

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66964

**FILED**

SID J. WHITE

MAY 8 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

THE STATE OF FLORIDA,

Petitioner,

vs.

RICHARD STRONG,

Respondent.

\*\*\*\*\*

ON PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

BRIEF OF PETITIONER ON JURISDICTION

JIM SMITH  
Attorney General  
Tallahassee, Florida

CALVIN L. FOX, ESQUIRE  
Assistant Attorney General  
401 N.W. 2nd Avenue, Suite 820  
Miami, Florida 33128  
(305) 377-5441

TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE.....	1-2
QUESTION PRESENTED.....	3
ARGUMENT.....	4-7
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
Adams v. State, 448 So.2d 1201 (Fla. 3d DCA 1984).....	5
Cardwell v. Lewis, 417 U.S. 583, 94 S.Ct. 2464, 41 L.Ed. 2d 325 (1974).....	4
Coolidge v. New Hampshire, 403 U.S. 433, 91 S.Ct. 2022, 29 L.Ed. 2d 564 (1971).....	5
Grant v. Brown, 429 So.2d 1229 (Fla. 5th DCA 1983).....	6
Pardo v. State, 429 So.2d 1313 (Fla. 5th DCA 1982).....	6
Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed. 2d 908 (1966).....	4
State v. Adams, Case No. 65,398 (Fla. March 28, 1985)...	5, 6
State v. Wilson, 276 So.2d 45 (Fla. 1973).....	6-7

OTHER AUTHORITIES

Section 316.1932(1)(f)(2), Fla.Stat.....	2, 5
Section 316.1963(1)(f)(2), Fla.Stat.....	2
Section 782.07, Fla.Stat.....	1
Section 860.01(2), Fla.Stat.....	1
Rule 9.030(a)(2)(A)(ii), Fla.R.App.P.....	4
Rule 9.030(a)(2)(A)(iv), Fla.R.App.P.....	4
Article I, §12, Fla.Const.....	2, 5

I  
STATEMENT OF THE CASE

The Defendant, was charged by information with two counts of D.U.I. manslaughter under Section 860.01(2) and two counts of manslaughter under Section 782.07, Florida Statutes arising from the deaths of two victims in a collision with the Defendant's vehicle on June 8, 1982<sup>1</sup>. See, R1-R4. The trial court entered a directed verdict as to the two counts of D.U.I. manslaughter and the Defendant was subsequently convicted of the two counts of manslaughter. See, R5-R7.

Relative to this petition, as a result of his immediate hospitalization following the collision, the Defendant's blood and urine samples were initially obtained (without a police request or police participation) by civilian medical personnel. See, R8; R10 (opinion of 3d DCA). The State sought and obtained an admittedly lawful criminal search warrant and seized the blood and urine samples from the medical personnel. Id. In the criminal trial, the trial court therefore refused to suppress the evidence of the Defendant's blood or urine samples. See, Id.

---

<sup>1</sup>The reference "R" refers to the pagination in the Petitioner's appendix, consisting of pages R1-R15, which contains the portions of the proceedings below sufficient to demonstrate jurisdiction in this court.

On appeal to the Third District Court of Appeal, the Defendant contended that the blood and urine samples should have been suppressed because the civilian lab technician was not officially certified under Section 316.1932 (1)(f)(2). See, R8-R9. On March 5, 1985, with Judge Jorgenson dissenting the District Court agreed. See, R8-R11.

As noted above, the District Court recites that the blood and urine samples were not drawn at the request of the police, but rather were drawn for medical reasons. See, R8; R10-R11. The District Court also recites that the samples were then subsequently seized pursuant to an admittedly valid search warrant. See, Id. The District Court reasons nevertheless that Florida law in the guise of Section 316.1963(1)(f)(2) provides greater protection for defendants than does the requirement of a warrant under Article I, Section 12 of the Florida Constitution and the Fourth Amendment of the United States Constitution. See, R8-R11. Judge Jorgenson in dissent would have affirmed the denial of the Defendant's motion to suppress based upon settled concepts of search and seizure in the criminal law. See, R10-R11.

The undersigned filed a vigorous motion for rehearing which was denied on April 8, 1985. See, R12-R15. The present petition for review follows. See, R16.

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 present controversy arises solely from a dispute as to the admission of criminal evidence in a criminal trial, which was seized under the Fourth Amendment and Article I, Section 12. Under Article I, Section 12 of the Florida Constitution enacted in 1982, the rules in a criminal trial governing the admission of evidence seized by the police shall be construed consistent with the substantive law construing the Fourth Amendment. The evidence herein was undoubtedly admissible under the Fourth Amendment. See, e.g. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); see, also, Cardwell v. Lewis, 417 U.S. 583, 94 S.Ct. 2464, 41 L.Ed.2d 325 (1974);

Coolidge v. New Hampshire, 403 U.S. 433, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). The District Court's construction of Section 316.1932(1)(f)(2) purports to provide greater protection in a criminal trial than does the Fourth Amendment. This analysis is therefore a direct contradiction of the mandate of Article I, Section 12 and provides a substantial basis for review in this Court.

The District Court's opinion is also in direct conflict with the recent opinion in State v. Adams, Case No. 65,398 (Fla. March 28, 1985). In Adams v. State, 448 So.2d 1201 (Fla. 3d DCA 1984), the District Court had held that Section 316.066(4) Florida Statutes provides greater protection for defendants regarding the admission of blood samples in a criminal trial than does Schmerber v. California, supra and the Fourth Amendment. Id., at 1203, n. 1. This Court reversed, holding that there was no state constitutional bar to the admission of blood-alcohol tests in civil or criminal proceedings, notwithstanding Section 316.066(4). Again in the present cause, in construing, Section 316.1932, another similar provision regarding the admission of blood-alcohol tests in traffic cases, the District Court has held that Florida's traffic statutes provide greater protection for defendants than does the Fourth Amendment. This contradiction of Article I, Section 12 and this Court's views in State v. Adams, provides a substantial basis for review.



The present District Court opinion providing a rule of exclusion in a criminal trial based upon a traffic statute is also in direct conflict with Grant v. Brown, 429 So.2d 1229 (Fla. 5th DCA 1983) and Pardo v. State, 429 So.2d 1313 (Fla. 5th DCA 1982). See, R11 (Jorgenson, J., dissenting). In Grant the Court held that notwithstanding the prohibitions in the traffic statutes concerning the admissibility of blood alcohol tests, such evidence was nevertheless admissible as part of a defendant's hospital records. In Pardo the Court similarly held that the failure to give traffic statute 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 rule of exclusion in a criminal trial under the administrative sections of the traffic statutes, where the substantive criminal law does not require any such exclusion. The present District Court's conclusion that there is somehow a different standard of constitutional review in a criminal trial because of the traffic statutes, is in direct conflict with Pardo, Grant and this Court's admonition in State v. Adams, supra.

Finally, as Judge Jorgenson noted in his dissent, there was ample evidence of manslaughter irrespective as to the admission of the blood alcohol evidence. In State v. Wilson,

276 So.2d 45 (Fla. 1973) this Court mandated that the District Courts must consider harmless error as a decisional basis in their analysis. The majority in this cause declined to follow any harmless error analysis. This Court should also accept review based upon a conflict with State v. Wilson, supra.

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 permits drunk drivers, who also kill, to avoid criminal prosecution through the escape hatch of traffic statutes. Such a result is directly contrary to both the intent of the Legislature in enacting such statutes and the will of the people of this state in voting overwhelming approval of Article I, Section 12. This cause is therefore a significant decision warranting the immediate exercise of this Court's jurisdiction.

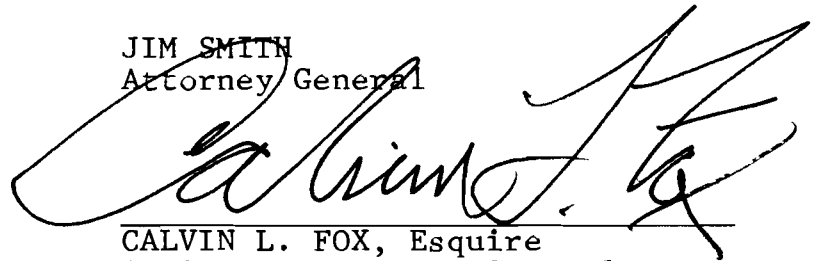
IV

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 3rd day of May, 1985,  
at Miami, Dade County, Florida.

JIM SMITH  
Attorney General

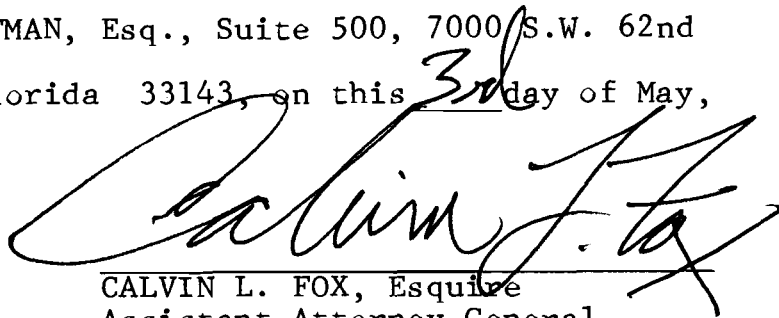


CALVIN L. FOX, Esquire  
Assistant Attorney General  
401 N. W. 2nd Avenue (Suite 820)  
Miami, Florida 33128

(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON JURISDICTION was served by mail upon COREY E. HOFFMAN, Esq., Suite 500, 7000 S.W. 62nd Avenue, South Miami, Florida 33143, on this 30<sup>th</sup> day of May, 1985.



CALVIN L. FOX, Esquire  
Assistant Attorney General

ss/