IN THE SUPREME COURT OF FLORIDA

CASE NO. *78,568*

STATE OF FLORIDA

Petitioner,

vs.

ERIC NORSTROM,

Respondent.

****

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent was the defendant, and Petitioner the prosecution, in the criminal division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. In the brief, the parties will be referred to as they appear before this Honorable Court, except that Petitioner will also be referred to as the State. All emphasis has been added by Petitioner,

The opinion of the Fourth District Court of Appeal is appended to the initial brief as exhibit "A".

STATEMENT OF THE CASE

Petitioner relies on its statement of the case contained in its initial brief.

STATEMENT OF THE FACTS

Petitioner relies on its statement af the facts contained in its initial brief.

SUMMARY OF THE ARGUMENT

Respondent's motion to suppress was properly denied, as the statement given to Officer Lavoie was not for the purpose of the accident investigation. The evidence at the hearing on the motion to suppress supports the trial court's conclusion that Respondent was the subject of a custodial interrogation. The giving, and acknowledgment of, Miranda warnings belies the District Court's finding that the questioning was for the purpose of the accident investigation. Further, the evidence was cumulative to other evidence at trial, and any erroneous admission would be harmless. The legislature has amended the accident report statute to provide that statements made can be admissible as long as the person's rights against self-incrimination are not violated. In this case, Respondent waived those rights, and the statements would definitely be admissible under the amended statute. The certified question should be answered in the negative.

ARGUMENT

STATEMENTS MADE IN THE COURSE OF A POST ACCIDENT INVESTIGATION BY AN INDIVIDUAL IN POLICE CUSTODY ARE NOT PRIVILEGED UNDER 8316.066, FLORIDA STATUTES, WHERE MIRANDA WARNINGS HAVE BEEN GIVEN AND THE INDIVIDUAL IS NOT TOLD THAT HE OR SHE IS REQUIRED TO ANSWER THE QUESTIONS, AND THE DISTRICT COURT'S OPINION SHOULD BE QUASHED.

Petitioner relies on its initial brief, subject to the following additiohs.

The state reasserts its position that even if Respondent s statement was erroneously admitted, its admittance would have been harmless error. Numerous witnesses gave testimony about the high speed at which Respondent was driving, and his statements regarding this were merely cumulative. Further, since there was no question at trial that Amber Hunter had died as the result of the impact of Respondent's car, Respondent's position that the jury may have come back with a conviction on this charge of either reckless driving or culpable negligence is somewhat farfetched. Vehicular homicide was the logical verdict.

Attached as exhibit "B" to the initial brief is the legislative history for the statutory amendments. The section-by-section analysis is as follows for these amendments.

> Section 13 amends s. 316.062, F.S., 1990 Supplement, to provide that a person's statutory duty to give information to a law enforcement officer relating to an accident shall not be construed as extending to information which would violate the person's privilege against self-incrimination.
>
> Sections 14 and 15 amend ss. 316.066 and 324.051, F.S., to provide for the admissibility of statements made in accident reporting when the privilege of self-incrimination is not violated.

The amendment to the statute was not to change the law, but to clarify the existing law. See e.g., State ex rel. Szabo Food Service, Inc. of North Carolina v. Dickinson, 286 So.2d 529, **531** (Fla. **1973**); U.S. Fire Insurance Co. v. Roberts, 541 So.2d **1297**, **1299** (Fla. 1st DCR 1989). It is thus applicable sub judice.

Respondent argues that Petitioner waived its argument regarding the applicability of the legislative amendment to his case, because it failed to bring it to the District Court's attention. Petitioner replies that the people of this state, and the victims and the families of the victims in this case, ought not to suffer because undersigned counsel failed to locate the legislative amendment prior to briefing this case to this honorable court. Such form over substance could hardly help reach the goals of the proper administration of justice. Moreover, that argument is only one of several presented in the alternative, and should not preclude this court's review of the decision below and of the certified question.

Since Respondent was in custody at the time he gave his statements to the police, received his Miranda warnings and waived them, and was never told that he was required to answer the questions, the accident report privilege was inapplicable. The statements were properly admitted since Respondent's right against self-incrimination was not violated.

CONCLUSION

Wherefore, based on the foregoing argument and authorities, Petitioner respectfully requests that this Honorable Court answer the certified question in the NEGATIVE, QUASH the opinion of the Fourth District Court of Appeal, and REMAND this cause with directives that Respondent's convictions and sentences be AFFIRMED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I Hereby Certify that a true copy of the foregoing has been furnished by U.S. Mail to MICHAEL SALNTCK, Esquire, 250 Australian Avenue South, #1303, West Palm Beach, FL 33401 this 4th day of November, 1991.

Of Counsel