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IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 82,702

By _____
Chief Deputy Clerk

TODD RILEY,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES.....ii
STATEMENT OF THE CASE.....1
STATEMENT OF THE FACTS.....2
SUMMARY OF ARGUMENT.....3

ARGUMENT:

SECTIONS 316.155(1) and (2), FLORIDA
STATUTES, REQUIRE VEHICLE OPERATORS TO
USE AN APPROPRIATE SIGNAL WHENEVER
THEY TURN FROM A DIRECT COURSE UPON A
HIGHWAY.....4

CONCLUSION.....8
CERTIFICATE OF SERVICE.....8

TABLE OF AUTHORITIES

CASES:

PAGES:

<u>Carawan v. State,</u> 515 So. 2d 161 (Fla. 1987).....	5
<u>In re: Order on Prosecution of Criminal Appeals,</u> 561 So. 2d 1130 (Fla. 1990).....	5
<u>Parker v. State,</u> 406 So. 2d 1089 (Fla. 1981).....	5
<u>State v. Kamins,</u> 615 So. 2d 867 (Fla. 4th DCA 1993).....	1,3
<u>State v. Riley,</u> 625 So. 2d 1261 (Fla. 5th DCA 1993).....	1,3
<u>State v. Sullivan,</u> 95 Fla. 191, 116 So. 255 (1928).....	5
<u>State v. Webb,</u> 398 So. 2d 820 (Fla. 1981).....	5
<u>Weber v. Dobbins,</u> 616 So. 2d 956 (Fla. 1993).....	5

OTHER AUTHORITIES:

§ 316.155, Fla. Stat. (1991).....	4,8
§ 316.155(1) and (2), Fla. Stat. (1991).....	3
§ 893.13(1)(f), Fla. Stat. (1991).....	1

STATEMENT OF THE CASE

Respondent was charged by Information dated August 6, 1992, with possession of more than 20 grams of cannabis in violation of section 893.13(1)(f), Florida Statutes (1991). (R39, Appendix I). On September 14, 1992, Respondent moved to suppress the marijuana based upon an allegedly illegal stop and improperly obtained admission of guilt. After hearing, the defense motion to suppress was granted. (R48-49, 53,33, Appendix II and III, -- Motion and Order). In its opinion filed October 1, 1993, the Fifth District Court of Appeal affirmed the order of the trial court suppressing the marijuana, but "cited" conflict with the Fourth District Court of Appeal in State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993). State v. Riley, 625 So. 2d 1261 (Fla. 5th DCA 1993). (Appendix IV).

STATEMENT OF THE FACTS

Officer Nicholas Green of the Cocoa Police Department was the first witness at the hearing on the Respondent's motion to suppress evidence. On July 18, 1992, he along with his partner, Officer Cantaloupe, stopped a car for a traffic violation, "no turn signal". Officer Green activated his blue lights and pulled the vehicle over in less than one minute despite the fact that they were in rush hour traffic. Respondent Todd Riley was a passenger in that vehicle. While Green spoke to the driver, Officer Cantaloupe asked the passenger, Riley, if he had anything illegal on him and thereafter seized several bags of marijuana. Riley was placed under arrest and the driver was issued a warning for no turn signal. (R3-8). On cross-examination, Green said they were part of a "Street Crimes Unit" and that he told everyone he stopped that, as members of that unit, their objective is to stop street level narcotics. (R12).

Officer Cantaloupe testified that Riley was standing outside the passenger side of the vehicle while Green spoke to the driver. Cantaloupe started talking to Riley and asked him for identification. He told Riley that they were on the Street Crimes Unit and asked him if he had anything illegal on his person. Riley responded in the negative. When Cantaloupe asked him for permission to search his person, Riley admitted having some "pot". (R14-18). The trial court found that the traffic stop was illegal because the driver was not cited for an improper, unsafe turn, but only for failure to give a right hand turn signal. (R27-33).

SUMMARY OF ARGUMENT

The Fourth District Court of Appeal in State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993), has interpreted section 316.155(1) and (2), Florida Statutes (1991), to require a vehicle operator to use an appropriate signal whenever he is turning from a direct course upon a highway. The Fifth District Court of Appeal has interpreted the same statutory provisions to require the use of an appropriate signal only when other vehicles may be affected by the movement. State v. Riley, 625 So. 2d 1261 (Fla. 5th DCA 1993). Petitioner suggests that the most logical and reasonable interpretation of the statute is that the legislature intended that vehicle operators use appropriate signals whenever they turn from a direct course rather than require them to make a subjective determination concerning whether their turn will affect any other vehicles before deciding whether or not to signal their intention. If it is left to the individual vehicle operator to decide whether his movement will affect other drivers and consequently whether or not to so advise them, the statute would be unenforceable and the practical implications would be life-threatening.

ARGUMENT

SECTIONS 316.155(1) and (2), FLORIDA
STATUTES, REQUIRE VEHICLE OPERATORS
TO USE AN APPROPRIATE SIGNAL
WHENEVER THEY TURN FROM A DIRECT
COURSE UPON A HIGHWAY.

Section 316.155, Florida Statutes, reads as follows:

(1) No person may turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by the movement.

(2) A signal of intention to turn right or left must be given continuously during not less than the last 100 feet travelled by the vehicle before turning, except that such a signal by hand or arm need not be given continuously by a bicyclist if the hand is needed in the control or operation of the bicycle.

Except for the addition of the clause relating to turn signals by bicyclists in 1983, these statutory provisions have remained unchanged from 1971 to date.

The issue before this Court is whether those provisions require a vehicle operator to use an appropriate signal whenever he or she is turning from a direct course upon a highway or whether the signal is required only in the event another vehicle may be affected by the movement. The Fifth District Court said that these subsections (1) and (2) should be read in pari materia and concluded that a turn signal is only required if the movement may affect another vehicle. The Fourth District Court felt that

the specific requirements of subsection (2) control over the general requirements of subsection (1) and, therefore, a turn signal must always be given. While Petitioner agrees with the result reached by the Fourth District Court, that conclusion is based upon the plain meaning of the statute and is reinforced by a logical analysis employing general rules of construction.

This Court has repeatedly held that legislative intent is the polestar by which the Court must be guided in interpreting statutory provisions. In re: Order on Prosecution of Criminal Appeals, 561 So. 2d 1130, 1137 (Fla. 1990); Parker v. State, 406 So. 2d 1089, 1092 (Fla. 1981); State v. Webb, 398 So. 2d 820, 824 (Fla. 1981); State v. Sullivan, 95 Fla. 191, 116 So. 255 (1928). The best evidence of the intent of the legislature is generally the plain meaning of the statute. Weber v. Dobbins, 616 So. 2d 956, 958 (Fla. 1993). However, in Webb, Supra at 824, the Court said that a construction of the statute which would lead to an absurd or unreasonable result should be avoided. See Carawan v. State, 515 So. 2d 161, 167 (Fla. 1987).

The State's primary position is that the language of the statute is clear and unambiguous. The first part of subsection (1) provides that a turn from a direct course on a highway shall not be made unless and until it is safe to do so and then only after giving an appropriate signal. The issue in this case is the effect of the final clause of that subsection, "in the event any other vehicle may be affected by the movement". That clause simply explains the reason for requiring the use of turn signals -- to advise other vehicles which might be affected by

the movement. If the legislature had intended that the vehicle operator need not use appropriate signals if he or she concluded that the turn could be made without affecting other vehicles, the statute would not have included the word "only" in that subsection: "No person may turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal...in the event any other vehicle may be affected by the movement." The use of the word "only" indicates the legislative intent that appropriate signals always be used in making turns for the benefit of other vehicles which might be affected thereby.

The Fifth District Court found that the clause, "in the event any other vehicle may be affected by the movement", means that a turn signal is required only in those instances where another vehicle may be affected by the turn. The State would assert that such an interpretation is unreasonable and could result in chaos and carnage on Florida's highways and was certainly not the intention of the legislature. If the vehicle operator can make a right turn quickly enough so that the car behind him will not have to slow down or if the driver turns left in front of an oncoming vehicles without necessitating braking or other evasive action on their part, it could be argued that the other vehicle was not "affected by the movement", no signal was required and no infraction occurred. Then there is the problem of other vehicles not visible to the turning vehicle. The Fifth District Court's interpretation of the statute requires the

vehicle operator to make the determination whether or not his movement will affect other vehicles and then to decide whether or not to activate the appropriate signal based upon that determination. If the operator cannot see another vehicle about to turn onto the highway from a sidestreet or driveway or coming around a bend in the road, how can he or she make the determination whether or not that unseen vehicle may be affected by his decision to turn? From the standpoint of public safety as well as from the standpoint of reasonableness in statutory construction, the better view is that of the Fourth District Court that Section 316.155 requires vehicle operators to appropriately signal their intention whenever they turn from a direct course upon a highway. The traffic stop in the instant case was proper and the drugs seized as a result thereof should not have been suppressed.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner suggests that this Court should find that section 316.155, Florida Statutes (1991) requires vehicle operators to signal their intention to turn whenever they leave a direct course upon a highway and, therefore, the trial court erred in suppressing drugs discovered as a result of this traffic stop.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petitioner's Brief on the Merits has been delivered to Susan A. Fagan, Esquire, Office of the Public Defender, Counsel for Respondent, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 3rd day of February, 1994.



Anthony J. Golden
Assistant Attorney General

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INDEX TO APPENDIX

DOCUMENT(S) :

APPENDIX :

INFORMATION
 filed August 7, 1992.....I

MOTION TO SUPPRESS EVIDENCE
 filed September 15, 1992.....II

ORDER - 18th Judicial Circuit
 granting Motion to Suppress Evidence
 filed October 30, 1992.....III

State v. Riley,
 623 So. 2d 1261 (Fla.App. 5 Dist. 1993)
 Case No. 92-2789.....IV