

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DEIVIS PATINO ORTEGA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-2681

[February 18, 2026]

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; Phoebe Rebecca Francois, Judge; L.T. Case No. 23000615MU10A.

Joseph Andrew DiRuzzo, III, and Daniel Lader of Margulis Gelfand DiRuzzo & Lambson, Ft. Lauderdale, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Sorraya M. Solages-Jones, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed. See *South Dakota v. Neville*, 459 U.S. 553, 564 (1983) (holding that that “a refusal to take a blood-alcohol test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the privilege against self-incrimination”); *State v. Busciglio*, 976 So. 2d 15, 18, 21–22 (Fla. 2d DCA 2008) (holding that “whether analyzed under article I, section 9, of the Florida Constitution or the Fifth Amendment of the United States Constitution,” “neither [a] yes/no question nor its answer” to an officer’s “postarrest statutory explanation of [a motorist]’s obligation to take a breath test” and “the criminalization of a refusal to take a breath test” pursuant to section 316.1939, Florida Statutes, “constituted a testimonial interrogation implicating [the motorist]’s right to counsel”); *State v. Sowers*, 442 So. 2d 239, 239–40 (Fla. 5th DCA 1983) (holding that admitting evidence of the defendant’s “refus[al] to submit to a chemical test for intoxication” pursuant to section 316.1932(1)(a), Florida Statutes, is not unconstitutional and does not violate the Fifth Amendment to the U.S.

Constitution and Article I, section 9 of the Florida Constitution); *Evans v. Hamilton*, 885 So. 2d 950, 951 (Fla. 4th DCA 2004) (holding that “[b]ecause a refusal to take a blood-alcohol test is not compelled, and admission of such refusal does not violate the Fifth Amendment, the trial court did not err in finding that section 316.066 does not prevent the admission into evidence of [the motorist]’s refusal to submit to a blood-alcohol test”).

KUNTZ, C.J., GROSS and GERBER, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.