# The Fourth District Court of Appeal
# Oral Argument Session
# Nova Southeastern University
# Shepard Broad College of Law

### Wednesday, April 4, 2018

# Today's Cases

**Salomon v. State—4D17-2610**

The defendant was convicted of Possession of a Firearm by a Felon (Count I) and Carrying a Concealed Firearm (Count II). On appeal, the defendant challenges his conviction and sentence on the carrying a concealed firearm charge. He argues that the trial court should have granted his motion for judgment of acquittal on this charge because when he exited his vehicle after being pulled over by the police, the officers were able to immediately identify the object outlined at his waist as a gun. Therefore, he argues, the firearm was not concealed. The state counters that the trial court properly denied the motion for judgment of acquittal and presented the issue to the jury because of the totality of the circumstances, including the fact that the firearm was mainly located in a holster beneath appellant's waistband, indicating that the defendant was trying to obscure the firearm from the ordinary sight of another person.

**Charbonneau v. Charbonneau—4D4D17-0191**

The former wife appeals an order reducing the amount of alimony to be paid by the former husband. First, she argues the trial court erred in finding the former husband voluntarily retired because that issue was not pled by the former husband. Second, she argues the court failed to perform the proper legal analysis for voluntary retirement. And third, she argues the court erred in reducing the alimony because the reduction is not supported by the evidence and the law. The former husband responds that the trial court correctly reduced the alimony based on the facts and the law.

**Mulvey v. Stephens – 4D17-1292**

Appellant, the decedent's widow, appeals the trial court's Final Judgment entered against her for tortious interference with the Appellee' expectancy and awarding $60,000 in damages. On appeal, the Appellant argues that the Final Judgment should be reversed because: (1) there was no substantial competent evidence supporting the jury's verdict that she interfered with Appellee's expectancy, and (2) there was no reasonable basis supporting the $60,000 damages award.

**Heller v. Tower Hill Signature Insurance Company—4D17-1345**

The insureds appeal an amended order and final judgment awarding the insurer attorney's fees pursuant to a Proposal for Settlement. The insureds argue the trial court erred in entering the order because the proposal for settlement was ambiguous and unenforceable due to a discrepancy between the language of the proposal and the release attached to it. The insurer responds that the terms of the proposal were precise in detail, sought resolution of all disputes arising from the subject matter of the litigation, and otherwise satisfied every criterion for enforcement of the fee claim. The insurer argues there is no conflict between the terms of the Proposal and the Releases that are incorporated into the Proposal by reference.

# Today's Panel

Judge, Fourth District Court of Appeal, April 1, 1998 — present
Judge , 17th Judicial Circuit Court, 1995—1998;
County Court Judge, 1991—1995, Broward County, Florida;
Private Practice, 1983 - 1991
Assistant U.S. Attorney Southern District of Florida; 1982-1983;
Assistant Public Defender, Broward County, Florida; 1979-1982;
Associate University Attorney, University of Florida, Gainesville, Florida; 1977-1979;
Staff Attorney, New Hanover Legal Services, Wilmington, North Carolina (1976-1977) and Legal Aid Society of Durham County, Durham, North Carolina (1974—1976).

**The Honorable**      University of North Carolina, B.A., 1971;
**Carole Y. Taylor**   University of North Carolina Law School, J.D., 1974.

Chief Judge, Fourth District Court of Appeal, July 1, 2011 - June 30, 2013;
Judge, Fourth District Court of Appeal, 2002 - present;
Judge, 17th Judicial Circuit Court, 1991 - 2002;
Private Practice, 1982 - 91;
Law Clerk, U.S. Court of Appeals - Eleventh Circuit, 1981 - 82.

Florida Atlantic University, B.S., 1973;
Nova Law Center, J.D. summa cum laude, 1981
(Nova Law Review Executive Editor).

**The Honorable**
**Melanie G. May**

Judge, Fourth District court of Appeal, November 21, 2016—present;
Private Practice, 2006-2016
Florida's Rules of Judicial Administration (2017-present); Florida's Appellate Court Rules Committee Member (2011–2017); Electronic Filing Subcommittee Chair (2016 – 2017); Civil Practice Subcommittee Chair (2013-2016); General Practice Subcommittee Vice-Chair (2012-2013).

Boston College, B.A. (2003);
Suffolk University Law School, J.D. (2006).

**The Honorable**
**Jeffrey T. Kuntz**

# FUN FACTS ABOUT THE COURT

- The Fourth District Court of Appeal celebrated its 50th Anniversary in November, 2015.

- There are twelve judges on the Fourth District. There are three female and nine male judges.

- The current chief judge is Judge Jonathan D. Gerber.

- The court hears cases in three judge panels that rotate throughout the year.

- The court serves six counties (Broward, Palm Beach, Martin, Indian River, St. Lucie and Okeechobee) and three judicial circuits (15th, 17th, and 19th).

- The court decides most cases without holding oral argument.  In 2017, the court disposed of 4,657 cases, issued 748 opinions, and held 198 oral arguments.


# Notable quotes about Justice and the Courts

- The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

  - Alexander Hamilton, Federalist 78

- Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

  - Justice Elena Kagan

- Restriction on free thought and free speech is the most dangerous of all subversions.  It is the one un-American act that could most easily defeat us.

  - Justice Thurgood Marshall

- Error of Opinion may be tolerated where Reason is left free to combat it.

  - Thomas Jefferson