Breath technician affidavits often play a critical role in DUI convictions. In *Belvin v. State*, 30 Fla. L. Weekly D1421 (Fla. 4th DCA 2005), the state introduced a breath test affidavit without calling the breath test technician to testify. The Fourth District Court of Appeal reversed the conviction, finding that the sole purpose of the breath test affidavit prepared by law enforcement is for use at trial and, thus, falls squarely within *Crawford's* "core class of 'testimonial' statements."

Likewise, in *Shiver v. State*, 900 So. 2d 615 (Fla. 1st DCA 2005), the First District Court of Appeal held that the trial court erred in admitting a breath test affidavit into evidence in a felony DUI trial in violation of *Crawford*. Although the state trooper did testify at trial, since the breath test affidavit contained hearsay statements as to the breath test instrument's maintenance which the trooper did not personally perform, that aspect of the breath test affidavit was testimonial and improperly admitted. 10 The defendant's felony DUI conviction was reversed.

Florida law post-*Crawford*, appears to deal a death blow to DUI breath technician affidavits when the state fails to call the technician to testify at trial. Although the issue will be subject to further appeals and opinions, prosecutors should tread cautiously in this area and defense counsel should be alert to object to such hearsay affidavits.