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IN THE SUPREME COURT OF FLORIDA

CARL A. HAAS,  
Petitioner,  
vs.  
STATE OF FLORIDA,  
Respondent.

CASE NO.: 76,767

ON REVIEW FROM A QUESTION CERTIFIED  
TO BE OF GREAT PUBLIC IMPORTANCE  
FROM THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON  
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SEVENTH JUDICIAL CIRCUIT

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AUTHORITIES CITED:

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## ARGUMENT

THE TRIAL COURT ERRED IN DENYING  
PETITIONER'S MOTION FOR JUDGMENT  
OF ACQUITTAL AS TO THE CHARGES OF  
DUI MANSLAUGHTER AND DUI CAUSING  
SERIOUS BODILY INJURY.

The State's Answer Brief creates a great deal of unnecessary confusion. The first eighteen pages of the brief are irrelevant because they are a restatement of the State's position in the case of Miller v. State, Case Number 75,708. The Appendix is totally unnecessary -- merely containing a copy of the brief Petitioner filed in the District Court of Appeal which states the same position Petitioner has taken before this Court. Only on pages nineteen through twenty-three does the State address the issues raised in Mr. Haas's case. Only five of the over fifty pages the State submits to this Court contain relevant argument.

Petitioner has taken great pains to clarify the issue presented in his case and to distinguish it from the issue presented in Miller. Petitioner has never argued the issue presented in Miller (admissibility) and has never claimed that any other issue is preserved for review. Therefore, only pages nineteen through twenty-three of the State's Answer Brief merit reply.

Mr. Haas was convicted only of operating a vehicle while his blood alcohol level was .10 or greater. But the State's expert witness testified she could not tell whether Mr. Haas's blood alcohol level was over .10 at the time he was

driving. Thus there is no competent evidence from which a jury could conclude that Mr. Haas had the required blood alcohol content at the necessary time.

The State points out that, in addition to the results of the blood alcohol test, the jury had other evidence of Petitioner's intoxication. From this evidence the State claims a jury should be allowed to make a false assumption -- that jurors can judge a person's blood alcohol level from the signs of intoxication exhibited. This assumption has no legal or scientific basis. While one may assume (by law) that someone with a BAL (blood alcohol level) over .10 is intoxicated, it does not follow that someone who is intoxicated has a BAL of over .10. Blood alcohol level can only be proven with a scientific test. And, where the State's expert witness says the test result is inconclusive, the evidence is clearly insufficient to convict.

It might be argued that Petitioner's position, though supported by logic, would create great inconvenience in law enforcement. But a statute which allows a person to be sent to prison solely on the basis of the results of a scientific test must be strictly construed. If the State has evidence of intoxication, it may prove guilt by proving intoxication, without relying on an exact BAL. But if the State proves only blood alcohol level, then the test results must have some meaning -- some true relationship to the defendant's BAL at the time of driving, that can be explained by someone who understands the test. Over and over again in this case the State has claimed


that blood alcohol level can be determined by a jury through a combination of an inconclusive test result and evidence of intoxication. But no matter how often the State says it, it just isn't so. Further, if it were so, it would be up to the State to explain how it could be so to the jury. This the State did not do. The decision of the District Court of Appeal must be reversed.

CONCLUSION

Based on the arguments and authorities cited herein, and in Petitioner's Initial Brief on the Merits, Petitioner respectfully requests that this Court answer the certified question in the affirmative and rule that blood alcohol test results must be related back to the time of the offense in order to provide sufficient evidence of guilt in an unlawful blood alcohol level case. Petitioner's convictions should be reversed.

Respectfully submitted,

JAMES B. GIBSON  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Robert Butterworth, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, FL 32399-1050 and to; Carl Andrew Haas, #137211(FC103), P.O. Box 1807, Bushnell, FL 33513-0667, this 11th day of January, 1991.

  
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DANIEL J. SCHAFFER