IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
vs.
TODD M. RILEY,
Respondent.

CASE NO. 82,702

RESPONDENT'S MERIT BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0845566
112-A Orange Avenue
Daytona Beach, Florida 32114
(904) 252-3367

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts and makes the following additions and corrections to Petitioner's statement of the facts.

Officer Cantaloupe stated that before he and Officer Green stopped the car in which Respondent was a passenger, he observed that the car came to a complete stop at the stop sign before turning. Further, Officer Cantaloupe agreed that the car did not cross over any median while it turned right, nor did the vehicle endanger any other vehicles or pedestrians. (R 9-11, 20-21) Officer Cantaloupe did state, however, that he informed the Respondent that he was part of the Cocoa Police Street Crime Unit whose main objective was to target street level narcotics activity. (R 22)

It was also conceded by Officer Green that he only heard Officer Cantaloupe "ask" the Respondent if "he had anything on him", and only assumed that Officer Cantaloupe had obtained permission from the Respondent to search his person because marijuana was recovered from the Respondent. (R 13) Moreover, while Officer Cantaloupe testified he was given consent by the Respondent, defense counsel did indicate to the trial court that the Respondent would testify that he was "ordered" out of the car by Officer Cantaloupe. (R 14-18, 34)

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal decision in the instant case correctly interpreted the plain and simple statutory meaning of subsections (1) and (2) of Section 316.155, Florida Statutes (1991). When read in pari materia, the two subsections are namely: that a turn signal need only be activated by a driver of a motor vehicle if the movement of his or her vehicle affects any other motor vehicle. Respondent further submits that the Fourth District Court of Appeal in State v. Kamins, 615 So.2d 867 (Fla. 4th DCA 1993) has incorrectly interpreted the specific language of this same statute to require all motor vehicle operations to activate the appropriate turn signal on their vehicle when turning onto a highway regardless of whether any other vehicle may be affected by such movement (i.e. turning the vehicle onto the highway). Specifically, the Fourth District Court of Appeal decision in Kamins directly relies on the legal maxim that a statute relating to a specific subject will control over another more general, comprehensive statute. The instant case on appeal, however, merely involves the statutory interpretation of a single statute, albeit two subsections. This Court should approve the District Court's decision affirming the trial court's granting of Respondent's motion to suppress.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL CORRECTLY UPHELD THE TRIAL COURT'S ORDER GRANTING RESPONDENT'S MOTION TO SUPPRESS.

The trial court below directly held that the Respondent had been illegally "seized" when the automobile he was riding in was stopped by police officers Nicholas Green and M. Cantaloupe, allegedly because the driver of the automobile failed to use her turn signal upon making a right hand turn at a stop sign. (R 3-19, 34-36) The legal underpinning for the trial court's ruling essentially centered on the fact that because all of the testimony offered by the State's witnesses (two police officers) during the suppression hearing below conclusively established that there was no valid legal basis justifying the police stopping the vehicle the Respondent was in, the detention and seizure of drugs from the Respondent was unlawful. In fact, both officers specifically conceded that no other vehicle had been affected by the driver's failure to activate her turn signal contemporaneously with her initiating the right hand turn in her vehicle onto the highway. (R 9-11, 20-21)

Section 316.155(1), Florida Statutes (1991) specifically outlines under what circumstance a turn signal is required to be activated by a driver while operating a vehicle on the roads in Florida:

> 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. [emphasis added]

Nothing magically occurs which would alter in any manner whether or not a turn signal is required to be activated by a motorist by the fact that subsection (2) of the same statute defines the proper distance during which a signal of intention to turn right or left must be given prior to an intended turn by a motorist, namely:

> 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...

As pointed out by the Fifth District Court of Appeal in its decision in this cause, the proper statutory interpretation of both subsections of the statute is obtained by reading them in pari materia. The Fourth District court of Appeals in State v. Kamins, 615 So.2d 867 (Fla. 4th DCA 1993), however, held that "the specific language and requirements of subsection (2) of Section 316.155, Florida Statutes (1991) controls over the general provision of subsection (1) of the same statute. Id. at 867-68.

In support of its statutory interpretation of the aforementioned subsections, the District Court in Kamins cites Adams v. Culver, 111 So.2d 665 (Fla. 1959). That particular case dealt with two entirely different statutes, Section 800.04 and 847.01, Florida Statutes (1957), the former involving lewd assault upon a child and the latter involving exhibiting a lewd

and pornographic picture to a child under the age of seventeen. The case at bar, in comparison, involves a single statute which lends further credence to the Fifth District's reading of subsections (1) and (2) of Section 316.155, Florida Statutes in pari materia.

Petitioner, on the other hand, argues that only the result reached in Kamins was correct and that the proper focus for interpreting Section 316.155 is to examine the plain meaning of the statute's language. But the bare bones of Petitioner's argument is really not this at all. Rather, it is what the statute's language should say, i.e., that every Florida motorist must signal before turning his or her vehicle regardless of whether other motorists are affected. This may be a truly laudable legislative policy, however, the legislature has not deemed it necessary to fashion the statute's wording in such a manner. Respondent submits that the reason Section 316.155 has not yet been amended to require the use of turn signals at a stop sign, irrespective of whether another vehicle may be affected, is simply because the existing statute adequately insures every motorists' safety.

Moreover, it appears somewhat disingenuous for the Petitioner to argue in the form of an emotional hyperbole that unless this Court interprets the plain meaning of the state's language as it suggests "chaos and carnage on Florida's highways" will result. (Brief of Petitioner, p.6) Not only is there absolutely no legally valid evidence presented by Petitioner in

support of such a contention, if there is any "affected" motorist who may be harmed by another motorist's failure to activate his or her turn signal, the statute, as presently written, surely applies under such circumstances. Conversely, in the case at bar, where there simply is no dispute that there was no other motorist "affected" when the driver of the vehicle Respondent was in made her right hand turn after first stopping at the stop sign, Section 316.155 has not, therefore, been violated. (R 9-11, 20-21) Even the two police officers conceded, as previously stated, that the driver made a safe right turn. (R 9-11, 20-21) This is also exactly what the trial court below found as well.

Certainly, Respondent does not disagree that Section 316.155 should be accorded its plain meaning. Holly v. Auld, 450 So.2d 217 (Fla. 1984), Thayer v. State, 335 So.2d 815 (Fla. 1976); and State v. Diloreto, 600 So.2d 25 (Fla. 4th DCA 1992). However, Petitioner entirely overlooks the "rule of lenity" in its effort to determine the statute's meaning even if the legislature's intent may be viewed as unclear based on the statute's wording standing alone. Under the rule of lenity, where reasonable minds might differ as to the legislature's intention expressed in a statute, courts will adopt the less harsh meaning. U.S. v. Callanan, 173 F.Supp. 98, 100 (E.D. Mo. 1959). Similarly, courts must strictly construe criminal statutes and where a criminal statute is susceptible of different constructions, the construction most favorable to the accused should be adopted. State v. Camp, 596 So.2d 1055 (Fla. 1992);

Arthur v. State, 391 So.2d 338 (Fla. 4th DCA 1980); Diloreto, supra; State ex rel Washington v. Rivkind, 350 So.2d 575 (Fla. 3d DCA 1977). Respondent should therefore have the benefit of any possible ambiguity found to exist in Section 316.155. While Respondent recognizes that the statute in question in the instant case does not involve, strictly speaking, a "criminal statute", but rather a traffic infraction, this canon of construction should be applied since the statute's enforcement ultimately led to Respondent's conviction.

Finally, if this Court approves the Fifth District Court of Appeal's interpretation of Section 316.155, such a construction would not lead to an absurd or purposeless result as Petitioner contends since the legislature has clearly intended that the statute should only be enforced when a driver's turning movement affects other vehicles. What would lead to an absurd result is if the police are able to stop motorists in Florida under the aforementioned statute who do not activate their turn signals prior to turning when there are no other vehicles which may be affected by such movement. As Judge Harris pointed out in a specially concurring opinion in the instant cause, even if the Fourth District Court of Appeal's interpretation of Section 316.155 is "better policy", it is the function of the legislature, not the judiciary, to enact such a policy. Therefore, the trial court's order granting Respondent's motion to suppress was correct as was the Fifth District Court of Appeal's affirmance of the trial court's order.

CONCLUSION

Based on the foregoing cases, argument and authorities, Respondent respectfully requests this Honorable Court affirm the Fifth District Court of Appeal's decision.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 845566
112-A Orange Avenue
Daytona Beach, Fla. 32114
(904) 252-3367

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Mr. Todd M. Riley, 6817 Elder Road, Cocoa, FL 32927 on this 23rd day of February, 1994.

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, vs. TODD M. RILEY, Respondent.	)	CASE NO. 82,702

APPENDIX

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0845566
112-A Orange Avenue
Daytona Beach, Florida 32114
(904) 252-3367

ATTORNEY FOR RESPONDENT

STATE of Florida, Appellant,

v.

Todd RILEY, Appellee.

No. 92–2789.

District Court of Appeal of Florida, Fifth District.

Oct. 1, 1993.

State brought criminal action against defendant. The Circuit Court, Brevard County, John D. Moxley, Jr., J., found that defendant was improperly stopped for failure to use turn signal, and suppressed evidence. State appealed. The District Court of Appeal, Cobb, J., held that statute requiring that turn signal be given continuously during not less than last 100 feet traveled by vehicle before turning does not conflict with provision which requires that signal be made only when another vehicle may be affected by turning vehicle's movement.

Affirmed.

Harris, C.J., and Dauksch, J., filed opinions concurring and concurring specially.

Automobiles ⇐9, 329

Statute requiring that turn signal be given continuously during not less than last 100 feet traveled by vehicle before turning does not conflict with provisions which require that turn signal be made only when another vehicle may be affected by turning vehicle's movement; 100–foot rule merely defines distance prior to intended turn that signal is required in event one is required at all by effect of that turn on another vehicle. West's F.S.A. § 316.155(1, 2).

Robert A. Butterworth, Atty. Gen., Tallahassee, and Anthony J. Golden, Asst. Atty. Gen., Daytona Beach, for appellant.

James B. Gibson, Public Defender, and Susan A. Fagan, Asst. Public Defender, Daytona Beach, for appellee.

COBB, Judge.

The state appeals an order of suppression based upon the trial court's finding that the defendant was improperly stopped for failure to use a turn signal. The trial court found that no other vehicle was affected by the turn, therefore no offense occurred based upon the provisions of section 316.155, Florida Statutes (1991), which provides:

> (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 traveled 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.

The state, relying on *State v. Kamins*, 615 So.2d 867 (Fla. 4th DCA 1993), argues that the "specific" language of subsection (2) above prevails over the "general" language of subsection (1), thereby negating the reference to the effect of a turn on any other vehicle.

We agree with the trial court and disagree with *Kamins*. Subsections (1) and (2) of section 316.155, Florida Statutes, should be read *in pari materia*. Subsection (2) is not in conflict with subsection (1), but merely defines the distance prior to an intended turn that a signal is required—in the event one is required at all by the effect of that turn on another vehicle.

Accordingly, we affirm, and cite conflict with *State v. Kamins*, 615 So.2d 867 (Fla. 4th DCA 1993).

AFFIRMED.

HARRIS, C.J., and DAUKSCH, J., concur and concur specially with opinions.

HARRIS, Chief Judge, concurring and concurring specially:

I agree with the logic of Judge Cobb's analysis. He has, I think, properly interpreted the statute as written. But, as so interpreted, the statute, as an effective traffic regulation, becomes illusory. The question before the traffic judge is no longer whether the signal was given but rather whether the requirement for a signal is applicable.

What does "may be affected by the movement" mean? If any vehicle is in or near the intersection (even behind the subject vehicle) is the law applicable? How close to the intersection must other traffic be in order to make the statute applicable?

One must stop at a stop sign even if no other vehicle is in sight; twenty-five miles an hour through a residential section is the speed limit even if everyone else is asleep. It is only the applicability of the turn signal requirement that is subject to debate depending upon the location of other traffic. *Kamins* is better policy.[1] But policy is the function of the legislature. It should reexamine this issue.

DAUKSCH, Judge, concurring specially.

I concur with the opinion of Judge Cobb; I write only to say that the trial judge would be eminently correct in suppressing the evidence based upon the illegal pretextual stop and could easily disbelieve the drug enforcement policemen who urge that they were merely trying to keep the highways safe from persons who don't signal a right turn after they have stopped for a stop sign.

1. It also appears to be more consistent with the legislative history of the 1983 amendment to section 316.155:

> The bill amends § 316.155 to prohibit turning a vehicle or moving right or left upon a roadway unless it is safe to do so *and proper turn signals are given.* (Emphasis added.)

Ch. 83-68, S.B. 274, Senate Staff Analysis and Economic Impact Statement (1983).

Franklin M. HOLMES, Appellant,

v.

State of Florida, Appellee.

No. 92-2374.

District Court of Appeal of Florida, First District.

Oct. 4, 1993.

Rehearing Denied Nov. 22, 1993.

Defendant appealed from an order of the Circuit Court, Duval County, David Wiggins, J., denying defendant's motion to withdraw his plea of nolo contendere. The District Court of Appeal, Mickle, J., held that court would not consider issue defendant raised for first time on appeal, absent fundamental error.

Affirmed.

Criminal Law ⇐1044.2(1)

Absent fundamental error, reviewing court was not required to consider defendant's newly raised issue, alleging that trial court erred in refusing to allow him to withdraw his plea of nolo contendere when there had been no formal acceptance thereof, where defendant below challenged order solely on basis that plea was not entered knowingly or voluntarily.

Nancy A. Daniels, Public Defender, Lynn A. Williams, Asst. Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Atty. Gen., Marilyn McFadden, Asst. Atty. Gen., for appellee.

MICKLE, Judge.

Holmes challenges the trial court's order denying his motion to withdraw his plea of nolo contendere. We affirm.