed by the valet, Moore. While Campbell is dealing with the car issue, Personius begins a new flurry of communications with Filthaut, apparently telling him that she is trying to get Campbell in her Nissan, since Sgt. Fernandez confirms Filthaut told him in one of his texts around this time, that Campbell may be driving a gray Nissan.

From 9:32 p.m. to 9:42 p.m., Personius and Filthaut engage in six texts between each other. At 9:42 p.m., Personius voice calls Filthaut for 57 seconds, and at 9:43 p.m., talks to him a second time for 49 seconds. At 9:44 p.m., Filthaut texts Personius and she voice calls him a third time at 9:45 p.m., for 45 seconds, and texts him also at 9:45 p.m. It is at this time, 9:44 p.m., that Campbell and Personius are seen by security cameras in the valet area. They leave in the Nissan at 9:54 p.m. At this point, the texts are back and forth between Filthaut and Sgt. Fernandez. During this time frame, Adams and Diaco are also being kept in the loop via text.

During the ten minute span (9:44 p.m. to 9:54 p.m.), Campbell says he is trying to convince Personius to leave her car and take a cab. He even gets money from an ATM to pay the

fare. Certainly, if Campbell intended to drive her car, there was no need to wait these 10 minutes. The Nissan had already been moved to the front by Moore. Moore had explained to Campbell in the presence of Personius, that it was okay to leave the car in the Sykes public lot steps away and take the keys, allowing Personius to come back at any time and get her car. Moore recalls specifically that Personius kept saying she needed "access" to the car. Campbell says Personius kept saying she needed to move the car to a "secure public lot with 24 hour access." These repeated requests by her are senseless, considering they could have been accomplished by allowing Moore to just move the car. The logical explanation for her odd insistence on moving her car would be to get Campbell to drive it, knowing Sgt. Fernandez was laying in wait.

Campbell says he became frustrated with her insistence to have her car moved to another lot. He said it was getting late and he was tired, so he conceded to her demands to move her car the four blocks to another lot. He felt she was too intoxicated to drive and he was not, so he drove the Nissan. She could have stopped him from driving her car, but she did not.

Based upon Personius' drinking history, it is likely she was feigning intoxication to play upon Campbell's responsible nature. There is no question she could have gotten her car keys that night, had the car moved to the public lot at Sykes and.

taken a cab home; as suggested by Campbell, and verified by Moore. Personius' explanation for needing her car moved are meritless. First, she says she wouldn't be able to get her keys from the valet, which is inconsistent with Moore's assertions. Second, that she needed the car the next morning; however, she has stated under oath in the Motion for Mistrial two days later that she didn't even go to her car the next day until around noon. Certainly, she would have had plenty of time to get back to Malio's the next morning to retrieve her car.

Campbell drives Personius' vehicle about three blocks before being pulled over at 9:57 p.m., by Sgt. Fernandez. Sgt. Fernandez alleges that Campbell turned right out of a middle lane, cutting off a S.U.V. Campbell disputed that in our interview. Surprisingly, Sgt. Fernandez has no dash camera in his patrol car. Campbell gets out of the car as Sgt. Fernandez approaches. Personius immediately calls Adams for 20 seconds. At 10:00 p.m., back-up Officer McGinnis has already arrived at the traffic stop and taken over for Sgt. Fernandez and activates his dash camera. While Campbell is on the sidewalk being interviewed by Officer McGinnis, Personius calls Adams for 4-1/2 minutes, and he calls her back for 2-1/2 minutes.

Immediately after Campbell's arrest, there is another flurry of communications between parties, as evidenced in the timeline. Interestingly, though not surprisingly, the first

person Diaco calls is Bubba Clem at 10:13 p.m. The first voice call Personius makes to Diaco all day is at 10:25 p.m.

The text/calls go on through the early morning hours. The Adams/Personius conversation picks up at 4:30 a.m., and goes back and forth until 5:30 a.m. Based upon the early morning hours, the only reasonable interpretation is that a debriefing of Personius is taking place.

Adams, Diaco, Filthaut and Motroni were invited to be interviewed to explain what occurred on January 23, 2013, but declined.

Another point of interest involves Campbell's rolling trial briefcase, which he put in the backseat of the Nissan when they left Malio's. After Campbell's arrest, the briefcase remained in the Nissan. Although clearly in plain view, Personius apparently did not mention it to Sgt. Fernandez. Sgt. Fernandez remained with Personius while Campbell was with Officer McGinnis. Sgt. Fernandez testified he ran Personius' information in D.A.V.I.D. and determined she had a suspended driver's license. (Previously, Filthaut had represented her on the traffic matters that led to her suspension.) Sgt. Fernandez also felt she was too impaired to drive, so he allowed her to contact a friend to come get her and her car. Although she was a witness, there was absolutely no mention of Personius in either Sgt. Fernandez' or Ofc. McGinnis' police reports.

Personius called Motroni, who came with another driver and picked up Personius and her car, and supposedly drove to Personius' home in Brandon. Even though he would have been aware that Campbell (his opposing counsel in the Schnitt v. Bubba case) was arrested for DUI, he supposedly failed to see the rolling trial briefcase taking up the backseat of the car he was driving. The cell phone records do show over 20 minutes in voice calls between Motroni and Stephen Diaco after Motroni drove off in Personius' Nissan (between 10:22 p.m. and 11:12 p.m.)

#### CONCLUSION

There is insufficient evidence of Campbell's alcohol impairment to go forward with the DUI prosecution. In interviewing the people who were in his presence that night, Ellis, Trentalange and Moore testified that Campbell looked fine and did not appear to be under the influence. The person who is likely with him the longest was Personius, however, her self-reported memory loss and intoxication was so profound she is rendered useless as a witness. Additionally, when you examine her obvious motives, any reasonable juror would reject her testimony. Sgt. Fernandez and Ofc. McGinnis both smell an odor of alcohol on Campbell, which is not enough to prove impairment. In reviewing the video taken by Ofc. McGinnis' dash cam, Campbell does not appear impaired. His speech and balance look

fine. He is logically and coherently engaged in conversation with Ofc. McGinnis. Overall, the video is favorable to Campbell. Although he allegedly fails the Horizontal Gaze Nystagmus test, that would not be admissible. Campbell initially refused the field sobriety tests, (FSTs), but after being told he was being arrested, he quickly offered to take the test. Ofc. McGinnis refuses to allow Campbell to do the FSTs he just asked him to do, explaining to Campbell that a court could see that as "coercion." Campbell, on his being put in the police car, again begs to take the FSTs and is again refused by Ofc. McGinnis. Why would Ofc. McGinnis deprive law enforcement from gathering evidence, either inculpatory or exculpatory? There is absolutely no legal basis to justify Ofc. McGinnis' "coercion" policy.

In analyzing the receipts and interviewing witnesses with Campbell on the night of 1/23/13, it appears that between approximately 5:15 p.m. and 9:45 P.M., (4 1/2 hours), Campbell likely drank five vodka drinks and one Southern Comfort shot. He also ate a significant dinner of two appetizers. With the above facts, the software DUIPRO was utilized, which is a blood alcohol simulator to estimate a range of Campbell's blood alcohol content (BAC) at the time he was stopped. Attached, you will find the results in two pharmacology reports generated by DUIPRO. The only difference between the two is that, in one simulation, Campbell is classified as a "social drinker," and in



the other, he is classified as an "alcoholic." At 10:00 P.M., three minutes after the stop, Campbell's BAC range was between zero and .0277% under the alcoholic classification and a range of .0161% and .0765% on the social drinker classification. Although subject to interpretation and not proof positive and likely not admissible. Campbell is not over the .08% legal limit at the time of the stop.

To sum it all up, the major admissible evidence to potentially prove DUI would be:

- alcohol consumption
- an arguably illegal lane change
- odor of alcohol
- refusal to take a breathalyzer

The likely evidence the defense would present:

- eyewitnesses who would say Campbell was not impaired
- favorable video
- prevented from doing FST's

The above evidence would be insufficient to sustain a conviction even if there was no evidence of a set up. However, there would be no legal vehicle to limit the defense in presenting evidence regarding the behavior of Personius, et al. Sgt. Fernandez's and Ofc. McGinnis' credibility would become a significant issue which would be exploited by the defense.

Although it would have been preferable for Campbell to have taken the breathalyzer, it could be reasonably argued that once ~~Off. McGinnis~~ refused to allow Campbell to do EST's that there was no interest in proving Campbell guilty of DUI, but rather the goal was to arrest Campbell to benefit Sgt. Fernandez's friend ~~Falshaut~~, and the A & D law firm in a pending civil trial.

The public relations mantra from A & D has been that they were only helping get a drunk driver off the streets. This rings hollow when you consider the time, effort and subterfuge used by them to get Campbell on the streets. Besides the above-mentioned proof problems, to prosecute Campbell would require us to adopt the worrisome behavior of all involved. Based upon all of the above, we should file a Nolle Prose.

WAL/0711SP9