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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,161

THE STATE OF FLORIDA,

Petitioner.

vs .

JAMIE STEMBER,

Respondent.

JUL 6 1990  
CLERK OF THE SUPREME COURT  
TALLAHASSEE, FLORIDA

\*\*\*\*\*

ON PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

BRIEF OF PETITIONER ON THE MERITS

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## INTRODUCTION

Petitioner, the State of Florida, was the prosecution in the trial court and the appellant in the Fourth District Court of Appeal. Respondent, Jamie Stember, was the defendant in the trial court and the appellee in the Fourth District Court of Appeal. All parties will be referred to as they stood in the lower court. The symbol "R" will be used to refer to the record on appeal. The symbol "SR" will be used to refer to the supplemental record.

STATEMENT OF THE CASE AND FACTS

On January 18, 1989, a Florida Marine Patrol Officer issued a uniform traffic citation to Appellee, Jamie Stember, for violation of Florida Statute §316.183(4). The uniform traffic citation states that the Marine Patrol Officer, Michael Raymond, paced Appellee driving in excess of 80 m.p.h. on Highway 595 at Hiatus Road, in Broward county, Florida (R-15).

Appellee moved to dismiss the uniform traffic citation in Broward County Court (R-17). Appellee's Motion to Dismiss stated: "there is no authority vested in the Florida Marine Patrol to issue citations for any violation occurring on a public highway" (R 17). Broward County Court Judge, Honorable Harvey Ford, granted Appellee's Motion to Dismiss on September 14, 1989 (R 27). In the order granting the Motion to Dismiss Judge Ford certified the following question as a matter of great public importance:

Is an officer of the Florida Marine Patrol, with full arrest powers as a licensed peace officer of this state authorized to issue a non-criminal traffic citation pursuant to Chapters 316 and 318 FLORIDA STATUTES?

(R 27, 30-31).

The State timely filed a Notice of Appeal (R 32).

The Fourth District Court of Appeal affirmed the trial court's order dismissing respondent's speeding citation. State v. Stember, 15 FLW 1461 (Fla. 4th DCA, May 30, 1990). The District Court of Appeal certified the following question:

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

The same question was certified in State v. Parsons,  
**549 So.2d 761** (Fla. 3rd DCA **1989**), rev. pending, (Fla. Case No.  
**74,879**). This brief is essentially the identical brief filed on  
behalf of the State of Florida in Parsons.

QUESTION PRESENTED

DO OFFICERS OF THE FLORIDA MARINE PATROL  
HAVE AUTHORITY TO DETAIN AND CITE  
DRIVERS IN FLORIDA FOR NONCRIMINAL  
TRAFFIC INFRACTIONS?



SUMMARY OF ARGUMENT

Section 370.021(5), Florida Statutes (1987) deems that Marine Patrol Officers are "law enforcement officers" and grants them the power to investigate and arrest for any violation of the laws of this State. The power includes the power to arrest for noncriminal traffic violations. Initially, law enforcement officers are specifically granted the authority to make such an arrest by §901.15(5), Florida Statutes (1987). Because Marine Patrol Officers are law enforcement officers by definition, they possess the same authority as any other law enforcement officer. In addition, noncriminal traffic violations are violations of the laws of this state and, therefore, are included within the powers granted in §370.021(5). Accordingly, the officer in the instant case properly stopped the defendant for committing a traffic violation.

## ARGUMENT

### OFFICERS OF THE FLORIDA MARINE PATROL HAVE AUTHORITY TO DETAIN AND CITE DRIVERS IN FLORIDA FOR NONCRIMINAL TRAFFIC INFRACTIONS.

The question for resolution in this case is whether Florida law grants Marine Patrol Officers the authority to stop and cite drivers for noncriminal traffic infractions. It is the State's contention that several Florida statutes clearly provide such power and, accordingly, the actions of the officer in the instant case were proper.

Section **370.021(5)** Florida Statutes (1987) sets forth the power of Marine Patrol Officers and 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 **§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 above section declares that Marine Patrol Officers are law enforcement officers and grants them the power to make arrests for any violation of the laws of this State.

The authority granted in **§370.021(5)** includes the authority to arrest for noncriminal traffic infractions, as such infractions clearly are violations of the laws of this state. Indeed, Section **901.15(5)**, Florida Statutes (1987), specifically provides that law enforcement officers have the power to arrest a person without a warrant when a violation of Chapter **316**, the traffic laws, has occurred in the officer's presence. The term violation contained in **§901.15(5)** includes both criminal and noncriminal traffic violations. Attorney General Opinion, **076-6**, January **8**, **1976**. As such, Marine Patrol Officers, who are constituted law enforcement officers, have clear statutory authority to arrest for noncriminal traffic violations. **§370.021(5)** and **901.15(5)**.

Notwithstanding the broad authority granted Marine Patrol Officers by the above mentioned statutory provisions, the District Court agreed with the trial court that Marine Patrol Officers do not have the authority to stop and cite drivers for noncriminal traffic infractions. This conclusion was made following review of Section **316.640 (1987)** which provides:

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.

(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).

(b) The sheriff's office of each of the several counties of this state may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under 8943.12.

1. A parking enforcement specialist employed by the sheriff's office of each of the several counties of this state is authorized to enforce all state and county laws, ordinances, regulations, and official signs governing parking within the unincorporated areas of the county by appropriate state or county citation and may issue such citations for parking in violation of signs erected pursuant to §316.006(3) at

parking areas located on property owned or leased by a county, whether or not such areas are within the boundaries of a chartered municipality.

2. A parking enforcement specialist employed pursuant to this subsection shall not carry firearms or other weapons or have arrest authority.

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 lot limited access road or roads over which the municipality has jurisdiction pursuant to a written agreement entered into under §316.002(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.

(b) The police department of a chartered municipality may employ as a traffic accident investigation officer **any** individual who successfully completes at least 200 hours of instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the commission, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident is authorized to issue traffic citations when, based upon

personal investigation, he has reasonable and probable grounds to believe that a person involved has committed an offense under the provisions of this chapter in connection with the accident. Nothing in this paragraph shall be construed to permit the carrying of firearms or other weapons, nor shall such officers have arrest authority other than for the issuance of a traffic citation as authorized above.

(c)1. A chartered municipality or its authorized agency or instrumentality may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under §943.12.

2. A parking enforcement specialist employed by a chartered municipality or its authorized agency or instrumentality is authorized to enforce all state, county, and municipal laws and ordinances governing parking within the boundaries of the municipality employing the specialist by appropriate state, county, or municipal traffic citation. Nothing in this paragraph shall be construed to permit the carrying of firearms or other weapons, nor shall such a parking enforcement specialist have arrest authority.

(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

6418.30 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.

Purporting to apply the rule of *expressio unius est exclusio alterius*, the district Court held that the inclusion of various kinds of law enforcement agencies in 6316.640, excludes the possibility of providing authority to enforce the traffic laws to Marine Patrol Officers, who are not included in the statute. While it is a general principle of statutory construction that the mention of one thing implies the exclusion of another, this principle does not operate in one statute to preclude the finding of authority granted in another. Indeed, application of this statutory principle to 6316.640 leads only to the implication that the legislature did not intend that Marine Patrol Officers have the authority to enforce the traffic laws of this state. This divined legislative intent is refuted by the legislature itself, however, where the legislature, in a separate statute makes Marine Patrol Officers law enforcement officers and grants them the full power to investigate and arrest for any violation of the laws of this state. §370.021(5). This authority, which is clear and absolute, precludes courts from reading by implication into a statute a meaning not intended by the legislature. 49 Fl.Jur.2d §124.

Indeed, 8316.640, formerly, 8316.016, merely sets forth the jurisdiction for various categories of officers. It does not limit the authority of any other law enforcement officers to carry out their statutory duties. In 1972, prior to the abolishment of constables and justices of the peace, the following legal question was propounded to the Attorney General:

DO JUSTICES OF THE PEACE AND CONSTABLES  
HAVE ANY AUTHORITY IN RELATION TO  
ENFORCEMENT OF TRAFFIC LAWS OF THE STATE  
OF FLORIDA?

The Attorney General opinion examined 8316.016 (currently 8316.640) and §901.15(5) and concluded that the question should be answered in the affirmative. Attorney General Opinion, 072-165, May 18, 1972. Thus, notwithstanding that neither constables nor justices of the peace were specifically listed in 8316.016, the opinion concluded that the arrest powers later granted in §901.15(5) authorized such an arrest.

Moreover, there is another rule of statutory construction that requires a finding that Marine Patrol Officers have the authority to cite drivers for traffic infractions. This rule provides that later statutory enactments control earlier ones. 49 Fla. Jur. 2d Statutes 8181. State v. Diers, 532 So.2d 1271 (Fla. 1988). 8316.640, formerly 8316.016, was enacted in Ch. 71-135, Laws of Florida (1971), as part of the "Florida Uniform Traffic Control Law" and delineated the respective powers of state and local authorities in the control of traffic.

At the same time §901.15(5), was created in Ch. 71-982, Laws of Florida (1971), which became effective January 1, 1972. This provision authorized arrests without a warrant by peace



officers when a person has committed a violation of the traffic laws in his presence. Thereafter, in 1975 the legislature expanded the authority of Marine Patrol Officers to permit arrests for any violation of the laws of the state. Ch. 75-180, Laws of Florida (1975). Thus, the last expression of the legislative will is that Marine Patrol Officers have the broad authority to arrest for any violation of the laws of this state. Accordingly, any perceived conflict between 8316.640 and §370.021(5) must be resolved in favor of the most recent legislative intent, the granting of broad authority to Marine Patrol Officers to arrest for any violation of the laws of this state.

As further support for the conclusion that Marine Patrol Officers do not have authority to arrest for noncriminal traffic violations, the District Court held that the provision granting Marine Patrol Officers the power to investigate and arrest is confined to laws and rules under the marine statutes. This conclusion is contrary to the clear reading of §370.021(5) which states:

Such law enforcement officers may arrest any person in the act of violating any of the provisions of this law, the rules or regulations of the department, the provisions of chapter 253 and the rules and regulations promulgated thereunder, or any of the laws of this state.

The latter provision, which as indicated earlier was added in 1975 by Ch. 75-180, is written in the disjunctive and indicates an alternative power, not one limited by the prior powers. See Sparkman v. McClure, 498 So.2d 892 (Fla. 1986); Telphase Society

of Funeral Directors & Embalmers, 334 So.2d 563 (Fla. 1976). The power granted Marine Patrol Officers is clear and unambiguous and encompasses all violations of the laws of this state.

A similar argument was made in State v. Howard, 411 So.2d 372 (Fla. 4th DCA 1982), where the defendant maintained that he was unlawfully arrested for possession of marijuana because the arresting Wildlife Officers did not have authority to arrest for offenses other than those relating to game, fish and wildlife. The Fourth District rejected the argument holding:

Commencing with the power to arrest, we refer first to Section 372.07(1), Florida Statutes (1979) which in 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.

To us this quoted subsection is perfectly clear and means exactly what it says, i.e. each wildlife officer has the power to make arrests for violations of the laws of this State when committed in his presence or when committed on lands under his supervision.

The defense argues that to take the above quoted subsection (1) by itself distorts the true picture and the said subsection must be considered in pari materia with the ensuing subsection (2) which grants wildlife officers the power to enforce "all laws relating to game, nongame birds, fresh water fish etc.

etc. . . .," and therefore restricts them to wildlife jurisdiction. However, that argument completely ignores the history of the present statute. The former statute similarly entitled, "Police Powers of Commission and its Agents" did in fact limit the power and authority of wildlife officers to the enforcement of wildlife laws. See Section 372.07, Florida Statutes (1969). However, the current version has added subsection (1) and we are convinced the purpose of that addition was to expand the power and authority of wildlife officers to encompass all violations of the law committed in their presence or on lands under their supervision.

[footnotes omitted].

State v. Howard, supra at 373-3-74.

See Attorney General Opinion 072-139, April 24, 1972; Dodds v. State, 434 So.2d 940 (Fla. 4th DCA 1983). The same analysis applies in the instant case where the legislature has granted even broader authority to Marine Patrol Officers. Section 370.021(5) is clear and the conclusion that the arrest powers of Marine Patrol Officers are limited to violations of the marine statutes is clearly erroneous. The legislature has declared that Marine Patrol Officers are law enforcement officers and that they have full arrest powers. There is nothing which exempts noncriminal traffic infractions from the power of arrest for violations of the law by Marine Patrol Officers. Indeed, noncriminal traffic infractions are violations of the law by definition. See §318.13(3), Florida Statutes (1987). Thus, all law enforcement officers, including Marine Patrol Officers, have statutory authority to arrest for noncriminal traffic violations. §901.15(5). See also §943.10(1), Florida Statutes (1987).

CONCLUSION

Based upon the foregoing reasons and citations of authority, the petitioner would urge that the decision of the District Court should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Brief of Petition on the Merits" has been forwarded by mail, to: **ANDREW L. SIEGEL**, Esquire, Counsel for Defendant/Appellee, 8751 W. Broward Blvd., Suite 108, Plantation, Florida 33324, this 5th day of July, 1990.



Of Counsel

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