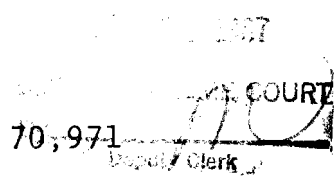


Ases

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
v.
PEDRO PEREZ,
Respondent.

Case no. 70,971



DISCRETIONARY REVIEW OF THE DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT

BRIEF OF PETITIONER ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF THE ARGUMENT.....	4
ISSUE I.....	5
WHERE A DRIVER OF A MOTOR VEHICLE IS INVOLVED IN A MOTOR VEHICLE ACCIDENT AND IS THE ONLY PERSON TO SUSTAIN BODILY INJURY, MAY A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT THE DRIVER IS UNDER THE INFLUENCE OF ALCOHOLIC BEVER- AGES OR CONTROLLED SUBSTANCES REQUIRE THE DRIVER TO SUBMIT TO A BLOOD TEST UNDER SECTION 316.1933(1) EVEN THOUGH THE DRIVER OBJECTS THERETO?	
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	8

TABLE OF CITATIONS

PAGE NO.

Carawan v. State,
12 F.L.W. 445 (Fla. Sept. 3, 1987).....6

S.R.G. Corp. v. Dept of Revenue,
365 So.2d 687 (Fla. 1978).....6

State v. Perez,
12 F.L.W. 1923 (Fla. 2d DCA Aug. 7, 1989).....3

State v. Prues,
478 So.2d 1196 (Fla. 4th DCA 1985).....6

Thayer v. State,
335 So.2d 815 (Fla. 1976).....6

OTHER AUTHORITIES CITED

FLORIDA STATUTES:

§316.1933(1), (1985).....3, 5, 6, 7

§316.1931(2)(a).....6, 7

§316.1931(2)(b).....6, 7

§316.1933, (1985).....4

PRELIMINARY STATEMENT

PEDRO LUIS PEREZ will be referred to as the "respondent" in this brief. The STATE OF FLORIDA will be referred to as the "petitioner." The record on appeal will be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On October 16, 1985, respondent was involved in a traffic accident with another car in Pinellas Park, Florida. (R 65) Officer Nover of the Pinellas Park Police Department arrived at the scene and observed respondent sitting on the ground at the corner of the intersection where the accident occurred. (R 66) Respondent was then being attended to by paramedics also called to the scene. (R 66)

Upon visual examination of respondent, Officer Nover "observed various injuries to Mr. Perez (respondent), one being a head wound that was sustained in the accident." Respondent "appeared dazed, and . . . wasn't really aware of a lot that was going on." (R 66) Respondent was bleeding profusely from his head wound. (R 72) The officer also observed extensive damage to the windshield of the vehicle where "it appeared as though Mr. Perez struck his head . . . on the driver's portion." (R 67, 16, 17) Respondent was the only one who sustained substantial injury as a result of the accident.

Officer Nover "noticed the smell of an alcoholic beverage on respondent's breath," and she felt that the injuries sustained by respondent "were serious." (R 67) The officer requested the paramedics to draw a blood sample from the respondent and advised respondent that she was doing so. (R 68) Respondent did not consent to this blood draw and failed to sign a consent form, but did state that he would consent to a pretest breathalyzer test. (R 69, 75 - 76, 1') Respondent was advised that the pretest was

not an option, and that blood would be drawn whether he consented or not. (R 69, 73) Respondent's blood was drawn and subsequent analysis resulted in a reading of .161 percent. (R 69)

Petitioner was charged by citation for driving under the influence as against 316.193(1), Fla. Stat. (1985). (R 1) Petitioner thereafter moved to suppress the results of the blood test. (R 11 - 12) The county court granted petitioner's motion, but certified the question to the second district as one of great public importance.

The state sought review in the second district on the certified question. The second district affirmed the lower court's holding in State v. Perez, 12 F.L.W. 1923 (Fla. 2d DCA Aug. 7, 1987), but certified the following question to this Court as one of great public importance:

WHERE A DRIVER OF A MOTOR VEHICLE IS INVOLVED IN A MOTOR VEHICLE ACCIDENT AND IS THE ONLY PERSON TO SUSTAIN BODILY INJURY, MAY A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT THE DRIVER IS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCE REQUIRE THE DRIVER TO SUBMIT TO A BLOOD TEST UNDER SECTION 316.1933(1) EVEN THOUGH THE DRIVER OBJECTS THERETO?

From the second district's holding, the state seeks review.

SUMMARY OF THE ARGUMENT

The state contends that the second district misinterpreted **§316.1933, Fla. Stat. (1985)**, and contends that the plain meaning of this section mandates its application to the respondent in this cause.

ARGUMENT

ISSUE I

WHERE A DRIVER OF A MOTOR VEHICLE IS INVOLVED IN A MOTOR VEHICLE ACCIDENT AND IS THE ONLY PERSON TO SUSTAIN BODILY INJURY, MAY A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT THE DRIVER IS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES REQUIRE THE DRIVER TO SUBMIT TO A BLOOD TEST UNDER SECTION 316.1933(1) EVEN THOUGH THE DRIVER OBJECTS THERETO?

The State contends that the second district misinterpreted §316.1933(1), Fla. Stat. (1985), in affirming the county court's order suppressing respondent's blood sample.

§316.1933(1), provides:

Notwithstanding any recognized ability to refuse to submit to the tests provided in §316.1932 or any recognized power to revoke the implied consent to such tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon a request of a law enforcement officer, to a test of his blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in §877.111 or controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. The term "serious bodily injury" means a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(emphasis added)

In affirming the county court's order, the second district

relied upon State v. Prues, 478 So.2d 1196 (Fla. 4th DCA 1985). In Prues, the fourth district held against the State on the same question as that presented sub judice by reading the word "another" into the pertinent part of **§316.1933(1)** which states:

. . . a motor vehicle driven by or in the actual physical control of a person under the influence . . .has caused the death or serious bodily injury of a human being . . .

478 So.2d at 1197.

The second district found the Prues decision to be the correct interpretation because **§316.1931(2)(a) and (b)**, (1985), provides for the type and degree of crime committed by a driver under the influence who causes serious bodily injury to another or causes damage to the property of another. The state disagrees with the second and fourth district's interpretation and contends that the only task in this instance is to determine legislative intent.

Legislative intent must be determined primarily from the language of the statute because the legislature is assumed to know the meaning of words and to have expressed its intent by the use of the words in the statute. See Justice Shaw's dissent in Carawan v. State, 12 F.L.W. 445, 449 (Fla. Sept. 3, 1987); S.R.G. Corp. v. Dept. of Revenue, 365 So.2d 687 (Fla. 1978); Thayer v. State, 335 So.2d 815 (Fla 1976). If the legislature had intended that **§316.1933(1)** should apply only to the death or serious bodily injury of another human being, it would have so stated.

Furthermore, the second district's reliance on **§316.1931(2)(a) and (b)** is misplaced because this section was re-

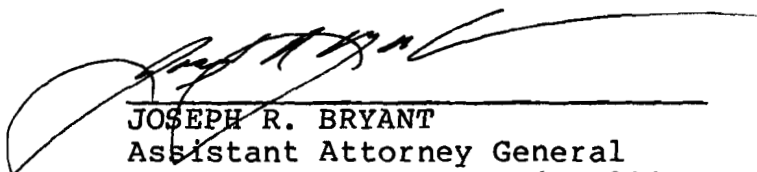
numbered and amended at the same time as the creation of §316.1933. See Ch. 82-155, Laws of Fla. (1982). Again, it seems obvious that the legislature intended for 316.1933(1) to apply to the death or injury of any human being where, after renumbering and amending §316.1931(2)(a) and (b) at the same time as enacting §316.1933(1), a conflicting result would foreseeably occur. Moreover, it is this Court's obligation to adopt an interpretation that harmonizes two related statutory provisions while giving affect to both. The second district's decision in this case must therefore be reversed.

CONCLUSION

Based on the above stated facts, arguments and authorities, petitioner would ask that this Honorable Court reverse the order of the lower court.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Officer of the Public Defender, Criminal Court Complex, 5100 - 144th Avenue North, Clearwater, Florida 33520, this 14th day of September, 1987.



OF COUNSEL FOR APPELLEE.