IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,398

THE STATE OF FLORIDA,

Petitioner

vs.

JAMES A. ADAMS,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW

* *

BRIEF OF PETITIONER ON JURISDICTION

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I

STATEMENT OF THE CASE

The Defendant was charged with and convicted of manslaughter by operation of a motor vehicle while intoxicated. See, R1. The facts relative to the present appeal are stated in the Third District Court of Appeal's first opinion in this case[1] issued on October 18, 1983:

> "The evidence shows that Adams, while driving under the influnece of alcohol, crossed the center lane of a residential street and collided head-on with another automobile causing serious bodily injury to the occupant of the other vehicle. Sergeant Molinari of the Public Safety Department arrived at the scene after the accident. He observed that appellant had bloodshot eyes, slurred speech, and an odor of alcohol, and was unsteady on his feet. Officer Molinari arrested Adams and charged him with driving under the influence of alcohol. He told Adams that he was going to take him to Ward D of the hospital to be treated for his minor injuries.
>
> Upon arriving at the hospital, the officer did not request any treatment for Adams, but instead took him to the emergency room for a blood-alcohol test. Appellant

[1]The first opinion as noted above begins the facts by stating, "[t]he evidence shows that..." R1. However, the second opinion issued on April 24, 1984, begins, "[t]he State maintains that..." R11. This may be distinction without a difference. The symbol "R" is for the pagination in the State's Appendix to the State's brief on jurisdiction.

> executed a hospital consent form that was given to him by the officer. A hospital physician, who said nothing to appellant about the reason for the blood sampling, drew appellant's blood for the purpose of examination. After the blood was taken, Sergeant Molinari took apellant back to Ward D (prison ward of the hospital) and placed him in a cell. Molinari shortly thereafter received a call from Detective Dorn, who was also at the scene of the accident, informing him that the driver of the other vehicle had expired. Detective Dorn then took over to begin a homicide investigation." [Emphasis added]. R1-R2

The "consent form" which the Defendant signed is entitled, "Prison Medical Services Ward D-Emergency Room Consent Form" and provides that:

> TO WHOM IT MAY CONCERN:
>
> I, JAMES ADAMS, DO HEREBY GIVE MY CONSENT FOR THE PHYSICIAN ATTENDING ME AND/OR NURSE TO WITHDRAW A SAMPLE OF MY BLOOD AND/OR URINE TO BE TESTED FOR ALCOHOLIC AND/OR DRUG CONTENT. THESE SPECIMENS ARE REQUESTED BY THE METRO-DADE POLICE DEPARTMENT. THE SPECIMENS WILL BE TURNED OVER TO THE DADE COUNTY PUBLIC SAFETY DEPARTMENT CRIME LAB AND/OR THE DADE COUNTY MEDICAL EXAMINERS DEPARTMENT TOXICOLOGY LABORATORY FOR TESTING.
>
> PATIENT'S SIGNATURE (SIGNED)
>
> WITNESSES (SIGNED)
>
> _____
>
> DOCTOR/NURSE (SIGNED)

ARRESTING OFFICER (SIGNED)

POLICE CASE NUMBER 400725-B " R.3a.

On appeal, the Defendant claimed that the trial court should have suppressed the results of his blood-alcohol tests. R2. On October 18, 1983, the Third District Court of Appeal agreed, and citing Section 316.066(4) Florida Statutes, Cooper v. State, 183 So.2d 269 (Fla. 1st DCA 1966) and State v. Coffey, 212 So.2d 632 (Fla. 1968) reversed for a new trial, explaining that:

> "In the instant case, there is no evidence that [the Defendant] was informed, or by other means might have known, that the blood test was being administered to him as part of an investigation for the crime of manslaughter by operation of a motor vehicle while intoxicated." R3.

The undersigned filed a vigorous motion for rehearing, emphasizing, 1) the Court's misreading of State v. Coffee, supra; 2) the fact that there was ample evidence that the Defendant knew or should have reasonably known that the blood test was being used in a criminal investigation; 3) that under State v. Rafferty, 405 So.2d 1004 (Fla. 4th DCA 1981) the evidence herein was specifically admissible in a criminal proceeding under the Florida Constitution. See, R2-R10. The Defendant did not file a Motion for Rehearing.

After more than six (6) months and perhaps being aware of the controversy and confusion generated by its original

opinion above, on April 24, 1984, the Third District Court of Appeal withdrew its prior opinion and issued an opinion entitled, "On Motion for Rehearing." See, R10a-R16. The District Court issued its mandate on the same day. R16a. The Court's opinion on rehearing is substantially identical to its previous opinion. However, the Court first embellishes upon its previous ruling holding that the evidence shows that the arresting officer took the blood test for the purpose of completing his "accident report" under Section 316.066(4) Florida Statutes. See, R13-R15. More importantly however, the Court also added the holding that Section 316.066(4) and the Florida Constitution provide greater constitutional protection than does the United States Constitution:

> "Although the fifth amendment to the United States Constitution had been held inapplicable to the taking of a blood sample, Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), the State of Florida has the right to extend to its citizenry greater protections than those afforded by the federal constitution. Sambrine v. State, 386 So.2d 546, 548 (Fla. 1980)." R13 at n1.

The District Court declined to say whether the Legislature's enactment of the new statute, Section 316.1933 Florida Statutes (Supp. 1982) was constitutional under its reading of the Florida Constitution. R14 at n2.

The undersigned again filed a vigorous Motion for Rehearing and Motion to Certify pointing the Court's misreading of State v. Coffee and conflict with other district courts and asserting that Rule 3.220(b)(1)(vii) Florida Rules of Criminal Procedure enacted by this Court precluded the District Court's construction of the Florida Constitution. See, R17-R18. On May 11, 1984, the District Court denied a Motion to Recall its Mandate which had been issued as noted above. R19. As a consequence of the latter order, On May 24, 1984, the State was forced to file its timely Notice of intent to seek discretionary review and on June 21, 1984, the Court therefore struck the State's Motion for Rehearing and Motion to Certify. R21.

II

QUESTION PRESENTED

WHETHER THIS COURT HAS JURISDICTION AND SHOULD EXERCISE IT HEREIN.

III

ARGUMENT

THIS COURT HAS JURISDICTION AND SHOULD EXERCISE IT HEREIN.

Under Rule 9.030(a)(2)(A)(ii) and (iv) Florida Rules of Appellate Procedure, this Court has jurisdiction, 1) where a district court of appeal has "expressly" construed the

Florida or federal constitution and 2) where an opinion of a district court directly conflicts with an opinion of this Court or of another district court. In the present cause, both reasons are present to enable this Court to properly exercise jurisdiction.

First of all, the District Court has expressly construed the Florida Constitution as imposing a more stringent constitutional standard to the suppression of a blood test in a criminal prosecution than does the United States Constitution. R13 at n1. Contrary to the present opinion this Court has expressly adopted the federal standard for the admission of physical evidence from a defendant contained in Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). See, Fla.R.Crim.P. 3.220(b)(1)(vii). Under Rule 9.0303(a)(2)(A)(ii) and (iv) this Court therefore has jurisdiction and should exercise it.

Similarly, the District Court's analysis of the Florida Constitution is in direct conflict with State v. Coffee, 212 So.2d 632 (Fla. 1968), in which the Court specifically rejected the application of the "accident report statute" to the defendant and held the evidence against the defendant was admissible under the criminal law irrrespective of any accident report statute requirement:

> "The fact that the crime was committed in the operation of a motor vehicle is pertinent to the highway safety proghram of this State; but it does not entitle the person suspected of or charged with

> committing such a crime to any special treatment in so far as the determination of his guilt or innocence is concerned. In our opinion he is entitled to the same constitutional safeguard as any other person suspected of or with a crime -- no more and no less." 212 So.2d at 635 [Emphasis added].

Accord, Schmerber v. California, supra; State v. Rafferty, 405 So.2d 1004 (Fla. 4th DCA 1981); See also, Fla.R.Crim.P. 3.220(b)(1)(vii). In State v. Rafferty, with Judge Downey also concurring, the Court held specifically that:

> "We believe that in light of the severity of the accident, the zero readings yielded by the breathalyzer test and Rafferty's apparent lack of comprehension, the arresting had probable cause to believe that Rafferty had been driving under the influence of a drug. Given the circumstances, the testing for drugs is constitutional even without consent or a warrant." [Citation omitted]. 405 So.2d at 1004.

The present District Court analysis applying a criminal rule of exclusion is also in conflict with Pardo v. State, 429 So.2d 1313 (Fla. 5th DCA 1982), which expressly holds that the failure to give various warnings to a Defendant did not require any exclusion of criminal evidence but rather only required that a Defendant's license not be suspended. The Pardo Court and the specially concurring opinion specifically decline to apply any criminal rule of exclusion to the purely administrative sections of the instant statutes,

where the substantial criminal law does not require any such exclusion. The District Court's conclusion that there is somehow a different standard of constitutional review in Florida because of the so-called "traffic accident report statute" is erroneous in view of the plain language in State v. Coffee. See, Pardo; State v. Rafferty, supra; State v. Demoya, 380 So.2d 505 at 506 (Fla. 3d DCA 1980(Schwartz, J. dissenting).

Also contrary to the present District Court construction of the Florida constitution and Florida criminal law, in Sambrine v. State, 386 So.2d 548, at 549 (Fla. 1980), the Court expressly held that, "there is no provision that a driver be informed of his right to refuse; he must merely be informed that his failure to submit to a chemical test will result in a three month suspension [of his license]." [Emphasis added]. Accord, State v. Edge, 397 So.2d 939, at 942 (Fla. 5th DCA 1981). Furthermore, two years after Coffey, the Court in State v. Mitchell, 345 So.2d 618, at 623 (Fla. 1968) also did not contemplate any sort of requirement that a defendant be warned of any change in the capacity of the investigating officers. Sambrine has refuted such a requirement and it has never been a requirement stated by the Supreme Court of Florida. See also, Pardo v. State, 429 So.2d 1313 (Fla. 5th DCA 1983); State v. Edge, supra. The present decision is therefore in direct conflict with Sambrine and the foregoing decisions.

The present issue is of grave importance to the proper prosecution of drunk drivers who are responsible for the carnage on our highways. The District Court's analysis has made the prosecution of drunk drivers, who also kill, susceptible to a Miranda-like warning not contemplated by either this Court's rule or the substantive law[2]. Under the District Court's analysis, despite contrary Legislative intent, the new statute, 316.1933 is also subject to such a state constitutional limitation. This cause is therefore a significant decision warranting the immediate exercise of this Court's jurisdiction.

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[2]. Assuming any such constitutional requirement, there was also ample evidence herein to establish that the Defendant's consent was sufficiently voluntary and sufficiently informed under Florida v. Royer, 460 U.S. ___, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) and Longo v. State, 157 Fla. 668, 26 So.2d 818 (1946). In Longo, the court explained the principles upon which the present decision directly conflicts:

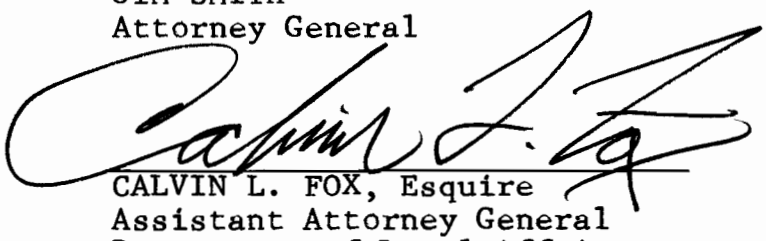
> "It appears to us that if the appellant ever had the right to protest that the evidence used to convict him was obtained by an unlawful search and seizure that right was waived when, as testified to by the arresting officers and apparently believed by the trial judge, he freely gave his consent to a search of the car which he was operating and voluntarily turned over his keys to the arresting officer for that purpose." 26 So.2d at 819.

CONCLUSION

WHEREFORE, upon the foregoing, the Petitioner, THE STATE OF FLORIDA, prays that this Honorable Court will issue its order accepting jurisdiction herein and will reverse the ruling of the Third District Court of Appeal.

RESPECTFULLY SUBMITTED, on this 11th day of June, 1984, at Miami, Dade County, Florida .

JIM SMITH
Attorney General



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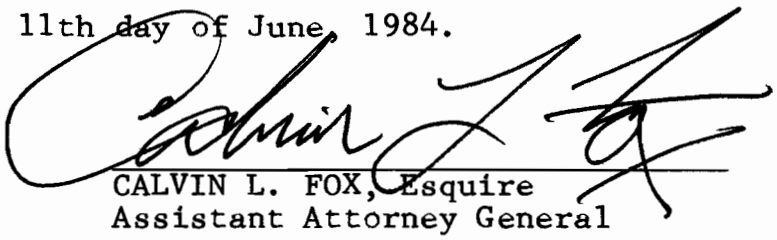
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER was served by mail upon HARRY W. PREBISH, Suite 606, 19 West Flagler Street, Miami, Florida 33130, on this 11th day of June, 1984.



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