IN THE SUPREME COURT OF THE STATE OF FLORIDA

JOSEPH CHARLES CRAFT and
SANDRA SHIPLEY PARNELL,

Petitioners,

vs

CASE NO. 68,421

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S BRIEF ON JURISDICTION

ON APPEAL FROM THE
FIFTH DISTRICT COURT OF APPEAL
DCA CASE NOS: 85-1398 - 85-1400
(Consolidated)

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STATEMENT OF THE CASE AND FACTS

Respondent agrees with the Statement of Case and Facts presented by Petitioner.

SUMMARY OF ARGUMENT

Petitioner argues that the District Court held that a citizen does not have the right to refuse to submit to a chemical test for blood alcohol thereby conflicting with the decisions in Sambrine v. State, 386 So.2d 546 (Fla. 1980), Smith v. State, 378 So.2d 281 (Fla. 1979); State v. Ducksworth, 408 So.2d 589 (Fla. 2d DCA 1981); Brown v. State, 412 So.2d 23 (Fla. 2d DCA 1982); and State v. Gunn, 408 So.2d 642 (Fla. 4th DCA 1982); all of which hold that a person may refuse to submit to a chemical breath test for blood alcohol. Respondent answers and argues that the District Court in this case did not hold that the State can require a person to submit to a chemical test for blood alcohol, but held specifically that a person may choose not to submit.

Respondent argues that Petitioner seizes upon an argument of semantics and not law and bases his argument on the District Court's analysis of the distinction between "a right" and an "option" not to submit to a chemical test for blood alcohol. The substance of the holding is still the same, and the holding is that a person does not have to submit unless he chooses to do so.

The District Court's analysis of "right" vs "option" is dictum and does not affect the holding which remains that a person may refuse the chemical breath test should he choose to do so.

ARGUMENT

ISSUE I

WHETHER THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL REVERSING THE DECISION OF THE LOWER COURT AND HOLDING THAT PETITIONERS DID NOT HAVE A LEGAL RIGHT TO REFUSE TO SUBMIT TO A CHEMICAL TEST EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN SAMBRINE V. STATE, 386 So.2d 546 (Fla. 1980) AND SMITH V. STATE, 378 So.2d 281 (Fla. 1979), AS WELL AS THE SECOND DISTRICT COURT OF APPEAL IN STATE V. DUCKSWORTH, 408 So.2d 589 (Fla. 2d DCA 1981); BROWN V. STATE, 412 So.2d 23 (Fla. 2d DCA 1982); AND STATE V. PAGACH, 442 So.2d 331 (Fla. 2d DCA 1983) AND THE FOURTH DISTRCIT COURT OF APPEAL IN STATE V. GUNN, 408 So.2d 642 (Fla. 4th DCA 1982).

Petitioner contends that the District Court held that a person does not have the right to refuse to submit to a chemical test and such holding conflicts with Sambrine v. State, 386 So.2d 546 (Fla. 1980); Smith v. State, 378 So.2d 281 (Fla. 1979); State v. Gunn, 408 So.2d 642 (Fla. 4th DCA 1982); State v. Ducksworth, 408 So.2d 589 (Fla. 2d DCA 1981); Brown v. State, 412 So.2d 23 (Fla. 2d DCA 1982); and State v. Pagach, 442 So.2d 331 (Fla. 2d DCA 1983). Respondent agrees that the cases with which Petitioner alleges conflict hold that a person does have the right to refuse to submit to a chemical breath test for blood alcohol. However, Respondent disagrees and argues that the decision of the District Court herein specifically agrees with the cited cases and does not conflict. Respondent argues that the decision of the District Court of Appeal agrees with the cited cases and holds that each Petitioner herein had the right to refuse to take the chemical breath test for blood alcohol.

The District Court characterized the right as an "option" as opposed to a true legal right for the reason that the legislature imposed a penalty for the exercise of the "right." Respondent argues that Petitioners base their allegation of conflict upon the District Court's analysis of the law presenting

the citizen with an option as opposed to a true legal right. Nevertheless, the citizen has the right to exercise the option to refuse to take the test, and therefore, the right to refuse. This is a matter of semantics, and it is not a matter of law. Petitioners seize upon this language and allege conflict, but Petitioners ignore the holding which is that the citizen has the right to exercise his option to refuse to submit to a chemical breath test for which the law imposes a penalty. This statement of the rule of law does not conflict with the rule of law enunciated in the cited cases.

Respondent argues that the District Court held that the results of the chemical tests given to each Petitioner were admissible as evidence at their trial even though the warning did not correctly state the law. The District Court sub judice specifically applied Sambrine v. State, 386 So.2d 546 (Fla. 1980) and Pardo v. State, 429 So.2d 1313 (Fla. 5th DCA 1983).

In Sambrine, supra, the defendant stood charged with two counts of manslaughter by operating a vehicle while intoxicated, and he refused to take a chemical breath test for blood alcohol. Law enforcement officers took him to a hospital and administered a blood test despite the defendant's refusal to consent. This court held that the defendant had the right to refuse to a chemical test for blood alcohol. The decision of the District Court sub judice also held that the petitioners had the right to refuse the chemical test for blood alcohol. Here, however, the Petitioners did not refuse but submitted to the test.

In Pardo, supra, law enforcement officers administered a chemical test for blood alcohol by taking a blood specimen from the defendant and without the defendant's objection. Law enforcement officers did not warn him of the consequences of refusal to submit to the testing. The District Court held that the State's failure to warn did not affect the admissibility of the results of the test where the defendant did choose the test. Here, the Petitioners did choose to take the

test, but the District Court followed its holding in Pardo that the failure to give the warning does not affect the admissibility of the test results when the defendant submits.

In the case sub judice, the District Court specifically held that the results of a chemical test for blood alcohol are admissible despite a warning that does not accurately state the law. Neither Sambrine, supra, nor any of the cited cases with which there is an alleged conflict so hold. There is, therefore, no conflict.

CONCLUSION

Respondent concludes, therefore, that there is no conflict between the decision of the District Court of Appeal in this case and the decision in the cited cases, and respectfully requests that the Court deny the Petition for the reason that there is no jurisdictional conflict.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Eric A. Latinsky, Esquire, 326-1/2 S. Beach St., #3, Daytona Beach, FL 32014, and Michael H. Lambert, Esquire, 630 N. Wild Olive Ave., Suite A, Daytona Beach, FL 32018, this 26 day of March, 1986.

JOHN V. DOYLE
ASSISTANT STATE ATTORNEY