

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

STATE OF FLORIDA, :
Petitioner, :
vs. :
PEDRO PEREZ, :
Respondent. :
_____ :

SEP 23 1987
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FLORIDA SUPREME COURT
Deputy Clerk

Case No. 70,791

ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

RESPONDENT'S BRIEF ON MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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TOPICAL INDEX

	<u>PAGE</u>
STATEMENT OF THE CAES AND FACTS	1
SUMMARY OF ARGUMENT	1
<u>ISSUE</u>	
THE STATUTORY INTERPRETATIONS PREVIOUSLY RENDERED <u>SUB JUDICE</u> FOLLOWING WELL-ESTABLISHED RULES OF CONSTRUCTION, CORRECTLY STATE THE LEGISLATIVE INTENT OF SECTION 316.1933(1), AND SHOULD BE AFFIRMED.	2-7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

CITATIONS OF AUTHORITIES

	<u>PAGE</u>
<u>Graham v. State</u> , 472 So.2d 464 (Fla. 1985)	4
<u>Hutchinson v. State</u> , 315 So.2d 546 (Fla. 2d DCA 1975)	4
<u>Jones v. State</u> , 356 So.2d 4 (Fla. 1977)	5
<u>State v. Llopis</u> , 257 So.2d 17 (Fla. 1971)	4
<u>U.S. v. Williams</u> , 71 S.Ct. 576, 341 U.S. 70 (1951)	4
<u>OTHER AUTHORITIES</u>	
316.1933(1), Florida Statute	1

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts except as noted within the argument portion of this brief.

SUMMARY OF ARGUMENT

Petitioner's interpretation of 316.1933(1) has been ruled untenable by the trial court and by two District Courts of Appeal. That interpretation requires adding one phrase to the statute as implied language, while deleting another passage as mere surplusage. That interpretation, involving such addition and deletion, creates ambiguities in a statute previously found to be clear, concise and plain in meaning. Moreover, since the statute is penal in nature, any such ambiguities, even if extant, must be construed in favor of the accused.

ISSUE

THE STATUTORY INTERPRETATIONS
PREVIOUSLY RENDERED SUB JUDICE
FOLLOWING WELL-ESTABLISHED RULES
OF CONSTRUCTION, CORRECTLY STATE
THE LEGISLATIVE INTENT OF SECTION
316.1933(1), AND SHOULD BE AFFIRMED.

The sole issue in the petition is the one certified by the Second District Court of Appeal as being one of great public importance. That issue is whether the statute allows police to force an automobile driver to submit to mandatory blood alcohol testing where only the driver of the car is injured in an accident, as the petitioner argues as the correct, and liberally construed, interpretation. The matter is important because without a decision rendered by this Honorable Court, that erroneous interpretation of law may be given effect by the District Courts which have yet to address the issue. An opinion by this Honorable Court affirming the rulings, sub judice, would act to prevent such potential injustice before it occurs.

The Second District Court's opinion in this case, interpreting the legislative intent of 316.1933(1), is eminently correct and should be affirmed. That interpretation mandates the forced submission to blood alcohol tests only where death or serious injury occurs to someone other than the driver of a car involved in an accident. That interpretation is clearly the plain intent of the words of 316.1933(1), which interpretation

has been given effect by the trial court, sub judice, by the Second District Court of Appeal and by the Fourth District Court of Appeal. On the other hand: "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." Petitioner's brief, page 6.

Petitioner is perfectly correct in that assertion. However, that determination has already been made. Where petitioner errs is in his assertion that "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." Id, emphasis added. Petitioner then takes a perfectly clear statute and begins creating ambiguities. Petitioner argues that the plain meaning of the statute mandates forced testing, even if only the driver is injured, despite the fact that one trial court and two district courts have ruled otherwise. The analysis of the case provided by the Second District Court of Appeal can withstand petitioner's attack on its own merits: however, the respondent presents the following argument for this Honorable Court's consideration, joining the trial court and the Second District Court and Fourth District Courts in opposition of petitioner's proposed interpretation.

In support of his liberal interpretation of 316.1933(1), Petitioner cites one well known principle of statutory

construction: "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." Id. But petitioner ignores numerous other rules of construction. The most obvious and long-standing rule of construction not cited is that penal statutes must be strictly construed. What petitioner seeks is to extend and expand the meaning of a penal statute, beyond the clearly-worded intent of the legislature.

Criminal statutes should be given the meaning their language most obviously invites and should not be extended to conduct not clearly within their terms. U.S. v. Williams, 71 S.Ct. 576, 341 U.S. 70 (1951). A statute penal in nature must be strictly construed according to the letter thereof, and strictly construed in favor of the person against whom the penalty is sought to be imposed. State v. Llopis, 257 So.2d 17 (Fla. 1971). When the language of a statute is clear, plain and without ambiguity, effect must be given to it accordingly; where the language has a definite and precise meaning, courts are without power to extend that meaning. Graham v. State, 472 So.2d 464 (Fla. 1985). Statutes creating and defining crimes cannot be extended by construction or interpretation to punish an act unless such is clearly within the intent and terms of the statute. Hutchinson v. State, 315 So.2d 546 (Fla. 2d DCA 1975). Ambiguous

criminal statutes must be strictly construed, and when the language is susceptible of different construction it must be construed most favorably to the accused. Jones v. State, 356 So.2d 4 (Fla. 1977).

Section 316.1933(1) as written is clear, plain and without ambiguity. It is only the petitioner's tenuous reasoning which can render the statute even arguably ambiguous. But even if such an ambiguity can be recognized as extant, that newly-created obfuscation must still be construed most favorably to the accused. The act of creating a statutory ambiguity cannot override longstanding tenets of statutory construction.

The statute provides, in pertinent part, that a police officer can force submission to a blood alcohol test where he has probable cause to believe that a car driven by "a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being..." The petitioner submits, contrary to the plain meaning of the statute and to the statutory interpretation already noted, that the cited passage includes the implied phrase, "including the driver." That is, while the statute does not expressly include the wording forwarded by the petitioner, those words as implied mean that police may require the drawing of blood in an accident suspected of being caused by drunken driving, even if only the driver is hurt or killed. The purpose of drawing such blood is

clearly penal in nature, designed to provide police with evidence so that the driver may be convicted. But if the driver is killed, certain portions of the statute must be ruled to be mere statutory surplusage as a patent absurdity.

According to the petitioner's reading of the statute in such a situation, where a death has been caused, blood must be drawn so that the culprit may be punished. Where the driver is both culprit and sole victim, he must not only endure death, he also faces criminal trial (presumably in absentia) for drunken driving. The police must draw blood from the corpse so that that corpse can be charged and prosecuted for a crime. Such a reading is, to say the least, highly attenuated. Such a reading must of necessity render the words, "has caused the death...of a human being," to be mere surplusage, when applied to the driver of the car, as patently absurd. Thus, petitioner's requested reading of the statute would add one phrase, ostensibly implied, while another passage must be deleted as patently absurd and "mere surplusage," in the event death occurs to the driver, unless the state intends to prosecute the driver, posthumously, for causing the death of the himself by drunken driving. That is not interpretation, but reconstruction.

The petitioner's interpretation creates ambiguities, rather than resolves them. The jurisprudential gymnastics requested by the petitioner are unnecessary; the plain meaning of the statute

has been given effect by the prior rulings noted, sub judice. If the petitioner feels that the law should be as he proposes, the proper avenue for such drastic reconstruction of the statute is through the Legislature, not the courts.

CONCLUSION

In light of the foregoing reasons, arguments and authorities, Appellant respectfully asks this Honorable Court to affirm the order of the lower court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Joseph R. Bryant, Assistant Attorney General, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, Florida 33602, September 23, 1987.

Respectfully submitted,



Brad Permar
Assistant Public Defender