IN THE SUPREME COURT OF FLORIDA

FLORIDA POLICE BENEVOLENT, ASSOCIATION, INC.,

Petitioner,

vs.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,

Respondent.
_____/

CASE NO. 75,621

FIRST DISTRICT
89-11239

On Review from the District Court of Appeal, First District, State of Florida

RESPONDENT'S REPLY BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

Sections 570.151 and 901.15, Florida Statutes (1988), combine to create the issue of this case.

Primary of these is Section 570.151 because it creates the particular law enforcement officer as to which this appeal focuses. While legislatively vesting in these "road guard inspection special officers" the authority to make arrests, this statute limits the power and authority to a list of specific laws. The Legislature was compelled, we argue, to limit these special officers thusly because it had conferred upon them in Section 570.15 the unique and awesome power to search without warrant. The police power purposes warranted that grant, but no consideration can justify coupling the power of warrantless search with the power to arrest without a warrant for any felony uncovered by the warrantless search.

The other statute essential to our issue is Section 901.15. Without mentioning "road guard inspection special officers," this statute was adopted as a part of an omnibus crime prevention package which outlines, among other things, circumstances under which "a law enforcement officer" may arrest a person without a warrant.

The parties agree that the "road guard inspection special officers" of the Respondent. are "law enforcement officers.'' It is also agreed that the language of both pivotal statutes is clear, unambiguous and conveys a clear and definite meaning.

Therefore, our search narrows to a single question, "Should Section 901.15 cancel the special limitations to arrest found in Section 570.151(2)?" This Court should presume that the Legislature was aware of each statute when the other was passed. Woodaate Development Corp. V. Hamilton Investment Trust, 351 So. 2d 14 (Fla. 1977). Having done so, an interpretation of each statute should be favored which gives a field of operation to both. Oldham V. Rooks, 361 So. 2d 140 (Fla. 1978). No court would sanction an arrest consequent *of* a random search without a warrant. The Legislature certainly understood how constitutionally impermissible it would be when these "special officers" were constrained as tightly as they were.

The First District relied, in part, on State V. Parsons, 549 So. 2d 761 (Fla. 3d DCA 1989), and referenced it as representing "an analogous situation." In squirming to distinguish it from this case, Petitioner uses a bit of slight-of-hand which should not be relied upon. In the last paragraph on page 13 of the Initial Brief, it is represented that, "The Legislature affirmatively removed the potentially limiting language concerning the special officers' arrest authority from Section 570.150(2) and ..." THAT SIMPLY IS NOT TRUE! A cursory glance at the pertinent subsection, quoted for convenience on page 4 of this Brief, reveals that instead of being "affirmatively removed," as Petitioner suggested, the referenced Section 570.15 has been emphasized.

ARGUMENT

DOES THE WARRANTLESS FELONY ARREST AUTHORITY CONFERRED UPON LAW ENFORCEMENT OFFICERS, BY SECTION 901.15(11), FLORIDA STATUTES (SUPP. 1988), APPLY TO THE ROAD GUARD INSPECTION SPECIAL OFFICERS EMPLOYED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES?

This is a significant case of statutory interpretation, The legislative intent is expressed in the substance of the two statutes implicated by this struggle. The controversy is presented because two equally clear statutes passed during the same legislative session bear upon the issue.

For convenience, we present an appropriate segment of Section 901.15:

> **901.15 When arrest by officer without warrant is** lawful.--A law enforcement officer may arrest a person without a warrant when:
>
> (1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
>
> (2) A felony has been committed and he reasonably believes that the person committed it.
>
> (3) He reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
>
> (4) A warrant for the arrest has been issued and is held by another peace officer for execution.
>
> (5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit.
>
> (6) He has probable cause to believe that the person has knowingly committed an act of domestic violence in violation of a domestic violence injunction for protection entered pursuant to s. 741.30.

* * *

This Act applies to all law enforcement officers, and for the purposes of this brief, it can be taken that the special road guard officers of the Appellee are "law enforcement officers" as defined by Section 943.10, Florida Statutes (1988). If the quoted felony arrest statute is construed so as to disregard the critical limitations to the arrest power of the special road guard officer, we will have created a situation where one person can SEARCH without a warrant and ARREST without a warrant for whatever is found as a consequence of the warrantless search. The sole function of these special road guard officers is to search for infractions of food and agricultural laws of Florida.

The other statute is not of general application but empowers only the special road guard officers involved in this controversy. For convenience, it is quoted as follows:

> **570.151 Appointment and duties of road guard inspection special officers.--**
>
> (1) The department may appoint road guard inspection special officers in sufficient number to carry out the duties of the department relating to road guard inspection as prescribed in this section. Such officers shall be known as "road guard inspection special officers." Each such special officer shall be covered by a public employee's faithful-performance-of-duty bond with a corporate surety authorized to do business in this state, in the amount of $1,000, to be approved by the department, conditioned upon the faithful performance of his duties, and payable to the Governor.
>
> (2) All such special officers shall have power and authority to make arrests, with or without warrants as provided in s. 570.15 and all other laws relating to livestock, citrus and citrus products, tomatoes, limes, avocados, plants, and other horticultural products and any section with respect to which any authority is conferred by law on the department, to the same extent and under the same limitations and duties as do peace officers

> under the provisions of chapter 901; and all such special officers shall have the right and authority to carry arms while on duty, provided such officers meet the requirements of the Criminal Justice Standards and Training Commission established under s. 943.13, The compensation of such special officers shall be fixed and paid in accordance with the state classification and pay plan for career service employees. (Emphasis supplied)
>
> * * *

Both of the quoted statutes were adopted by the 1988 Session of the Legislature. There is no evidence or issue as to which actually became law sooner. Section 901.15 was part of an omnibus bill dealing with crime prevention generally. (See, Appellant's Appendix A-4.) Section 570.151 was part of a marketing bill and dealt only with the duties of these special officers. (See, Appellant's Appendix A-1.) It further limited the power of arrest by adding specificity to the arena of the law in which these officers shall have the power of arrest. The Legislature rephrased the reference to Section 570.15 and added, "... and all other laws relating to livestock, citrus and citrus products, tomatoes, limes, avocados, plants and other horticultural products and any section with respect to which any authority is conferred by law on the department..." That the power of arrest granted to these officers is limited to arrests only for violations of the food and agricultural laws enumerated above is supported by the doctrines of "expressio unius est exclusio alterius" and "ejusdem generis." Peeples v. State, 35 So. 223 (Fla. 1903); Van Pelt v. Hilliard, 78 So. 693 (Fla. 1918). Accordingly, it is illogical to say that the grant of power of arrest for violations of laws relating to livestock, citrus and citrus products, tomatoes, 'limes, etc. is broadened to felony arrest power by a statute that does not refer to the officers so limited.

It is true that courts should attempt to harmonize statutes so as to give meaning and a field of operation to both. Woodgate Development Corp. v. Hamilton Investment Trust, 351 So. 2d 14 (Fla. 1977); Oldham v. Rooks, 361 So. 2d 140 (Fla. 1978). If these two statutes are so harmonized, the law enforcement function will continue to be performed exactly as it has during all time since the passage of Section 901.15. Each Act, therefore, will have its field of operation, for the special officers of Appellee do not exercise felony arrest powers granted by Section 901.15.

Even more persuasive in this controversy is the case of Dept. of Health & Rehabilitative Services v. American Healthcorp of Vero Beach, Inc., 471 So. 2d 1312 (Fla. App. 1st DCA 1985). Here, the district restated the general rule of interpretation that when two statutes are inconsistent, a more specific statute covering a particular subject is controlling over a statutory provision covering the same subject in more general terms. The Supreme Court affirmed the First District by adopting the District Court's opinion. American Healthcorp of Vero Beach, Inc. v. Dept. of Health & Rehabilitative Services, 488 So. 2d 825 (Fla. 1986).

Petitioner closes the Initial Brief with a reference to Sparkman v. State, ex rel Bank for Ybor City, 71 So. 34 (Fla. 1916). Its specific applicability to a resolution of this issue was left to our imagination by Petitioner. In addition to stating some broad principles of law with which no one has ever quarreled, Sparkman, supra, gives a quick guide as to when a later Act might be deemed to supercede a prior Act. There is nothing in this record which either establishes or raises the issue as to which of these two statutes, Sections 570.151 or 901.15, was the "later Act." Since that is the only part of Sparkman highlighted by Petitioner, Respondent

suggests that it simply is not pertinent to this case, To the extent that one might argue that Sparkman seems to also favor an Act covering a broader general subject, it is advanced that the current and better view is clearly expressed in the opinion of the First District Court of Appeal in Department of Health & Rehabilitative Services v. American Healthcorp of Vero Beach, Inc., supra. This Court agreed and adopted that opinion of the First District in its per curiam decision at 488 So. 2d 825 (Fla, 1986). It is worthy of note that the First District Court of Appeal noted the contrast to Sparkman in its opinion.

CONCLUSION

Neither legislative enactment suffers one whit from the published opinion of Respondent. Established and time-honored rules of statutory reconciliation command affirmation.

Respectfully submitted this 12th day of April, 1990.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief on the Merits has been furnished to Gene "Hal" Johnson, Esquire, Post Office Box 11239, Tallahassee, FL 32301, by U.S. Mail, this 12th day of April, 1990.

ATTORNEY