**Online Reference: FLWSUPP 3007HUMP**

**Criminal law -- Driving under influence -- Charges of driving under influence with damage to property of another or driving in willful or wanton disregard for safety that causes damage to property of another are improper where only damage was to defendant's own vehicle -- Fact that bank holds lien on vehicle does not make bank owner of vehicle**

STATE OF FLORIDA, Plaintiff, v. DAVID DOUGLAS HUMPHREYS, IV, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County, Felony Criminal Division. Case No. 22005448CF10A. September 6, 2022. Michael Lynch, Judge. Counsel: Robert S. Reiff, Law Offices of Robert S. Reiff, P.A., Miami, for Defendant.

**ORDER GRANTING DEFENDANT'S MOTION**

**TO DISMISS COUNTS IV AND VII**

**OF THE INFORMATION**

**THIS MATTER**, having come before me upon David Douglas Humphreys, IV's motion to dismiss counts IV and VII of the Information filed against him pursuant to Fla. R. Crim. P. 3.190(b)(1), and having heard the argument of counsel and being otherwise fully advised in the premises, it is hereby

**ORDERED AND ADJUDGED** that the motion to dismiss counts IV and VII of the Information is hereby **GRANTED** for the reasons stated below.

Pursuant to Fla. Stat. § 316.193(3)(c)1, "[a] person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and: (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired; (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood . . . [and that] Any person . . . Who, by reason of such operation, causes or contributes to causing **Damage to the property or person of another** commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083." *Id.* (emphasis added).

Pursuant to Fla. Stat. § 316.192(3)(c)1, "[a]ny person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving . . . Who, by reason of such operation, causes: **Damage to the property or person of another** commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

The prosecutor's office in this case filed an Information against David Humphreys as a result of a traffic accident that occurred on February 6, 2021. In that Information, they have alleged the following:

**COUNT IV**

> HAROLD F. PRYOR, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that DAVID DOUGLAS HUMPHREYS IV, on the 6th day of February, A.D. 2021, in the County and State aforesaid, did then and there unlawfully drive a vehicle, while he was under the influence of alcoholic beverages and/or a substance controlled under Chapter 893 of the Florida Statutes to the extent that his normal faculties were impaired and/or with a blood-alcohol level of 0.08 or more, and who by reason of such operation did cause, or contribute to causing, **damage to the property of another, to-wit: BANK OF AMERICA NA as lienholder**[1], contrary to F.S. 316.193(1), F.S. 316.193(3)(a)(b)(c)1, and F.S. 316.1934(1)

and

**COUNT VII**

> HAROLD F. PRYOR, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that DAVID DOUGLAS HUMPHREYS IV, on the 6th day of February, A.D. 2021, in the County and State aforesaid, did then and there unlawfully drive a vehicle in willful or wanton disregard for the safety of persons or property, and who, by reason of such operation, **caused damage to the property of another, to-wit: BANK OF AMERICA NA as lienholder,** contrary to F.S. 316.192(1) and F.S. 316.192(3) (a) (b) (c)1

*See* INFORMATION FILED AGAINST DAVID HUMPHREYS (emphasis added).

In each of these counts, the prosecution has alleged that, by Mr. Humphreys' actions, he has "caused damage to the property of another, to wit: **BANK OF AMERICA NA as lienholder**." *Id.* (emphasis added). Yet, as the prosecution has conceded, the vehicle in question, a McLaren, was solely owned at the time of the alleged offenses by the accused, David Humphreys, who financed the purchase of the vehicle with a **loan** from the Bank of America NA. *And see* PROSECUTION'S EXHIBIT "1" and DEFENDANT'S COMPOSITE EXHIBIT "1", the title documents for the vehicle, which clearly shows that "Humphreys, David Douglas, IV" is the *sole* owner of the vehicle.

A lien holder places a lien against an item that is purchased by an individual. However, the lien holder does *not* own the item, in this case a motor vehicle, that the purchaser has purchased using the lenders funds. "A lien holder on a car is a loan lender that has a legal *claim* to your financed car. Because the lien holder is funding the loan, they have a legal interest in the vehicle until the loan has been fully repaid." *See* https://www.travelers.com (emphasis added).

While a lien holder has a "legal interest in [a] vehicle", *id*., there is a significant difference between having a legal interest in a piece of property and owning it. While Bank of America NA had a legal interest in the car, they had no ownership of it, and the charges against Mr. Humphreys for "causing, damage to the property of another, to-wit: BANK OF AMERICA NA as lienholder" are improper. *And see, e.g, D.S.S. v. State,* 850 So. 2d 459 (Fla. 2003) [28 Fla. L. Weekly S486a] (grand theft conviction vacated where the prosecution failed to produce proof of the ownership of the property insufficient) and *L.D.S. v. State,* 784 So. 2d 1227 (Fla. 2d DCA 2001) [26 Fla. L. Weekly D1845a] (in the context of an automobile, the prosecution must present evidence as to the owner or possessor of the property in order to prove the offense of burglary).

Admittedly this is an issue of first impression in this state. As the prosecutor has admitted, and seasoned defense counsel has affirmed, to their knowledge, he is the only prosecutor in the state to try to the such counts/charges where it is a defendant's vehicle that is involved in such an accident.

While this issue has not before been raised before in the context of Fla. Stat. § 316.193(3)(c)1, it has been raised and decided in the context of Fla. Stat. § 316.193(3)(c)2, which involves the charges of serious bodily injury to another.

In *Smith v. State,* 793 So.2d 1118, 1119 (Fla. 1st DCA 2001) [26 Fla. L. Weekly D2179a], the defendant was the only person injured in an automobile accident that occurred while that defendant was driving under the influence. The First District Court of Appeals held that the provisions of Fla. Stat. § 316.193(3)(c)2, which made it a third-degree felony to cause serious bodily injury to another as a result of driving under the influence were inconsistent with Fla. Stat. § 316.1933(1), which was incorporated into Fla. Stat. § 316.193(3)(c)2 and which defined serious bodily injury as an injury to any person, including the driver, which consisted of a physical condition that created a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. The Court, in accordance with the rule of construction set forth in Fla. Stat. § 775.021(1), held that the internal ambiguity had to be resolved in the defendant's favor and it held that the law does not authorize a conviction for DUI with serious bodily injury where only the defendant had been injured. *Id.* at 1119.[2]

In *Adams v. State,* 941 So. 2d 553 (Fla. 1st DCA 2006) [31 Fla. L. Weekly D1832a], the defendant filed a motion for post-conviction relief, arguing that his counsel was ineffective for advising him to plead guilty to DUI with serious bodily injury because he was the only person who sustained serious bodily injury. The First District Court of Appeals agreed, holding that "a defendant could not be convicted of DUI with serious bodily injury when the only person that sustained an injury was the defendant." *Id.* at 554.

Finally, in *Brown v. State,* 32 So. 3d 779 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D984b], the prosecution charged the defendant with several offenses related to a multi-car collision. Among them was driving under the influence with damage to the property of another, specifically, a 1997 Chevy truck that the defendant was driving. The prosecution failed to produce any evidence of the truck's ownership. At the close of the prosecution's case, the defendant moved for a judgment of acquittal on that basis, which was denied. The jury subsequently found her guilty. *Id.* at 779.

The Second District Court of Appeals held that "[b]ecause the State did not prove the existence of the charged offense, we conclude that the trial court erred in denying the motion for judgment of acquittal on this charge and reverse." In so doing, the court noted that Fla. Stat. § 316.193(3)(c)(1) "requires the State to prove that the damaged property belonged to someone other than the defendant." *Id.*

While the prosecution has provided this Court with several cases that discuss the rights of a lien holder in a civil context, we agree with the defense that these cases are inapposite to the issue at hand as those cases involved the interpretation of Article 1, Section 9 of the Florida Constitution, and the due process rights of those who have a legal *interest* in a piece of property.[3]

As it is unquestioned that Mr. Humphreys was the owner of the vehicle involved in this accident, he cannot be prosecuted for the damage that was caused to it. As such, this Court dismisses counts IV and VII of the Information.

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[1]"A lien is when a lienholder has a secured interest in a vehicle, mobile home or vessel in the form of a debt due to the lienholder . . ." *See* https://wwwflhsmv.gov/motor-vehicles-tags-titles/liens -and-titles/.

[2]This Court respectfully submits that, as the defense has argued, there is no inconsistency between these two statutes. While Fla. Stat. § 316.193 involves the prosecution and punishment of individuals accused of committing the offense of driving under the influence., Fla. Stat. § 316.1933 governs the circumstances under which blood may be drawn from an individual accused of driving under the influence in cases involving death or serious bodily injury and how and by whom that blood may be drawn. Certainly, the legislature may have wanted to create different standards for the drawing of blood in such serious cases from the circumstances governing the prosecution of DUI cases and this Court is of the belief that, as such, there is no inconsistency between those two statutes.

[3]A property owner can sell that property to anyone they chose to sell it to; an interest holder has no such lawful rights. A property owner can be sued for their misuse of a piece of property; an entity or person with an interest in that property cannot.

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