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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,161

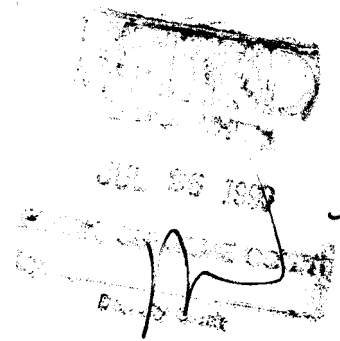
THE STATE OF FLORIDA

Petitioner.

vs .

JAMIE STEMBER,

Respondent.



ON PETITION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF RESPONDENT ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
POINT ON APPEAL	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	11
CERTIFICATE OF SERVICE	12

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Adam v. Culver</u> 111 So.2d 665 (Fla. 1959)	9
<u>Cheatem v. State</u> 416 So.2d 35 (Fla. 4 DCA 1982)	4
<u>Edwards vs. State</u> 462 So.2d 581 (Fla 4 DCA 1985)	4
<u>Ideal Farms Drainage Dist. v. Certain Lands</u> 154 Fla. 554. 19 So.2d 234 (1944)	6
<u>State v. Richard Parsons</u> 549 So.2d 761 (Fla. 3 DCA 1989)	4
<u>Van Pelt v. Hilliard</u> 75 Fla. 792, 78 So 694 (1918)	6
<u>Thaver v. State</u> 335 So.2d 815 (Fla 1976)	5, 6
<u>Vocelle v. Knight Bros. Paper So.</u> 118 So.2d 664 (Fla. 1 DCA 1960)	6
 <u>STATUTES</u>	
Florida Statutes 316.....	4, 5, 6, 8, 10
Florida Statutes 316.640.....	3, 5, 6, 7
Florida Statutes 370.....	10
Florida Statutes 370.021 & 370.021(5).....	7, 8
Florida Statutes 316.183(4).....	7
Florida Statutes 318.....	8
Florida Statutes 318.14.....	8
Florida Statutes 318.14(1) and (5).....	8
Florida Statutes 316.183(4).....	7, 8, 9
Florida Statutes 316.650 and 316.650(10).....	9

Florida Statutes 316.006	9
Florida Statutes 316.655	8. 9
Florida Statutes 370.013	9
Florida Statutes 370.021	7
Florida Statutes 943	7
Florida Statutes 943.13 (1)-(10).....	7
<u>OTHER AUTHORITY</u>	
Black's Law Dictionary Fifth Edition (1979).....	6

STATEMENT OF CASE AND FACTS

The Respondent adopts the Statement of Case and Facts as set forth in the Petitioner, State of Florida's, Brief of Petitioner on the Merits.

POINT ON APPEAL

THE APPELLATE COURT WAS CORRECT IN RULING THE
FLORIDA MARINE PATROL DOES NOT HAVE THE POWER
TO CITE DRIVERS FOR NON-CRIMINAL OFFENSES.

SUMMARY OF ARGUMENT

Florida Statutes Section 316.640 creates the process for enforcing the traffic laws of the State. The Florida Marine Patrol was not given any rights whatsoever to issue traffic citations for civil traffic infractions by this provision of the law. Accordingly, Florida Marine Patrol has no right to stop an individual for a civil traffic infraction and issue him/her a traffic ticket.

ARGUMENT

THE APPELLATE COURT WAS CORRECT IN RULING THE FLORIDA MARINE PATROL DOES NOT **HAVE** THE POWER TO CITE DRIVERS FOR NON CRIMINAL TRAFFIC OFFENSES

This issue was addressed by the Third District Court of Appeals in the matter of State v. Richard Parson, 549 So.2d 761 (Fla. 3 DCA 1989.) In that case, Mr. Parsons was stopped for a simple traffic violation and arrested for Driving Under the Influence. Chief Judge Schwartz, in writing his decision, adopted the well-researched opinion of the trial court and stated in essence that statutory construction does not permit the Florida Marine Patrol to detail and cite drivers for non-criminal traffic offenses.

Pursuant to the laws of the State of Florida, the right to undertake enforcement action for any breach of the law, that is not a breach of peace, is subject to statutory authority. That is a law enforcement officer has no right to stop an individual unless there is a law giving him the power to make the stop or the stop is for a breach of peace. Edwards v. State, 462 So.2d 581 (Fla. 4 DCA 1985); Cheatem v. State, 416 So.2d 35 (Fla. 4 DCA 1982). In the case of traffic offenses, the Legislature set forth in Florida Statutes Chapter 316, entitled State Uniform Traffic Control, those administrative bodies who are charged with enforcing the traffic laws of the State of Florida. Florida Statues Chapter 316 states in pertinent part:

316.640 - ENFORCEMENT. - The enforcement of 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 the State on all the streets and highways thereof and elsewhere throughout the state...

(b) The Department of Transportation has authority to enforce on all the streets or highways of the 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 streets and highways elsewhere throughout the county.. ■

(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 throughout the municipality.

(4) MOBILE HOME PARK RECREATION DISTRICTS.
Notwithstanding subsection (2) or subsection (s), 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 the State or any way or place used for vehicular traffic...within a mobile home part recreation district...

In construing any law the Appellate Courts have stated over and over again, that the Legislature must be assumed to know the meaning of words and to have expressed its intent by the use of the words found in the statute. Justice Boyd, in the case Thaver v. State, 335 So.2d 815 (Fla. 1976) construed the statutory authority of another administrative body, as follows:

...The law clearly requires that the legislative intent be determined primarily from the language of the statute because a statute is to be taken, construed and applied in the form enacted. Van Pelt v. Hilliard, 75 Fla. 792, 78 So.694 (1918); Vocelle v. Knight Bros. Paper Co., 118 So.2d 664 (Fla. 1st DCA 1960). The reason for this rule is that the legislature must be assumed to know the meaning of words and to have expressed its intent by the use of the words found in the statute...

It is, of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. Ideal Farms Drainage Dist. v. Certain Lands, 154 Fla. 554, 19 So.2d 234 (1944.)...Thayer at page 817.

Thus, we must look at the exact wording of Fla. Stat. Sec. 316.640 to determine what is expressed by the legislature.

The Legislature in the introduction to Fla. Stat. Sec. 316.640 used the word "vested" in addressing the power to enforce the provisions of Florida Statutes Chapter 316. The word "vested" as defined by Black's Law Dictionary, Fifth Edition (1979) means "fixed, accrued, settled, absolute." The Legislature after the word "vested" went on to specifically designate which agencies had the power to enforce the traffic laws and did describe same in minute detail. (Note: They even included individuals who were not trained law enforcement officers but who had training through the Selective Traffic Enforcement Program.) Surely, if it was the intent of the Legislature to authorize the Florida Marine Patrol or any other agency to issue traffic citations for violations of Florida Statutes Chapter 316, it would have given them authority

to do same in Fla. Stat. Sec. 316.640.

The State of Florida would have you believe that Florida Marine Patrol has the right to issue traffic citations because the Legislature in granting the Department of Natural Resources enforcement powers stated in Florida Statutes Chapter 370, Saltwater Fisheries, the following:

370.021 Administration, rules, publications, records penalties for violations of chapter, injunctions...

(5) Powers of Officers.

(A) 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 provision of F.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 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.. ■

The general laws applicable to arrests by peace officers of this State shall be applicable to such law enforcement officers.

The State resting its argument specifically on the words "with full power to investigate and arrest for violation of the laws of this State," and the words "the general laws applicable to arrest by peace officers of this State shall be applicable." This argument, however, is without any merit. The Appellee in this action simply states that the issuance of a traffic citation for violation of Fla. Stat. Sec. 316.183(4) is not something which can result in an arrest. It is not a criminal offense.

In 1979, the Legislature of the State of Florida passed

Florida Statutes Chapter **318**, Disposition of Traffic Infractions, which in its purpose clause made it clear that certain violations of Florida Statutes Chapter **316** were no longer to be criminal offenses:

318.12 Purpose.

It is the legislative intent of the adoption of this chapter to decriminalize certain violations of Chapter **316**, the Florida Uniform Traffic Control Law...

Further, Fla. Stat. Sec. **318.14**, entitled "Non-Criminal Traffic Infractions, Exceptions, Procedures," specifically and categorically classified a violation of Fla. Stat. Sec. **316.183(4)** as a "non-criminal infraction." The only penalty that can be imposed is a "civil penalty not to exceed **\$500.00** or require attendance at a driver improvement school or both." Fla. Sta. Sec. **318.14(1)** and **(5)**. (Note; See also Fla. Stat. Sec **316.655**.)

Additionally, the State argues that the general words of Fla. Stat. Sec. **370.021(5)** giving Florida Marine Patrol its law enforcement power, when read in conjunction with Florida Stat. Sec. **901.15**, authorizes the Florida Marine Patrol to take the action which it has taken against this Respondent. They cite the following provision of Fla. Stat. Sec. **901.15(5)**:

901.15 - When arrest by officer without warrant is lawful.- A law enforcement officer may arrest a person without a warrant when...

(5) A violation of Chapter **316** has been committed in the presence of an officer. Such an arrest may be made immediately or in fresh pursuit...

Again, this is a fallacy as no "arrest" is authorized by statute for a violation of Fla. Stat. Sec. **316.183(4)**. The Respondent instead states that when a person violates a non-

criminal infraction, the only thing a person can receive is a civil traffic infraction as provided by Fla. Stat. Sec. 316.650. The applicable provision, Fla. Stat. Sec. 316.650(10), even recognizes the difference between criminal traffic offenses and civil traffic offenses, to wit, "arresting officer" is a law enforcement officer who apprehended or takes into custody the alleged offender.

Further, in Florida Statutes Chapter 316, specifically, Fla. Stat. Sec. 316.006, the Legislature lists administrative bodies which have the "jurisdiction to control traffic" and in a similar fashion lists in Fla. Sta. Sec. 316.655 the division of each administrative body charged with enforcing traffic control. Nowhere is Florida Marine Patrol or the Department of Natural Resources addressed or mentioned. In fact, the purpose or jurisdiction clause of the Chapter creating the Florida Marine Patrol does not even mention the words highway, street, road or traffic, to wit:

370.013 DEPARTMENT OF NATURAL RESOURCES;
GENERAL FUNCTION.— The Department of Natural Resources is charged with the administration, supervision, development and conservation of the natural resources of the state.

When there is a conflict between statutes it is resolved by favoring the specific over the general provisions. Justice Roberts in writing for the Supreme Court in the case of, Adams v. Culver, 111 So.2d 665 (Fla. 1959), states:

...It is a well-settled rule of statutory construction, however, that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms. In this situation, "the statute relating to the particular part of the general subject will operate as an exception

to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy if any" ... Page 667.

The specific statute is Florida Statute Chapter 316, and the State cannot prevail with the argument that the general rule of Florida Statute Chapter 370 overrides to authorize enforcement of civil traffic infractions. It is clear the statute authorizing the enforcement of traffic control laws does not permit Florida Marine Patrol to enforce civil traffic violations such as the one the Respondent is alleged to have committed.

The State, in their brief, make two references to Attorney General opinions, relying upon same as if they have binding effect. Such reliance might be proper if we were arguing whether or not the Marine Patrol was guilty of a violation of a good faith test in a proceeding dealing with a search and seizure. however, the authority cited here are only self serving opinions of the office representing the State of Florida in this cause.

Lastly, strict construction dictates that different law enforcement agencies were created for different purposes, each with the authority to control that domain provided by statute. The laws creating the Marine Patrol give it authority to govern natural resources and the power to act in the same manner as law enforcement officers in protecting our natural resources. To argue they have the power to enforce the traffic laws or the highways is tantamount to saying that Florida Highway Patrol should be provided with Jet Skis, or Water Bikes so they can enforce traffic laws on our waterways. It makes absolutely no sense to say since are law enforcement officers they can comb the highways looking for traffic violations.

CONCLUSION

For all of the reasons stated in the argument portion of this brief, the Appellee requests this court to notify this dismissal of the citation.

If the court, however, is inclined to withhold its decision in accordance with the State's request, we would ask the court rather than holding its decision in abeyance to also certify the question as a matter of great public importance to the Supreme Court for consolidation into State v. Parson, Fla. Case No. 74,874 or simply uphold Judge Ford's decision.

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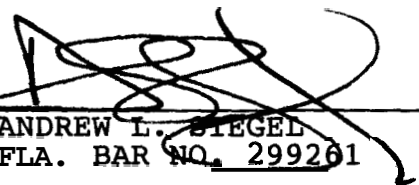
BY: _____
ANDREW L. SIEGEL
FLA. BAR NO. 299261

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent regular mail to DON M. ROGERS, Assistant Attorney General, 111 Georgia Avenue, Suite 304, West Palm Beach, Florida, 33401, this 25 day of July, 1990.

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