

Supreme Court of Florida

ORIGINAL

No. 77,213

DAVID LEE GALLAGHER, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[September 26, 1991]

BARKETT, J.

We review Gallagher v. State, 570 So.2d 442 (Fla. 3d DCA 1990), in which the district court certified the following question of great public importance:^{*}

* The district court certified "the same question of great public importance certified in [State v. Miller], 555 So.2d 391, 394 (Fla. 3d DCA 1989), approved in part, quashed in part, No. 75,708 (Fla. Sept. 26, 1991)]." We have jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution.

Whether the numerical result of the blood alcohol test taken . . . after the defendant's last operation of a motor vehicle is admissible evidence where the state's expert witness would testify that the numerical reading would not be the [blood alcohol level (BAL)] at the time the defendant was operating the vehicle, where that witness was unable to testify what the defendant's BAL was at the time he was operating the vehicle, and where the witness testified that the BAL could have been lower than .10% at the time the defendant operated the vehicle.

State v. Miller, 555 So.2d 391, 392 (Fla. 3d DCA 1989).

The district court relied in part on Miller, which we recently approved in part and quashed in part. Miller v. State, No. 75,708 (Fla. Sept. 26, 1991). Accordingly, we vacate the judgment below and remand for reconsideration in light of our opinion in Miller. We do not address the additional issues raised in the petitioner's brief.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, GRIMES, KOGAN and HARDING, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance

Third District - Case No. 90-164

(Dade County)

Bennett H. Brummer, Public Defender and Robert Burke, Assistant
Public Defender, Eleventh Judicial Circuit, Miami, Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Jorge Espinosa,
Assistant Attorney General, Miami, Florida,

for Respondent