Civil rights violations

1 message

John Waaser <dui.jhwaaser@gmail.com> Sun, May 15, 2022 at 21:17
To: jacksonville@fbi.gov

JOHN H. WAASER
6126 SW 52nd Ter
Lake Butler, Florida 32054
(904) 452-9212

I was arrested on May 25, 2019 for alleged DUI. Due to multiple delays, it was a full year before I could have a firm trial date. But then the Florida Supreme Court halted all trials two weeks before my scheduled trial date! It was July 29, 2021 before I actually had a trial! My public defender was very obviously ineffective counsel. I had told Judge Green repeatedly after several pre-trial conferences, that I expected to see both deputies led out of court in handcuffs facing perjury charges. Following the July 2021 pre-trial conference, I told Judge Green that a good part of my defense would be based on the fact that deputy Purington, who performed the Intoxilyzer test, had pulled the plug on the Intoxilyzer 8000, and I asked him to read up on that, but he said he was already familiar with that. My ineffective counsel flat refused to say anything against either deputy, in spite of the fact that it was he who first drew my attention to the incredibly large difference in volume between the two blows. He referred to it as an anomaly, and said he had never seen a difference that large. So he was well aware of some of the problems with this case from the very beginning! Yet he still refused to say anything about those problems at trial, in spite of the fact that the whole case was built on lies, and he knew it. Before he could even show me the dashcam videos, he told me that I had not been driving anywhere near as badly as the arrest report said I had, the fact that as soon as the blue lights came on, my brake lights came on, so there was no delayed reaction, and that he thought I did very well on the field sobriety tests, (which, per the NHTSA Manuals that govern those tests, should never be administered to anyone over the age of 65!)

So, in any event, judge Green should have been very aware that my attorney was ineffective counsel, since none of the things I had said to the judge at those pretrial conferences came out at trial. When it was my turn to take the stand, I brought my Samsung 8.4” hi-def tablet with a photo proving that the deputy who pulled me over lied about having seen my passenger side headlight out (it was the driver’s side light that had been sacrificed to a dead deer a couple of weeks earlier) and then created a second lie out of whole cloth (that he had been eastbound on 39th Avenue when he first made contact with me—he had actually been behind me all the way up 6th Street) to bolster that first lie. In fact, had he been Eastbound on 39th Avenue while I was northbound on NW 6th Street, he would have had a clear and unobstructed view of the front of my car! Making up a second lie out of whole cloth to bolster his first lie would require criminal intent, and note that this lie was specifically about his

probable cause to pull me over, which would mean that he could not hold me longer than a routine traffic stop, so there would not have been time enough to conduct either the field sobriety test or the Intoxilyzer test! I also brought a large stack of papers to the stand, three copies each of several different pieces of evidence. I was fully prepared with copies of two reports the FDLE had sent me on October 27, 2020, and I also had copies of the Intoxilyzer 8000 manual, and the protocol governing the administration of the Intoxilyzer tests, with highlighting of several areas showing, for instance, the fact that no license to operate the Intoxilyzer 8000 will not be granted until the applicant demonstrates proficiency in operating that device in accordance with the manual, which I maintain demonstrates the importance of following the manual for every blow, and, of course, that had the breathing instructions from that manual been followed, you would expect the volume to be essentially identical between the two blows. Thus, a difference of greater than 28% between the two blows would be conclusive evidence that the breathing instructions differed markedly from the manual. In fact, the maximum allowable difference between blood alcohol level is .02, which, as a percentage of the .12 he claims I blew, is one sixth, or 16.67%, so the volume difference, which should be zero or very close to that, was very nearly DOUBLE the maximum allowable difference between the blood alcohol levels! In addition to that proof that the manual was not followed, there is the fact that no login was shown for Patrick Purington (nor anyone else, either) on May 25, 2019! Now we know that it is impossible to perform such a test without logging in first! So it is obvious that AFTER the test was conducted, deputy Purington attempted to tamper with the login data in an effort to hide the fact that there were two logins because he had pulled the plug, which he vehemently denied doing, while under oath at my trial! He did such a good job of tampering with the login data that he destroyed any record of BOTH of those logins. Because there is a record of a test with his name as the operator and my name as the VICTIM, this tampering had to have occurred after the test was over! And note that tampering with evidence is also a crime punishable by incarceration, and is also a violation of my Constitutional right to due process of law!

Now I had thought of submitting an amicus curiae brief to the appellate court, but discovered that no party may do so, but any state or federal agency MAY do so with no restrictions. I therefore request that you submit an amicus curiae brief to the first DCA stating that records directly from the FDLE computer, demonstrate such substantial abnormalities that the breath test should have been suppressed at trial. And then, because the field sobriety tests, per the NHTSA Manuals governing those tests, specifically should never be given to anyone over the age of 65 (I turned 77 years old in jail because of the lies on the arrest report itself) those field sobriety tests should also be suppressed.

I now stand convicted of a crime I did not commit. From the moment the blue lights came on until the time the appellate attorney filed the appeal with wrong DCA, every step along the way has been a violation of my Constitutional right to due process of law. The deputy who pulled me over had been following me for 2.5 to 3 miles since before I turned north on NW 6th Street, and he told me he pulled me over because of suspicion of DUI and because my right side TAG lamp was out. I attended enough arraignments while waiting for my pre-trial conferences, to realize that the schools are teaching these guys that if someone changes lanes without signaling, they are drunk. I made four distinct lane changes, but the turn signals were not working since my driver's side headlight unit had been sacrificed to a dead deer on SR 121 just before the Lacrosse City limit a couple of weeks earlier. I had spent several hours each on two occasions, trying to get a replacement unit installed. I felt that I was going to have to purchase a four ton hydraulic puller from Tractor Supply to stretch the sheet metal so

that I could install the replacement unit. That hydraulic puller was about $160, and I could not have afforded to buy it until the end of June. Apparently the sheet metal had bent and trapped and shorted out the wire to the left front turn signal, such that the fuse would blow every time I tried to turn left, so I figured I would wait until I got the unit installed to fix the wiring. But with the fuse blown neither side turn signal would work. So that explains my inability to use turn signals, and that would have been his sole reason for suspecting I was DUI. As for the tag light, a 2001 Honda Accord (old enough to die for its country with about 310,000 miles on the clock) has only a single tag light in the middle of the tag! He did not have his external mic turned on (as he should have), so the things we discussed at that time are not audible on his dashcam video. However, you can see that I raised my voice for emphasis on a few words and at those times you can actually start to hear me, even if you can't really understand me. I am not sufficiently versed in the operation of Audacity software to want to tackle the job myself, but I do have a very good understanding of the process of enhancing the audio track. Volume is a Logarithmic curve, such that every three decibel rise doubles the volume. So if you raise the volume by 15 to 20 decibels that will increase the volume by 32 to about 100 times! That raises the background noise by the same amount, so that the noises of the engine and air conditioner would be raised by the same amount. But you can narrow the frequency band in order to get rid of most of the noise. The standard frequency determinant is 440 hertz, which is the A above middle C on a piano keyboard. I believe that the human voice would fall somewhere between 250 and 350 hertz, and you might be able to significantly narrow that to encompass his voice and mine, and thereby eliminate most of the background noise. In addition, Audacity allows you to eliminate noises with a very fast rise time from quiet to full volume. The human voice takes a brief but finite time to make that transition. So you can eliminate various noises like microphone clicks and static on the police band radio in the cruiser. That triple combination should render our voices perfectly understandable. I would expect that the FBI would have those capabilities in house, and if not, there probably is a recording studio in Jacksonville that could do the work, or you might find such a lab at any nearby university or at a local Hacker Space group. There is a Hackerspace group in Gainesville, but apparently a similar organization in Jacksonville is called Makerspace and their contact information may be available on the internet. There have been a few of them in Jacksonville, but I am not sure which, if any of them, are still active.

If you look at deputy Frank Atiles-Balbas' affidavit, you will see that he now says that he was Eastbound on 39th Avenue when he first noticed me as I was headed north on NW 6th Street and he saw that my passenger side headlight was out. Oops…the fact that he doesn't know which headlight was out shows that he never saw it with his own eyes! Had he been eastbound on NW 39th Avenue, he would have had a clear and unobstructed view of the front of my car and he WOULD HAVE KNOWN which headlight was out!!!! So he clearly made up a second lie from whole cloth, that he was Eastbound on 39th Ave instead of behind me on 6th Street, in order to bolster his first lie, that he saw my passenger side headlight was out before he pulled me over. So he is lying under oath about his probable cause for stopping me! And you cannot make up a second lie out of whole cloth in order to bolster your first lie without demonstrating very clear CRIMINAL INTENT! I do know that the backup deputy came southbound on 13th Street and then turned southbound on 6th Street (and no, Purington was NOT the backup deputy, as he swore he was at my trial). I believe the backup's name is on the cover page of the arrest report as a witness. He is the one who would have told Atiles-Balbas (who pulled me over) that I had a headlight out. At that point deputy Atiles-Balbas became the crow in that old French poem, LE COURBEAU ET LE RENARD. "A ces mots le Corbeau ne se sent plus de joie…." At these words the crow had never felt more joy. I am certain that when he

calmed down enough to speak, he must have asked “REALLY? WHICH ONE?” Then the backup must have said something mildly confusing, like “well, it was the one on my right….” At that point deputy Atiles-Balbas must have thought “oh, passenger side,” without realizing that the backup was FACING THE FRONT OF MY CAR!

I spent 47 days in the Alachua County Jail solely because of an outrageous lie on the arrest report which said that I was driving without any headlights whatsoever at 2:19 AM, which made me a danger to the public. That is one of only two reasons the judge may impose a bond, and I certainly was not a flight risk! You can see my passenger side headlight on in their dashcam video, so that statement which caused me to spend those days in jail was very clearly a lie on the sworn arrest report, written by Patrick Purington, the DUI trained deputy, and if you look at his affidavit attached to the arrest report, he states that he actually drove my car that night to a nearby parking lot, in lieu of impounding it. I am sure that he realized that my car at auction would not realize enough funds to pay the towing and storage charges. But if he drove my car he should have noticed three things: first, that I did have at least one headlight working—and I could see the white line on the left side of SR 121 just as far as I could see the white line on the right side of that road with only the right side headlight on! The second thing he should have noticed was that my turn signals did NOT work, which puts the lie to any suggestion that I was DUI because I did not signal my four deliberate lane changes. And the third thing that he should have noticed was that none of my dash instruments worked! In other words, the only way I had to determine speed was by subtle variations in engine noise and tire noise. I do know that the car, in a normal takeoff, will shift from second gear to third gear at 35 mph, which happens to be the speed limit on that stretch of NW 6th street. So I had to lock in the sound just after that shift, and maintain it precisely all the way up that road! Had I been drunk or in any way under the influence of any substance, I WOULD HAVE BEEN SPEEDING! And the deputy who pulled me over never turned on the speed check on his dashcam video because I was not speeding!!!!

So there was absolutely no probable cause to pull me over, in which case, this becomes a Terry Stop, and the United States supreme court has made it very clear that without probable cause, they cannot hold me any longer than the length of a routine traffic stop. This means he cannot keep me there long enough for either a field sobriety test or a breath test. If it makes any difference, my four lane changes were that as I approached 39th Avenue, I moved into the left lane specifically because I wanted to leave room for anyone behind me to turn right on red if they so desired. I firmly believe that intersection desperately needs a right turn lane. And there is no reason whatever why they could not put one there. There are no structures of any kind on that corner, so it would be easy to take a small part of the property by eminent domain and put in a right turn lane, which would permit better flow of traffic both for those turning right and those continuing straight ahead, since now if they are behind someone who wants to turn right onto 39th Ave, they would have to slow way down while the turning car makes its turn! But as soon as you cross 39th Avenue, you don’t want to be in the left lane, because there are about a dozen places where someone in front of you might want to turn left, and might have to come to a full stop before proceeding. Southbound traffic on 6th Street is funnelled through a stop light on 13th Street at NW 53rd Ave. Then, to get on to 6th Street, they have to wait at a stop sign for traffic northbound on 13th Street (which has a grass center median at that point). That northbound traffic is funnelled through a stop light at 39th Ave. So it is nothing to have five or six or more cars in a tight line going southbound on 6th Street! You do not want to be in the left lane north of 39th Ave. Now it may be true that with all of my driving experience, I think more about stuff like this than most drivers and/or law

enforcement officers do…. Then the third lane change was to move into the left lane just after the last side road on the left. I do that because at the end of the Discount Tire parking lot on the right side of the street, the right lane ends abruptly with no notice or warning of any kind. The left lane is the through lane, and that is where you want to be before that right lane ends. You want to get over there early enough to be sure that nobody will start to pass you on the left, which would keep you from moving to the left. Then, if there is any traffic behind me, I move to the center of the road, straddling the last portion of the dotted line in the center of the road, specifically to prevent anyone from passing me on EITHER side as the right lane ends. Google Maps, Street View would provide you with a very clear view of that problem. Then I got concerned because I thought the idiot behind me was too close for comfort as we were approaching the merger onto 13th Street, and I was paying attention to my mirror, wondering what he was up to. I drifted a little to the right until I touched the white line on the right. The sound and feel of the paint instead of asphalt alerted me, and I moved back to the center of the road without crossing the painted line. My attorney even remarked to me before he could even show me the video, that there was absolutely no delayed reaction time. When the blue lights came on, my brake lights came on as soon as possible. The arrest report says something like I was continuously drunkenly swerving across lane markers multiple times. Those are contradictory terms. Constantly or continuously means my driving path looked like a sine wave, and you can see on the dashcam video that that is not the case. Multiple times means that in between my four deliberate lane changes, I drove straight as an arrow down the middle of my chosen lane, which is what happened. Since I lost my license, I have had to rely on the Suwanee River Economic Council senior bus to get to my VA medical appointments, and one of my bus drivers used to be a corrections officer. She told me that the course they use, to teach law enforcement officers how to write a ticket, is called “Creative Writing.” I am a published author, and I associate that term with fiction. Now it is true that it is sometimes used in biographies and memoirs, but that is used to put the subject into the best, or sometimes the worst possible light, so it certainly exaggerates some points, without telling the whole truth, even in those books which are not supposed to be fiction. But the statements on the arrest report about my driving are blatant falsehoods, written by someone who never observed my driving.

Well, getting back to after I crossed over 39th Avenue, I wanted to get back into the right lane, but as the deputy noted, I hesitated before moving over. Of course I did! He had been in his cruiser, right next to me at the light, so I looked in the right side mirror, then in my windshield mirror, then in my passenger side window, then in my rear passenger window, then craned my head even more to look through the rear window where it wraps around on the side, and I could not see that cruiser. Then I wondered if he had turned his lights off so I could not see him. So I looked back in all of those places to be sure I had a clear view of the sidewalk past the curb. When I was sure he was not there, I moved into the right lane. I told my attorney to ask him for specific details about where I almost hit a fully marked sheriff’s cruiser. I said he would have to move that north of 39th Ave, and the most likely spot would be where he said I hesitated. I have seen a video that was supplied to the public defender’s office which they later deleted because it had a different case number on it. I can only assume that he had not yet requested a case number for me. But the video clearly shows me taking off and then hesitating before moving back into the right lane, and it shows the deputy sitting at that green light for what must have been virtually the whole light cycle, apparently to create a false impression that he was not following me. But at the time I was fully back in the right lane, he still had not started moving away from the light. So at the time he swore under oath in my trial that I almost hit his cruiser, there was more than an eighth of a mile between us! If you can

enhance the sound on his dashcam video, you can hear him tell me a vastly different story that the cruiser I almost hit was not his, and it was before I turned north on sixth street. Apparently he had been the backup deputy for another deputy's traffic stop. So the other deputy had already let the driver go, and was sitting there finishing up his report with no lights on except headlights and taillights, so I would have assumed he was moving. He would have been parked in the travelled lane since there are few if any parking lanes on that avenue. Atiles-Balbas ignored my direct question as to exactly where that cruiser was parked. He simply would not respond to that question. If I looked away for a second, and then looked back, I would have discovered the cruiser was NOT moving. But to me, a parked car is just like a pylon on a gymkhana course. You can come as close to it as you want to or need to but you had better not hit it! A moving car would be a far different beast, since it could speed up, brake, or turn in either direction with no warning. If a parked car suddenly jumps at you, any resulting accident is his fault for failure to use care when starting, backing or turning. But once the deputy moves the incident north of 39th Ave, he is once again committing perjury. So my attorney got him to commit that perjury, but absolutely refused to accuse either deputy of any form of malfeasance, so he didn't challenge the response. At one point, several weeks before the trial, attorney Rodriguez said to me, "this isn't about the cops, John, this is about you." Well I'm sorry, señor Rodriguez, but if this entire case is based on perjury and tampering with evidence, this case IS about the deputies! This wasn't the first time he had confused cops with deputies, either. At one point I asked him to file a subpoena duces tecum to obtain GPS location data and/or radio logs that would show exactly where Atiles-Balbas' cruiser was from 2 AM until he stopped me at 2:19 AM. Atty Rodriguez refused to do that, but submitted what he called a "polite request" to the GAINESVILLE POLICE DEPARTMENT! He then resubmitted it to the sheriff's office after I notified him of his error, and the sheriff's office neglected to respond, and since he was refusing to show any evidence of malfeasance by either deputy, he did not press the issue. So there is no question that I had ineffective counsel at my trial.

Since I knew that Atty Rodriguez was not willing to accuse the deputies of any form of malfeasance, I brought all the evidence I needed to prove both deputies guilty of perjury with criminal intent, and to prove deputy Purington was guilty of tampering with the Intoxilyzer test results and with the login information for that particular Intoxilyzer instrument. Judge Green ordered me to shut off my tablet and not to refer to the papers and then he stated clearly that I could only address the jury in Direct response to questions put to me by Atty Rodriguez. And since I had previously told Judge Green on three different occasions that I expected to see both deputies walk out of court in handcuffs facing perjury charges, he should have realized that I had evidence of that. Closer to the trial date, I told Judge Green that a large part of my defense would be based on the fact that deputy Purington had pulled the plug on the Intoxilyzer, and Judge Green told me that he was quite familiar with that action. He certainly should have expected that I would produce evidence of tampering with the Intoxilyzer evidence. And if he did not realize that my counsel was ineffective earlier, I requested to approach the bench, and I brought with me the tablet that the judge had ordered me to turn off earlier, and I showed him the photo of my car proving that the deputy did not know which headlight was out, which certainly proves that he was lying about his probable cause AND the second lie made of whole cloth to bolster his first lie. Judge Green then allowed Atty Rodriguez to replay the dashcam video for the jury. Atty Rodriguez specifically proved to the jury that my passenger side headlight was working properly, yet he never took the very logical next step of informing the jury that this proves that the deputy had made a perjured claim about probable cause, and created a second lie to bolster that first lie, thus demonstrating

criminal intent. By that point Judge Green knew, reasonably should have known or had a duty to know that I had ineffective counsel, which would, in and of itself, provide grounds for appeal. But of course, the public defender's office in Tallahassee would not be willing to allege legal malpractice by the 8th circuit public defender. But we DID INTRODUCE EVIDENCE to the jury that the deputy who initiated the arrest did not know which headlight was out! It should then have been obvious to the jurors that Atiles-Balbas had lied under oath about his probable cause to stop me, and so it should at minimum be possible to prove that to the appellate court, and then argue that Judge Green had the power and the duty to suppress both the field sobriety test and the breath test!

I should note that I had Meningococcal Meningitis as a child, and could not keep up with my friends physically. When I got my driver's license at age 16, I had a couple of motorized bicycles, and I bought my first motorcycle just before I turned 17, and a few weeks later, I went riding up to nearby Rustic Ridge, where we had had a summer cottage before we moved up to Northfield, Massachusetts permanently so that my sister could attend the Northfield School for Girls, and I could go to Mount Hermon School for Boys as day students, tuition free, since our mother had obtained employment at NSFG as a secretary. I noticed an old Chevrolet Fleetmaster convertible parked on a service road for NSFG to maintain the fence around their pastureland. The car clearly did not belong there. I made some inquiries, and it was owned by the older brother of a girl we used to hang out with. He said it needed a fuel pump ($5 at Jack and Harry's Auto Store) and I could buy the car for $35. That was just a few weeks of earnings from Podlenski's farm, driving his Oliver tractors for him, since I could not toss hay bales as well as the other guys. I jumped at the opportunity to buy that car and fix it up. All of a sudden instead of not being able to keep up with my friends, I was the teenager with his own car, who could carry my friends wherever they wanted to go! What a life-changer! I became a driving enthusiast! When I got to college, my dorm master and my best friend both had MGAs. They both let me do some body and paint work on their cars. It wasn't long before I had my first MGA, a 1957 with the 1500cc pushrod motor. In 1963 I was driving down to visit my father at work, and looked across at a consignment shop that sold used sports cars. I looked over and saw three MGAs, one of which looked taller and nastier than the others. "Is that a Twin Cam?" I wondered. I made a quick U-turn at the next break in the median. Sure enough, it was the first fabled MGA TWIN CAM I had ever seen. It was designed to compete in SCCA road racing in the production car class so it had to be street legal. I made arrangements to buy it on the spot. I had been the Activities Director and newsletter editor of the nascent Sports Car Club of Western Mass, Inc, and now I had a vehicle that would draw the attention of my fellow members and establish me as a true driving enthusiast! I got drafted soon after I dropped out of Northeastern University to work for a year so I could go to school without working during the school term. My intention was to get my degree in mechanical engineering, go to the General Motors Automotive Design School, and become the next Zora Arkus Duntov (known as the father of the Corvette). Those plans went away as I never got back to school. But I started photographing motorcycle and sports car races for a living. I spent two decades as a freelance motorsports photojournalist, rising to the position of Eastern US Contributing Editor of "Cycle World Magazine," which made me a big fish in a little tiny pond. I could walk up to two of the world's number one motorcycle racers (one past and one future) and start a conversation on any topic of my choice. I bought a 1974 Ducati 750 Sport to celebrate that promotion. That also was a limited production vehicle, and most of the 200 or so brought into this country wound up on the race tracks.

After 1982 I moved back in with my mother, who was starting to show signs of Alzheimer's, and I went to New England Tractor Trailer Training to get a Massachusetts class one license, and after a couple of stints as a hired driver, I bought my first tractor—a 1974 International Harvester 4070B Transtar ll. It had a 318 Detroit engine (300 oil leaks and 18 horsepower, known as the original dragonfly engine: drag it up one side of a hill and fly down the other.) It had such a narrow power band that Fuller had to make a 13-speed transmission for it. But I was then an independent owner-operator. I also had a stint in the early 1970s as a travelling sales rep calling on motorcycle dealerships throughout New England and the eastern parts of New York State, selling parts and accessories to them. At the time of my arrest, I had over a million miles of driving under my belt from two wheels to eighteen. You can't put as many miles on two wheelers as I have without becoming acutely aware of everything around your vehicle! And you can't put as many miles in eighteen wheelers as I have, without being able to ask AND answer the question "Am I good to go? Am I in good shape? Is my rig in good shape? Is the road in good shape?" if any of those answers are in the negative, you take a nap until to the problem is resolved. Just two days before my arrest, I came out of Walmart at 3:30 AM, and decided that I was too tired to make it home safely. I carried a blanket in the trunk, so I grabbed it, reclined my seat and took a nap for a few hours. I would have done the same thing had I been too drunk to drive home on the morning of my arrest! All this driving experience would have kept me from driving had I not been completely safe to do so. And frankly, back when I had more money and was not taking warfarin as a blood thinner, I drank more than I did that night, and if I thought that I did not want to meet a cop, even though I knew I could make it home, I would have headed east to NE 15th Street, then north to NE 53rd Ave, then east on 53rd Avenue, then north on Racetrack Road, west on 156th Ave to either SR 121 or 231, then north on one of those (probably 231) and then west on CR 18, which runs a few hundred feet behind my home. There was virtually no chance of seeing a cop along that way…. And just two months before my arrest, I got up, and couldn't remember if I had taken my warfarin the night before, so I figured another dose in 12 hours couldn't hurt, right? So I took one in the morning. Well, it turned out I had taken it the night before. By that night, I was passing blood red urine. So I drove to the Malcolm Randall VA Medical Center emergency room. The following night I had a book signing at the Hardback Café, which is owned by a local attorney, and I had two beers over a period of 3-1/2 hours, and was passing blood red urine again then, so back to the ER I went. So I was VERY WELL AWARE of the effect alcohol has with warfarin!!!! Had I been anywhere near a blood alcohol level of .120 grams per 210 liters of air, they would have found noticeable blood in my urine as part of my jail intake physical!!!!

I also recently found several calculators on the internet. Input gender and weight and number of drinks, multiply the number of hours since the first drink by a constant that indicates the ability of your liver to process alcohol per hour, and subtract that from the blood alcohol content after X number of drinks, and you have the anticipated Blood Alcohol Content. I bought four drinks that night, and never finished the last one—in fact more than half that drink remained when I left at 2 AM. I bought that drink at about 12:30, according to the receipts they stole from my pocket. And that is not all they stole from me that night, either. I had three five-dollar bills in my pocket, and a Microsoft Lumia 650 cellular phone that was in its case on my belt when I arrived at the jail. Those items were not listed as part of my personal property in the jail, and were not returned to me when I got out I believe the receipts were photocopied, and those copies were attached to the arrest report. I had arrived at the bar at 7pm and immediately bought my first drink in the upstairs bar on a tab. A little after 9pm, I paid off that tab and went downstairs and bought and paid for a drink downstairs. I bought a third drink

and started a tab some time around 11pm, and paid off the tab and got another drink at about 12:30. You can't blow a .12 on one drink per two hours! And according to that University of Tennessee calculator, I would have had to have consumed about 14 or 15 drinks to get to a .12 after seven hours!

So let's discuss that Intoxilyzer test. He had given me instructions which were almost verbatim from the manual (except that instead of a normal breath, he told me to take a deep breath, which would elevate the BAL a bit), but then when I was about halfway through the first blow, he stopped me. THAT raised a red flag for me! With two decades as a motorsports photojournalist, I can observe things very closely and remember them until I can write them down in my notes. Then I saw him jiggle the plug side to side, then he pulled it straight out of the wall and immediately pushed it straight back into the wall. At that point I did not know what the purpose was, and I couldn't get on the internet until after I got out of jail. But it turns out that the ONLY reason for pulling the plug is that the first blow was substantially below the legal limit! Since the data in that device is kept in RAM, not ROM, or more likely, in an EEPROM, pulling the plug erases all data up to that point except the actual login. All actual test data up to that point is erased by pulling the plug. He then had to ask me some of my personal information that he had already asked me, so he could reboot the instrument. (At my trial, he denied under oath that he had rebooted the Intoxilyzer and that he had asked me to repeat those items of personal information. These were questions I had suggested to my attorney in an email. But after Atty Rodriguez got deputy Purington to commit that perjury, Atty Rodriguez refused to challenge the answer and refused to ask me any questions when I was on the stand, that would allow me to to say the deputy had lied. Again, this was very definitely ineffective counsel.) Then after the reboot, deputy Purington totally changed the breathing instructions. He had me take a very deep breath, and stopped me after I blew out about 25% of the air. Then he had me back away from the mouthpiece, exhale, and then take a second very deep breath and stopped me again very quickly. Then we waited a full minute or a little more (time enough to clear the machine between the first and second blows), and then he had me take THREE of those very deep but short breaths. I knew that was not the instructions that he had given me initially. After I got out of jail, I visited the public defender's office, and Atty Rodriguez showed me a paper they had downloaded from the FDLE with the results. Note that the results from the FDLE computer include one result that does not show up on the printout that the operator collects after the test is completed. The ONLY reason the state would have for collecting the data related to the volume of air exhaled with each blow would be to catch corrupt operators!!!! At that time, atty Rodriguez, who had himself not seen the paper previously, said "there's an anomaly." The first recorded blow had a volume of 1.457 liters, while the second recorded blow had a volume of 1.871 liters. He told me had never seen such a large disparity between the two volumes, yet even though he was very much aware of the anomaly, he refused to bring it to the jury's attention. Again, a very ineffective counsel! And note that the fact that he had me take two of those very short, deep blows on the first blow after he pulled the plug, but three similar short, deep blows on the final blow, perfectly explains the difference in volume.

The Intoxilyzer 8000 Manual, which is published not by CMI, but by the FDLE itself, gives very specific instructions that the device depends on deep lung air which would be the LAST air expelled from the lungs, and here deputy Purington was studying only the first portion of very deep breaths instead of the entirety of normal breaths as required by the manual. Atty Rodriguez looked at the numbers as he was showing them to me, and he stated "THERE'S an anomaly!" He was referring to a very large variance in the VOLUME of air between the two

recorded blows. These two blows are supposed to be done as closely to the same way in every respect, so that they can back up each other. A volume difference that large is not merely abnormal, it is conclusive evidence that the test was not done in accordance with the manual. Atty Rodriguez said he had never seen a difference that large. When you do the math, using .120 as the blood alcohol level reported, the MAXIMUM ALLOWABLE difference of .02 grams per 210 liters is one sixth of the allegedly measured blood alcohol level of .12 or 16.67%. The difference in volume of .414 liters of air, also as compared against the lower number of 1.457 liters, is a difference of greater than 28.4%, nearly double the maximum allowable difference in blood alcohol level, for a number that should be zero or very close to zero. And remember that Atty Rodriguez is the person who pointed this out to me! So he had an absolute duty to present this information to the jury! I had this information, which was also sent directly to me from the FDLE in response to my request for information about logins which they also furnished to me as email attachments on October 27, 2020. When the operator pulls the plug you would normally prove that by showing two logins within the span of a few minutes of each other. In looking at the logins furnished to me by the FDLE, I find exactly ZERO logins by Patrick Purington (or anyone else) on May 25, 2019! Apparently he was aware of the two logins system of proving that the machine had been unplugged. Deputy Todd Hanlon, who performs all of the in-house service for the Intoxilyzer 8000 units in the Union County Sheriff's office, suggested Purington might have performed a dry gas check to get around some of the information that could have proven that he unplugged the unit. (I also informed deputy Hanlon that there were numerous instances where it appeared that the same individual had logged in frequently using his full name as required by the manual, but also frequently using only their initials, which he said was an absolute violation of the rules, and that they would be in a heap of trouble if I pointed that out to the FDLE! He said it was absolutely a violation for one operator to have more than one login identity.) I suggested that my first impression was that they could be allowing unlicensed people to log in with just the initials of licensed operators, and deputy Hanlon admitted that was very much a possibility. Since my conversation with him, I have discovered at least two logins using the initials KKK! I do not find a licensed operator with those initials. I would wager that the drivers in those tests were likely black, or possibly Hispanic. But the very fact that deputy Purington managed to produce a test with his name as the operator and my name as the victim, without being logged into that machine, is impossible since the act of hitting the escape key twice and then typing in the operator's name, sets up a login which is supposed to be uploaded to the FDLE computer once every month. It is also my understanding that if any piece of data that is supposed to be uploaded to the FDLE computer fails to get there, it means that the particular Intoxilyzer has been tampered with and must be taken out of use and not used again until it is repaired and recertified. This and some of my other information comes from the website/blog of the Sammis Law Firm, a large DUI practice in Tampa. That would likely make a large number of convictions open for retrial. But we certainly know that the login information with this Intoxilyzer has been tampered with AFTER the test was completed, in an attempt to hide the fact that the unit was unplugged. Tampering with evidence under these circumstances requires criminal intent!

If you compare the affidavits of the two deputies, Purington differs with Atiles-Balbas on three points! Deputy Atiles-Balbas checked NO smell of alcohol. Purington checked SIGNIFICANT smell of alcohol. That is a two-step jump, which you would not expect to see from two trained law enforcement officers, who are familiar with the smell of alcohol on one's breath. The one who is lying there is certainly not the one whose response favors me or any other defendant. Deputy Atiles-Balbas did not check either slurred speech or watery eyes. Deputy Purington

checked slurred speech. But he had his external microphone turned on, so every word we exchanged is loud and clear on his dashcam video, with not a slurred word to be heard! This is one reason why we should have been allowed to show all of the dashcam videos to the jury! But the kicker is “watery eyes!” Not only did he check the box, he mentioned my watery eyes specifically in the written part of his affidavit. The problem there is that I am one of FIVE MILLION US Citizens who suffer from a medical condition called DRY EYES! Either our bodies do not produce tears, or the ducts that carry tears to the eyes are plugged! This mostly affects older folks, and more women than men, but I am one of those affected by it. Claiming to have witnessed something that would have been physically impossible, requires CRIMINAL INTENT! Since tears are the eyes’ natural lubricant, that would explain erratic movement of the eyes at the extreme outer range of motion far better than any amount of alcohol! I was out of artificial tears on the morning of my arrest, but I had an appointment in early June to get a new pair of glasses and renew that prescription. I have since found a box of those artificial tears with an expiration date of 2016, so they have been prescribed at least since 2015. So Purington lied under oath with demonstrable criminal intent, in an effort to delude the court into believing that I was drunk off my anus, which I was not! One drink every two hours will not make me too drunk to drive!

I should note that the state’s attorney’s office could not resist the temptation to interject a lie of their own, in addition to promulgating the vicious lies from the arrest report even after they had possession of, or ready access to, the evidence that proved those statements were perjury. At my first bond reduction hearing, Judge Green asked the then prosecutor (there have been three) what the state’s position was on a bond reduction (which might have saved the lives of most of my cats—and until you reach my age and live alone, you have no idea what my cats mean to me!) The prosecutor’s response was we’re opposed, your honor ..”BECAUSE. OF. THE. CHARGES.” Now I believe that the founding fathers of this great nation meant a number of different things when they referred to DUE PROCESS OF LAW. One of those things was certainly “what’s good for the goose is good for the gander.” In other words, if you can deny me a bond reduction because the arrest report falsely declared that I was driving with no headlights whatsoever at 2:19 AM, in order to find me GUILTY AS CHARGED, you had better be able to prove that I was driving with no headlights whatsoever at 2:19 AM! In other words, they were not acting like this was a DUBAL case at the bond reduction hearing, and they can’t decide to change that later on. But then, in their response to our motion in limine (that the jury be allowed to see the dashcam videos), the state’s attorney’s office plainly stated that deputy Atiles-Balbas TOLD deputy Purington that I had a significant odor of alcohol, slurred speech, and watery eyes. They had the arrest report presumably in front of them as they penned that lie, and I believe that was a sworn document. They might try to claim that this was mere negligence. But they knew, reasonably should have known, or had a duty to know, that Atiles-Balbas did not claim to have witnessed those things! If this was negligence, it was at minimum, CRIMINAL NEGLIGENCE by the state’s attorney’s office!

Then, there is the matter of the DUBAL law itself. The state of Florida is well aware of the technique of pulling the plug on the Intoxilyzer 8000 (surely enough cases have been dropped for that reason), and then altering the breathing instructions which can produce a false reading of double or more of what could be determined by lab analysis of the driver’s blood. For them to insist that they can convict based solely on that frequently fraudulent number is a violation of the Constitutional right to due process of law! Furthermore, federal courts have ruled for decades that due process of law grants the defendant the right to the best possible defense, and that the state may NOT hide any evidence (such as dashcam videos) favorable

to the defendant under any circumstances! So Florida's DUBAL law fails a Constitutional check on two completely different grounds! It is high time a federal court ruled this law unconstitutional!

Nearly three years have been taken away from me already, and doctor Pikren, a psychologist with the Malcolm Randall VA Medical Center in Gainesville assured me that any event like this is life shortening, so at this time it is impossible to say how many years will be taken from me at the end of this life. What has happened to me should never be allowed to happen to any human being, and certainly not to any citizen of the United States of America!

For that reason, I am begging you to submit an amicus curiae brief to the appellate court (1st DCA) informing them that I have provided you with two pieces of information that were in my possession well before my trial date, which would have required suppression of the Intoxilyzer test data, and that it is apparent that my public defender (some people say public pretender) was ineffective counsel. If you obtain a copy of the trial DVD, you may be able to see that I had the papers and tablet with me and that the judge ordered me to turn off the tablet and not to refer to the papers, and that I could address the jury only in response to direct questions from my attorney. I consider that order to be a direct denial of my right to due process of law. You may also be able to see that after I requested permission to approach the bench, just before closing arguments, my attorney repeatedly ordered me to return to my seat, and at one point made a deliberate attempt to yank the tablet out of my hand to prevent me from showing the judge that my passenger side headlight was working normally. Thus, my attorney was not merely ineffective counsel, he was deliberately antagonistic toward my defense!

I then filed complaints against both deputies with the Alachua County Sheriff's Office. Their internal Affairs division EXONERATED the deputies, saying that even if my statements were true, the actions of the deputies were justified, lawful, and proper! I would like to know just what is lawful about proven perjury with demonstrated criminal intent, and tampering with evidence! At about that time there was a very well publicized incident, in which a pregnant inmate in the county jail went into labor. I am sure any reasonable person can understand that being in jail can create enough stress to result in a premature birth, and that a baby born prematurely would need immediate access to the neo-natal emergency room facilities upon birth. She also filed a complaint against the deputies who refused to transport her to the hospital. Her baby was born on the cold concrete floor of the jail. At that time they transported mother and infant to the hospital, where the baby died in its mother's arms within an hour after their arrival. Again, the Internal Affairs Division ruled that nobody did anything wrong! Frankly, I think the Alachua County Sheriff's Office should be investigated by the FBI as a corrupt organization under the federal RICO Act! In my 47 days in that jail, I witnessed bullying and actual Sadism by guards against prisoners.

But again, I beg you to inform the appellate court that I was wrongfully convicted, and that they should speed up the process insofar as is possible, of reversing my conviction. It is now approaching three years from my arrest, and I am still medicated with 150 mg of time released bupropion (the generic form of Wellbutrin, prescribed by the Malcolm Randall VA Medical Center in Gainesville) for the PTSD and depression I have suffered as a result of this wrongful arrest and incarceration. Of the seven cats that died while I was in jail, Corporal was a 5-1/2 week old kitten, the most innocent creature on the planet! He was just starting to eat solid food, and I fed him a slurry made of paté-style canned cat food, powdered kitten

formula, and water. After he was done eating, he would crawl up to my shoulder and go to sleep with his legs wrapped around my neck! I had not had a shoulder cat in fifteen years! I wanted to grow old with him! I believe that for the rest of my life, whenever I think of him, I will break down crying! That would be a dramatic way of showing a jury that I could not have had watery eyes that night. I would be sobbing, but no tears would show up! Such an innocent little kitten should not have had to die because of Purington's vicious lies on the arrest report! So again, please ask the 1st DCA to reverse this conviction as soon as possible to put this behind me! Attached is a copy of the cover sheet from an appeal motion that shows the case numbers in both courts. If you need any more documents, I have uploaded a few to a hidden page on my website at https://cpubfl.com/dui-files.

Sincerely yours,

John H. Waaser