

IN THE SUPREME COURT OF FLORIDA

CASE NO. 74,874

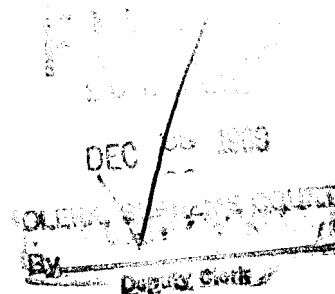
THE STATE OF FLORIDA,

Petitioner,

vs.

RICHARD S. PARSONS,

Respondent.



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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL OF  
FLORIDA, THIRD DISTRICT

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BRIEF OF RESPONDENT ON THE MERITS

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BRIEF OF RESPONDENT ON THE MERITS

INTRODUCTION

Petitioner, the State of Florida, was the appellant in the district court of appeal, and the prosecution in the County Court. Respondent, Richard Parsons, was the appellee in the district court of appeal and the defendant in the County Court. In this brief of respondent on the merits, all emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the petitioner's Statement of the Case and Facts as a substantially accurate account of the proceedings below.

SUMMARY OF ARGUMENT

Florida Marine Patrol Officers are not listed in Section 316.640, Florida Statutes (1987), which lists the law enforcement officers granted the power to enforce the traffic laws, and therefore Florida Marine Patrol Officers do not have such power. Section 370.021(5), Florida Statutes (1987) does not in any way alter this conclusion, for the provisions contained therein only give the Marine Patrol the limited authority to arrest for violations of those laws under its jurisdiction. Furthermore, even if Marine Patrol officers were deemed to have the full arrest powers of law enforcement officers by virtue of Section 370.021(5), they still would not have the power to stop and cite drivers for noncriminal traffic infractions. This is so because to the extent that there appears to be a conflict between the general grant of law enforcement powers to the Marine Patrol in Section 370.021(5), and the specific grant of the authority to enforce the traffic laws to a specific group of officers not including Marine Patrol officers in Section 316.640, the specific grant of authority in Section 316.640 controls.

The state's reliance upon Section 901.15, Florida Statutes (1987) is also misplaced. Section 901.15 is not a grant of authority to make an arrest to any particular law enforcement officer. It simply allows law enforcement officers who are otherwise authorized to make an arrest, to do so in certain circumstances without having to first obtain a warrant.

If Marine Patrol Officers wish to enforce the traffic laws, section 316.640 will have to be amended.

## ARGUMENT

FLORIDA MARINE PATROL OFFICERS DO NOT HAVE THE POWER TO DETAIN AND CITE DRIVERS FOR NON-CRIMINAL TRAFFIC INFRACTIONS BECAUSE SUCH OFFICERS ARE NOT LISTED IN THE STATUTE WHICH VESTS THE POWER TO ENFORCE THE TRAFFIC LAWS OF THIS STATE.

The District Court of Appeal, Third District, has certified the following question to this Court:

Do officers of the Florida Marine Patrol have authority to detain and cite drivers for noncriminal traffic infractions?

State v. Parsons, 549 So.2d 761, 765 (Fla. 3d DCA 1989).

The answer to this question is found in Section 316.640, Florida Statutes (1987), which clearly and unambiguously grants the authority to enforce the traffic laws of this state as follows:<sup>1</sup>

**316.640.** Enforcement

The enforcement of the traffic laws of this state is vested as follows:

(1) State.-

(a) The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles has authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

(b) The Department of Transportation has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

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<sup>1</sup> The portions of Section 316.640 which authorize the employment of parking enforcement specialists and traffic accident investigation officers are omitted as those portions are not relevant to the issue in this case.

**(2) Counties.-**

(a) The sheriff's office of each of the several counties of this state shall enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the county wherever the public has the right to travel by motor vehicle. In addition, the sheriff's office may be required by the county to enforce the traffic laws of this state on any private or limited access road or roads over which the county has jurisdiction pursuant to a written agreement entered into under § 316.006(3)(b).

\* \* \* \*

**(3) Municipalities.-**

(a) The police department of each chartered municipality shall enforce the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the municipality wherever the public has the right to travel by motor vehicle. In addition, the police department may be required by a municipality to enforce the traffic laws of this state on any private or limited access road or roads over which the municipality has jurisdiction pursuant to a written agreement entered into under § 316.006(2)(b). However, nothing in this chapter shall affect any law, general, special, or otherwise, in effect on January 1, 1972, relating to "hot pursuit" without the boundaries of the municipality.

\* \* \* \*

**(4) Mobile home park recreation districts.-** Notwithstanding subsection (2) or subsection (3), the sheriff's office of each of the several counties of this state and the police department of each chartered municipality have authority, but are not required, to enforce the traffic laws of this state on any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district which has been created under § 418.30 and the recreational facilities of which district are open to the general public.



(5) **Construction of chapter 87-88, Laws of Florida.**- For purposes of traffic control and enforcement, nothing in chapter 87-88, Laws of Florida, shall be construed to classify any road which has been dedicated or impliedly dedicated for public use, and which has been constructed and is open to the use of the public for vehicular traffic, as a private road or driveway.

It is readily apparent that Florida Marine Patrol Officers are not listed in the foregoing statute as law enforcement officers vested with the power to enforce the traffic laws of this state. Based on this omission, the district court concluded that Marine Patrol officers may not stop and cite drivers for noncriminal traffic infractions. The district court reached this result by applying "the general rule of construction that statutes purporting to confer governmental and particularly criminal authority are to be strictly construed, 49 Fla.Jur.2d Statutes §§ 195, 196 (1984); and the familiar doctrine of *expressio unius est exclusio alterius*, which is simply to the effect that a statutory reference to particular items implies the exclusion of similar matters which are not mentioned. E.g., State v. Diers, 532 So.2d 1271 (Fla. 1988) (adopting State v. Weston, 510 So.2d 1001 (Fla. 3d DCA 1987); Thayer v. State, 335 So.2d 815 (Fla. 1976)." Application of these rules of statutory construction led the district court to the following conclusion:

In light of these principles, it seems clear that the studied inclusion of various kinds of law enforcement officers in section 316.640, Florida Statutes (1987), which deals specifically with the precise subject matter of this case, the enforcement of the traffic laws of our state, 49 Fla.Jur.2d Statutes § 126 (1984), clearly excludes the possibility of providing such authority to Marine Patrol officers who are just as clearly not mentioned.

549 So.2d at 764 (footnotes omitted).

In this Court, as it did in the district court, the state seeks to avoid this seemingly obvious result by relying upon Section 370.021(5), Florida Statutes (1987), which provides in pertinent part as follows:

POWERS OF OFFICERS.---The department may designate such employees of the several divisions, as it may deem necessary in its discretion, as law enforcement officers, who shall meet the provisions of s. 943.13(1)-(10) and have the powers and duties conferred in this subsection, except that such employees shall comply with the provisions of Chapter 943. Such officers, together with the executive director, and the Director of the Division of Law Enforcement, are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules and regulations of the department under their jurisdiction and for violations of Chapter 253 and the rules and regulations promulgated thereunder. The general laws applicable to arrests by peace officers of this state shall also be applicable to such law enforcement officers ... Such law enforcement officers may arrest any person in the act of violating ... any of the laws of this State.

The district court rejected the state's argument that the foregoing provision empowered Marine Patrol officers to stop and cite automobile drivers for noncriminal infractions because the provision is clearly confined to laws and rules under the jurisdiction of the Florida Marine Patrol. A review of Chapter 370 fully supports the conclusion reached by the district court. Chapter 370 is entitled "Saltwater Fisheries". It proscribes numerous offenses related to saltwater fisheries. Section 370.021 is entitled "Administration; rules publications, records; penalty for violation of chapter; injunctions."

Subsection (2) of section 370.021 establishes penalties for commission of the offenses proscribed in Chapter 370.

When subsection (5) of section 370.021 is viewed in this context, its limited scope is apparent. Subsection (5) states that Marine Patrol officers are constituted law enforcement officers and granted the power to investigate and arrest "for any violation of the laws of this state and the rules and regulations of the department under their jurisdiction". The jurisdiction of the Marine Patrol is offenses such as those proscribed in the other sections of Chapter 370.

The amendment of Section 370.021(5) by Chapter 75-181, Laws of Florida, did not extend the arrest power of the Marine Patrol beyond their limited jurisdiction. The qualifying phrase "under their jurisdiction" was left untouched by the amendment. Chapter 75-181 did change another portion of subsection (5) dealing with the arrest powers of the Marine Patrol. Prior to the amendment, subsection (5) provided that the Marine Patrol "may arrest any person in the act of violating any of the provisions of this law, rules or regulations of the department, or the provisions of chapter 253 and the rules and regulations promulgated thereunder." As amended by Chapter 75-181, the subsection provides that the Marine Patrol "may arrest any person in the act of violating any of the provisions of this law, rules or regulations of the department, or the provisions of chapter 253 and the rules and regulations promulgated thereunder, or any of the laws of this state."

A comparison of the provision before and after the amendment reveals the purpose of the amendment. Before the amendment, the provision seemed to limit the arrest power of the Marine Patrol to violations of Chapters 253 and 370, as well as the rules and regulations of the department. After the amendment it is clear that the Marine Patrol has the power to arrest not just for violations of Chapters 253 and 370, but for violations of any statutes within their jurisdiction. Examples of such statutes can be found in the provisions of Chapters 327 and 328 which regulate the safety and licensing of marine vessels. Section 327.70, Florida Statutes (1987) specifically places the enforcement of these laws within the jurisdiction of the Marine Patrol, and therefore under Section 370.021(5), as amended by Chapter 75-181, Marine Patrol officers have the power to arrest for violations of Chapters 327 and 328.

Thus, contrary to the state's contention, Section 370.021(5) only gives the Marine Patrol the limited authority to arrest for violations of those laws under its jurisdiction. Furthermore, even if Marine Patrol officers were deemed to have the full arrest powers of law enforcement officers by virtue of Section 370.021(5), they still would not have the power to stop and cite drivers for noncriminal traffic infractions. Again, a well-established principle of statutory construction compels this result. In the event of an apparent conflict between a statute covering a particular subject matter and a general statutory provision covering the same and other subjects in general terms, the statute covering the particular subject matter controls. 49

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Fla. Jur. 2d § 182. Thus, to the extent that there appears to be a conflict between the general grant of law enforcement powers to the Marine Patrol in Section 370.021(5), and the specific grant of the authority to enforce the traffic laws to a specific group of officers not including Marine Patrol officers in Section 316.640, the specific grant of authority in Section 316.640 controls.

This result fully comports with logic and common sense. By virtue of Section 316.640, the legislature has clearly chosen to vest only certain law enforcement officers with the power to enforce the traffic laws. The fact that the legislature in a totally different statute declares that Marine Patrol officers are law enforcement officers in no way indicates a determination by the legislature to include Marine Patrol officers in the group specifically delineated in Chapter 316. There is simply no basis to conclude that anything in Chapter 370 dealing with saltwater fisheries is in any way intended to effect the specific provisions of Section 316.640, a part of Chapter 316 entitled "State Uniform Traffic Control". If the legislature intended to give the Marine Patrol the power to enforce the traffic laws, the logical way to do so would be to add Marine Patrol officers to the list of officers set forth in Section 316.640.<sup>2</sup>

The decisions of the Fourth District Court of Appeal in

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<sup>2</sup> There is no apparent reason why Marine Patrol officers should be given the power to enforce the traffic laws. There is no indication that the officers delineated in Section 316.640 are not capable of enforcing the traffic laws. Furthermore, it would seem that the limited resources of the Marine Patrol should be fully directed toward enforcement of the marine laws within their jurisdiction.

Dodds v. State, 434 So.2d 940 (Fla. 4th DCA 1983) and State v. Howard, 411 So.2d 372 (Fla. 4th DCA), rev. denied, 421 So.2d 517 (Fla. 1982), do not support the state's position. Those two decisions involve Section 372.07(1), Florida Statutes (1987), which in pertinent part provides:

372.07 Police powers of commission and its agents.---

(1) The Game and Fresh Water Fish Commission, the director and his assistants designated by him, and each wildlife officer are constituted peace officers with the power to make arrests for violations of the laws of this state when committed in the presence of the officer or when committed on lands under the supervision and management of the commission.

Based upon this provision, the Fourth District concluded that wildlife officers had the power to make arrests for violations of narcotics laws committed in their presence or on lands under their supervision.

Dodds and Howard are distinguishable from the case at bar in two respects. First, the grant of arrest powers to wildlife officers in Section 372.07 does not contain the qualifying clause "under their jurisdiction" which is found in Section 370.021(5). Thus, it would appear that the arrest powers granted to wildlife officers in Section 372.07 are broader than the arrest powers granted to Marine Patrol officers in Section 370.071.

Second, Dodds and Howard do not involve the power to enforce the traffic laws, and therefore the fact that wildlife officers are not listed in the specific grant of power made in Section 316.640 was not an issue in those cases. Both Dodds and Howard

involved the enforcement of the narcotics laws by wildlife officers. There is no statute restricting the power to enforce the narcotics laws to only certain law enforcement officers, and therefore no basis exists to hold that wildlife officers lack the authority to enforce the narcotics laws. As there is a specific statute vesting the power to enforce traffic laws in only certain law enforcement officers, the issue in this case is markedly different from the issue presented in Dodds and Howard.

The state's reliance upon Section 901.15, Florida Statutes (1987) is equally misplaced. Section 901.15 simply sets forth the circumstances which allow a law enforcement officer to arrest a person without a warrant, as opposed to those situations in which a law enforcement officer is required to secure a warrant before arresting a person. Section 901.15 is not a grant of authority to make an arrest to any particular law enforcement officer. It simply allows law enforcement officers who are otherwise authorized to make an arrest, to do so in certain circumstances without having to first obtain a warrant.<sup>3</sup>

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<sup>3</sup> The failure to recognize the proper scope of Section 901.151 led an assistant attorney general to erroneously conclude in Attorney General Opinion, 072-165, May 18, 1972, that constables and justices of the peace had the power to enforce the traffic laws even though they were not specifically listed in section 316.016, Florida Statutes, the predecessor to current section 316.640. This erroneous conclusion was also based upon the fact that various sections in Chapter 316 referred to "peace officers", and constables and justices of the peace were considered to be peace officers. The assistant attorney general who prepared the opinion, much like the assistant attorney general who prepared the brief of petitioner in the present case, failed to recognize that simply being designated a peace officer or a law enforcement officer does not confer the authority to enforce the traffic laws because by virtue of Section 316.640, the legislature has clearly chosen to vest only certain law enforcement officers with the power to enforce those laws.

Section 316.640 is clearly the statute which controls the issue in this case, and that statute just as clearly does not authorize Marine Patrol Officers to enforce the traffic laws of this state. If Marine Patrol Officers wish to enforce the traffic laws, section 316.640 will have to be amended.



CONCLUSION

Based on the foregoing facts, authorities and arguments, respondent respectfully submits that the question certified by the district court should be answered in the negative, and that the decision of the district court be affirmed.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, 401 N.W. Second Avenue, Miami, Florida 33128, this 22nd day of December, 1989.

  
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HOWARD K. BLUMBERG  
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