

**IN THE SUPREME COURT OF THE
STATE OF FLORIDA**

**CASE NO. SC09-1115
DISTRICT CASE NOS. 4D07-3703 and 4D07-4641 (Consolidated)
L.T. CASE NO. 50 2005 CA 002721 XXXX MB**

**SHEILA M. HULICK and THE REYNOLDS AND REYNOLDS
COMPANY,**

Petitioners,

v.

**STEPHEN J. BEERS, as Personal Representative of the Estate of
LESLEY N. BEERS,**

Respondent.

**ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT**

**JURISDICTIONAL BRIEF OF PETITIONERS
SHEILA M. HULICK AND THE REYNOLDS AND
REYNOLDS COMPANY**

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TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE AND THE FACTS..... | 1 |
| SUMMARY OF ARGUMENT | 4 |
| ARGUMENT | 6 |
| THERE IS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE OPINION AND DECISIONS OF OTHER DISTRICTS ON WHETHER INADMISSIBLE AND HIGHLY PREJUDICIAL TRAFFIC CITATION EVIDENCE INTRODUCED IN AN AUTOMOBILE NEGLIGENCE CASE REQUIRES A NEW TRIAL..... | 6 |
| A. The Opinion Conflicts with the First District’s Decision in <i>Golden v. Tipton</i> and <i>Ryder Truck Rental, Inc. v.</i> <i>Johnson</i> | 6 |
| B. The Opinion Conflicts with Numerous Other Decisions from the Fourth District | 8 |
| CONCLUSION | 10 |
| CERTIFICATE OF SERVICE | 10 |
| CERTIFICATE OF TYPEFACE COMPLIANCE | 11 |

TABLE OF AUTHORITIES

| <u>Cases</u> | <u>Page</u> |
|---|-------------|
| <i>Albertson v. Stark</i> , 294 So.2d 698, 699-700 (Fla. 4 th DCA 1974) | 9 |
| <i>Budget Rent A Car Sys., Inc. v. Jana</i> , 600 So.2d 466 (Fla. 4 th DCA), <i>review denied</i> , 606 So.2d 1165 (Fla. 1992) | 8 |
| <i>Golden v. Tipton</i> , 723 So.2d 871 (Fla. 1 st DCA 1998) | 4, 6, 7 |
| <i>Hernandez v. State Farm Fire & Cas. Co.</i> , 700 So.2d 451, 452 (Fla. 4 th DCA 1997) | 8 |
| <i>Lindos Rent A Car v. Standley</i> , 590 So.2d 1114 (Fla. 4 th DCA 1991) | 9 |
| <i>Royal Indemn. Co. v. Muscato</i> , 305 So.2d 228 (Fla. 4 th DCA 1974) | 8 |
| <i>Ryder Truck Rental, Inc. v. Johnson</i> , 466 So.2d 1240 (Fla. 1 st DCA 1985) | 5, 7 |
| <i>Volk v. Goetz</i> , 206 So.2d 250 (Fla. 4 th DCA 1967) | 8 |
| <i>Wainer v. Banquero</i> , 713 So.2d 1104, 1105 (Fla. 4 th DCA 1998) | 9 |

STATEMENT OF THE CASE AND FACTS

The Opinion sets forth the operative facts:

This appeal arises from a fatal automobile accident on the Sawgrass Expressway that began when the defendant Sheila Hulick struck the rear of the vehicle driven by decedent Lesley Beers. After the impact, Mrs. Beers' vehicle crossed the median into oncoming traffic and was struck head-on by a second vehicle, and then by a third. Mrs. Beers died at the scene of the accident. Defendants Sheila Hulick and Reynolds and Reynolds Co., the owner of the vehicle, appeal final judgments of over \$ 21 million entered upon jury verdicts for Mrs. Beers' estate and survivors. We affirm on all issues raised in this appeal, but write to discuss the issue regarding a trial witness's unsolicited comment about a "criminal traffic trial."

The defendants admitted that Hulick was negligent in rear-ending the decedent's vehicle. During opening statement, defense counsel admitted that Hulick was following the decedent's car too closely and was not paying attention as well as she should have been. However, defendants denied that Hulick's negligence proximately caused the decedent's fatal injuries. They attributed fault to the decedent and drivers of the third and fourth vehicles. According to the defense, the decedent was comparatively negligent by stepping on the accelerator instead of the brake after being struck from behind. They asserted that this driving error is what caused decedent's vehicle to cross the median and get struck by other drivers, who they claimed were also negligent.¹

¹ Although Defendants admitted Sheila Hulick's negligence, *i.e.*, breach of the duty of care for careless driving in rear-ending Mrs. Beers' vehicle, the relative and proportionate liability or fault of the respective drivers was at issue for jury determination. Defendants denied that Hulick's negligence proximately and entirely caused the decedent's fatal injuries, which indisputably resulted from Mrs.

Witnesses who were at the scene of the crash testified about the traffic and road conditions and the speed and impact of the vehicles involved in the accident. Two witnesses recounted their attempts to comfort and console the decedent while they waited for the paramedics to arrive. Ron Riddle testified that he held Mrs. Beers' hand as she kept saying "Help, help." He recalled that her last words before she died were "Please, ... call my husband."

Just before the close of the plaintiff's case-in-chief, the decedent's brother-in-law, David Moll, testified about Ron Riddle's attempts to comfort the decedent at the scene. Moll testified that several months after Mrs. Beers' death, Riddle approached him and other family members and told them about his contact with Mrs. Beers.

Mr. Moll proceeded to volunteer during his direct examination: "We were at the criminal traffic trial, I believe."

At that point, defense counsel moved for a mistrial. The trial court asked if he wanted a curative instruction, but the defendants declined the offer, explaining that no instruction could cure the prejudicial effect of the testimony and that any instruction would draw even more attention to the "criminal traffic trial" reference. Defense counsel also declined individual voir dire of the jury for the same reason. Ultimately, the court denied their

Beers' head-on collision with the third vehicle. That vehicle was driven by a young woman who was speeding and admitted failure to even attempt to brake or swerve to avoid the collision. Defendants introduced expert testimony that but for the negligence of the third driver, the collision and Mrs. Beers' fatal injuries would not have occurred. Significantly, Defendants prevailed at trial on Plaintiff's Motion for Directed Verdict as to the sufficiency of evidence on the comparative negligence and *Fabre* defenses regarding the contributory fault of the other drivers and Plaintiffs never challenged this denial of directed verdict on appeal.

motion for mistrial. Moll went on to testify about what Riddle told him at the accident scene and what he, in turn, told the decedent's husband. After the jury returned a verdict for the plaintiff, the defendants filed a motion for new trial, asserting that the reference to the "criminal traffic trial" was inadmissible and highly prejudicial. The trial court denied the motion.

Defendants argued on appeal that the trial court abused its discretion in refusing to grant them a new trial because the witness' reference to the criminal traffic trial clearly implied that the defendant, Sheila Hulick, received a citation in connection with the accident. *Id.* The Fourth District acknowledged that "Where fault is an issue, evidence of the presence or absence of a traffic citation will almost always constitute prejudicial error and warrant a mistrial," however noted that "the particular circumstances of each case must be examined in ruling on a motion for new trial." *Id.* The Fourth District further stated that "the trial court must examine liability and damages independently in deciding the proper relief in such cases."

In refusing to grant a new trial, the Fourth District reasoned that "in the case before us, it is undisputed that the impact and damages resulting from the rear-end collision were significant enough to have warranted a traffic citation." The Fourth District also rationalized that

the defendant driver admitted to careless driving and overwhelming evidence was presented that this careless driving caused a significant impact with the rear of the decedent's car. The only issues were whether she was

responsible for the ensuing head-on collision (including comparative negligence and Fabre defenses) and the survivors' damages. We fail to see how the fact that the jury may have known that a traffic citation was issued for the admitted careless driving could have had any prejudicial impact on the jury's resolution of these issues.

SUMMARY OF ARGUMENT

This Court should accept jurisdiction to resolve a conflict between the Opinion and the First District regarding whether the introduction of inadmissible and highly prejudicial traffic citation evidence in an automobile negligence case requires a new trial. In the First District, if testimony implying that a driver received a traffic citation as a result of a collision is introduced in a negligence action, even where negligence is not an issue and the jury is instructed to disregard it, a new trial is required on causation and damages. *See Golden v. Tipton*, 723 So.2d 871 (Fla. 1st DCA 1998) (noting that “[g]enerally, ‘questions or allusions which suggest that a driver has or has not been charged with a traffic violation’ are considered sufficiently prejudicial to require a new trial; trial court abused its discretion, notwithstanding its instruction to the jury to disregard the testimony, in denying a motion for mistrial made after the appellee implied in response to a question from his lawyer that the appellant had received a traffic citation as a result of the collision between the two parties); and *Ryder Truck Rental, Inc. v. Johnson*, 466 So.2d 1240, 1241 (Fla. 1st DCA 1985)(reversing the denial of a motion for mistrial where the appellee testified at trial that he was never charged with a traffic

violation following the parties' accident and concluding that this evidence was highly prejudicial and that the harm was not cured by the trial court's instruction to the jury to disregard it).

However, based on the Opinion of the Fourth District below, if testimony implying that a defendant driver received a traffic citation as a result of a collision is introduced in a negligence action, even where negligence is not an issue but causation and *Fabre* causation of other non-party drivers involved in the ultimately fatal collision are at issue, a new trial is **not** required on either causation or damages. This conclusion creates conflict that this Court should review and also undermines Florida's carefully calibrated policy governing comparative fault. The Opinion contravenes well-established law and sound underlying policy that evidence as to whether a person has or has not been charged with a traffic violation in connection with an accident is inadmissible, highly prejudicial and requires a new trial.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION BASED ON EXPRESS AND DIRECT CONFLICT BETWEEN THE OPINION AND DECISIONS OF OTHER DISTRICTS ON WHETHER INADMISSIBLE AND HIGHLY PREJUDICIAL TRAFFIC CITATION EVIDENCE INTRODUCED IN AN AUTOMOBILE NEGLIGENCE CASE REQUIRES A NEW TRIAL

A. The Opinion Conflicts with the First District's Decisions in *Golden v. Tipton* and *Ryder Truck Rental, Inc. v. Johnson*

In *Golden v. Tipton*, 723 So.2d 871 (Fla. 1st DCA 1998), the First District held that the trial court abused its discretion-- notwithstanding its instruction to the jury to disregard the testimony -- in denying a motion for mistrial made after a party/driver implied in response to a question from his lawyer that the other driver had received a traffic citation as a result of the collision between the two parties. *Id.* at 871. After the inadmissible and prejudicial testimony, the offended party immediately moved for a mistrial. *Id.* The trial court denied the motion for mistrial and instead merely instructed the jury to disregard the testimony. *Id.* In reversing and remanding for a new trial, the First District reasoned as follows:

Generally, 'questions or allusions which suggest that a driver has or has not been charged with a traffic violation' are considered sufficiently prejudicial to require a new trial. *Moore v. Taylor Concrete & Supply, Co.*, 553 So.2d 787, 790 (Fla. 1st DCA 1989). ***This is true even when, as in this case, negligence is not an issue.*** See *Budget Rent A Car Sys., Inc. v. Jana*, 600 So.2d 466 (Fla. 4th DCA), *review denied*, 606 So.2d 1165 (Fla.

1992)(holding that the trial court should have granted the defendant's motion for mistrial when testimony in an automobile collision case suggested that a traffic citation had been issued to the defendant *even though negligence was not an issue*). *Because the severity of the impact which allegedly caused Tipton's injuries was hotly disputed, we conclude that the trial court abused its discretion when it denied Golden's motion for a mistrial. Accordingly, we reverse and remand for a new trial on causation and damages.*

Id. at 871. (emphasis added).

In *Ryder Truck Rental, Inc. v. Johnson*, 466 So.2d 1240, 1241 (Fla. 1st DCA 1985), the First District reversed the denial of a motion for mistrial where a tractor-trailer driver testified at trial that he was never charged with a traffic violation following the parties' accident. *Id.* The First District concluded that "considering the context, the question and response allowed the jury to infer that the [truck driver] was free of fault in the accident" and that the "question and answer were highly improper and prejudicial and the harm resulting therefrom was not cured by the trial court's instructions to the jury [to disregard.]" *Id.*

Contrary to *Golden v. Tipton* and *Ryder Truck Rental*, the Opinion essentially holds that in instances where a defendant driver has admitted negligence but disputes entire responsibility for an accident and related damages, introduction of evidence as to the existence of a traffic citation is neither problematic nor prejudicial, thereby precluding a jury's proper and independent

determination of comparative fault of the respective drivers under Section 768.81, Florida Statutes, as well as damages.

B. The Opinion Conflicts with Numerous Other Decisions from the Fourth District

The Panel's Opinion is also contrary to the following cases of the Fourth District and announces a contrary rule of law or otherwise reaches a different result on the same of substantially similar facts. It has been well settled for almost forty years that testimony that a driver did or did not receive a traffic ticket in connection with an accident will almost always constitute prejudicial error warranting a new trial. *See Volk v. Goetz*, 206 So.2d 250 (Fla. 4th DCA 1967); *Royal Indemn. Co. v. Muscato*, 305 So.2d 228 (Fla. 4th DCA 1974)(inquiry into whether defendant driver has received a traffic citation with regard to the vehicular accident in question in a negligence action will constitute prejudicial error warranting the grant of a mistrial); *Hernandez v. State Farm Fire & Cas. Co.*, 700 So.2d 451, 452 (Fla. 4th DCA 1997)(a jury should not be informed of the investigating officer's determination of who caused the accident and who was cited); *Budget Rent A Car Sys., Inc. v. Jana*, 600 So.2d 466, 467 (Fla. 4th DCA), *review denied*, 606 So.2d 1165 (Fla. 1992)(Florida law is well settled that conclusions of an officer even suggesting that a driver has been charged with a traffic violation in connection with an accident constitutes prejudicial error). As the Fourth District has explained:

Common sense (and experience as well) tells us that to the average juror the decision of the investigating police officer, i.e., whether to charge one driver or the other with a traffic violation based upon the result of his investigation, is very material to, if not wholly dispositive of, that juror's determination of fault on the part of the respective drivers.

Albertson v. Stark, 294 So.2d 698, 699-700 (Fla. 4th DCA 1974). Accordingly, a trial court abuses its discretion in denying a motion for mistrial or a new trial that is based upon an improper reference to traffic citations despite an attempted "curative" instruction. *See also Wainer v. Banquero*, 713 So.2d 1104, 1105 (Fla. 4th DCA 1998)(holding that the trial court reversibly erred in denying the appellant's motion for mistrial given the appellee's testimony that "we don't have no ticket for that accident," notwithstanding the fact that the trial court instructed the jury to disregard the comment); *Lindos Rent A Car v. Standley*, 590 So.2d 1114, 1114-1115 (Fla. 4th DCA 1991)(affirming the trial court's grant of a new trial as a result of the appellants' counsel's opening statement that "no citations were issued" following the parties' collision).

CONCLUSION

The Petitioners submit that acceptance of jurisdiction over this case is necessary and appropriate to establish uniformity of decision within the State on the foregoing issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this ____ day of August, 2009 to Edna L. Caruso, Esquire, Edna L. Caruso, P.A., 1615 Forum Place, Suite 3A, West Palm Beach, Florida 33401 and Jack Scarola, Esq., Searcy, Denney, Scarola, Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409.

June Galkoski Hoffman

CERTIFICATE OF TYPEFACE COMPLIANCE

The undersigned hereby certifies that the typeface of this brief is 14 point Times New Roman and complies with the font standards prescribed by Fla.R.App.P. 9.210.

June Galkoski Hoffman