O/a 10-31-86

SUPREME COURT OF FLORIDA

CASE NO. 68,421

DISTRICT COURT OF APPEAL,
FIFTH DISTRICT - NOS. 85-1395
85-1396
85-1397
85-1399

Craft vs State

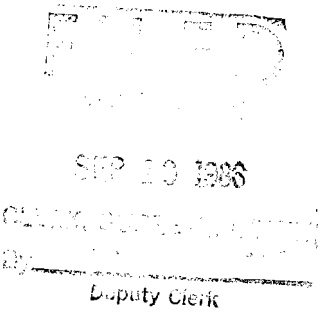
ANDREW LAWRENCE YOUNG,
JAMES ALLEN TAYLOR,
WILLIE RAY BURTON, and
MICHAEL FRANCHINI,

Petitioners,

VS.

STATE OF FLORIDA,

Respondent.
_____/



PETITIONERS' REPLY BRIEF

Respectfully Submitted,

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CITATION OF AUTHORITY

(CASES CITED)

(OTHER AUTHORITIES)

SUMMARY OF REPLY ARGUMENT

Petitioners' agree with a large portion of the Respondent's Brief, especially that the failure to give a statutory warning about the penalty for refusal to take a breath test consequences not being a prerequisite to the admissibility of the test results. (See Sambrine v. State, 386 So 2d 546 (Fla. 1980).) Your Petitioners also agree that Pardo v. State, 429 So 2d 1313 (Fla. 5th D.C.A. 1983), holds that test results are admissible even where no warning is given; however, your Petitioners dispute therefore, any warning, no matter how incorrect, cannot bar the inadmissibility of test results. (See Washington v. Whitman County District Court, 714 P 2d 1183 (Wash. 1986).

The Fifth District Court of Appeal in its opinion in this case held that our Florida Supreme Court did not mean to say that a Defendant had a "right to refuse" to submit to a chemical test in Sambrine. Fifth District held that what this Court meant was that an individual has an option to chose whether or not to submit to such a test and that the option can not be equated to a legal right. The Fifth District Court of Appeals ignored the title of Florida Statute 322.61.

The State of Florida in its response, rather than try and reword Sambrine, chose to ignore it.

There does exist a statutory right to refuse to submit to a chemical test to determine blood alcohol content.

ARGUMENT ISSUE I

INFORMING THE PETITIONERS THAT THEY DID NOT HAVE A RIGHT TO REFUSE THE CHEMICAL BREATH TEST, DENIED THEM THE OPPORTUNITY OF EXERCISING AN INTELLIGENT JUDGMENT WHETHER TO SUBMIT TO AN EVIDENTIARY BREATH TEST.

The pointed, limited issue presented by this consolidated appeal is simply "does there exist a right to refuse a chemical test?" If such a right to refuse a chemical test does exist, was the warning read to each of the Petitioners misleading, thereby denying each the opportunity to make a knowing and intelligent decision whether to submit an evidentiary breath test?

This Court on prior occasions, has very plainly stated that there does exist a right to refuse chemical tests and that the right is a creature of the Legislature, establishing protections greater than those afforded by the Constitution Of The United States. (See Sambrine v. State, 386 So 2d 546 (Fla. 1980); Smith v. State, 378 So 2d 281 (Fla. 1979)).

There is no provision, nor is it argued, that one must be informed of his right to refuse. (Sambrine pg 569). The consequences of refusing to submit to a chemical test are only important to those who refuse to take the test; therefore, the explanation of those consequences need only be given to those who refuse.

In Washington v. Whitman County District Court, 714 P 2d 1183 (Wash. 1986), the entire Supreme Court of Washington was called upon to determine whether or not the results of various breathalyzer tests were properly suppressed. A group of individuals had had their chemical breath test results suppressed, they fell into one of two groups. One group was informed by the officer that their refusal to take the test may be used against them in any subsequent criminal trial. The other group was informed that their refusal to take the test shall be used against them in any subsequent criminal trial. Washington State's Implied Consent Statute requires that the officer shall warn the driver that his refusal to take the test may be used against him in any subsequent criminal proceeding.

Ruling that those who were informed that their refusal to take the test shall be used against in any subsequent criminal trial properly had the breath test results suppressed, the Supreme Court found that the warning was misleading and therefore denied them an opportunity for them to make an intelligent judgment. Those who were informed that their refusal may be used against in a subsequent proceeding were not misled and therefore had an opportunity to make an intelligent judgment whether to take the test, thereby making the breathalyzer test results admissible.

To categorically state to the Petitioners "you do not have the right to refuse to take the test...", no matter how it is thereafter qualified is undeniably erroneous and misleading.

The Respondent categorizes the Petitioners as civil libertarians and modern day epicureans whose formula for life is eat, drink, drive and be merry for tomorrow we die.

Perhaps the Respondent will now advise its law enforcement agency, supported by the Fifth District Court of Appeals, to give the following Implied Consent Warning:

> "You do not have the right to refuse to submit to this test, though you do have the option to so refuse, and if you do refuse your privilege to operate a motor vehicle will be suspended."

CONCLUSION

Petitioners do not contend that law enforcement need even advise them of Florida's Implied Consent law unless, and until, they have refused to submit to a chemical test. At that point, and at that point alone, should they be told that their privilege to operate a motor vehicle will be suspended for a period of six months if it is their first refusal or a period of twelve months if it is a second or subsequent refusal. The warning given to the Petitioners was not only erroneous and misleading, but also necessary unless they refused to submit to the test, and then the only warning necessary would be the consequences of such a refusal. The warning given produced a submission. The warning given was erroneous and misleading therefore the Petitioners were denied the opportunity to make a knowing and intelligent decision whether to submit to the breath test necessitating suppression of those tests and the affirmance by this Court of the County Court opinion.

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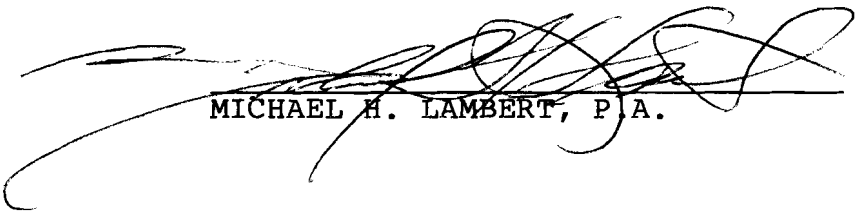
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to the Honorable John V. Doyle, Assistant State Attorney, 125 E. Orange Avenue, Daytona Beach, Florida; and to Eric Latinsky, Esquire, 326 1/2 South Beach Street, Suite 3, Daytona Beach, Florida, this 8th day of September, A.D., 1986.



MICHAEL H. LAMBERT, P.A.