IN THE SUPREME COURT OF FLORIDA

CASE NO. 88,774

THE STATE OF FLORIDA,

Petitioner,

-vs-

BURT MARSHALL,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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ARGUMENT

THE 1991 AMENDMENTS TO THE ACCIDENT REPORT PRIVILEGE OF CHAPTER 316, FLORIDA STATUTES, RENDERED RESPONDENT'S VOLUNTARY STATEMENTS TO AN OFFICER CONDUCTING A CRIMINAL INVESTIGATION ADMISSIBLE AT TRIAL, WHERE HE WAS NOT READ HIS *MIRANDA* RIGHTS BUT WAS NOT IN CUSTODY.

The lower court determined, and Respondent argues, that his voluntary statements made during a traffic accident investigation where Respondent was not in custody, should not have been admitted at trial due to the accident report privilege. However, the District Court decision and Respondent's arguments are flawed in several aspects.

The lower court rejected the State's argument that the ch. 91-255 Laws of Florida amendments to §§ 316.066 and 316.062, Fla. Stat. should be read in *pari materia*, and indicated that the amendment to § 316.062 abrogated the privilege for that section only. However, no privilege existed as to § 316.062 prior to the 1991 legislative amendments, as that section only required information such as name, address, registration and license, in accident cases that were not investigated by police. § 316.062(1), Fla. Stat. It is well settled that a defendant's identity is not subject to suppression. Immigration & Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032, 1039-40, 104 S.Ct. 3479, 3483-84, 82

L.Ed.2d 778, 786 (1984); State v. Ramos, 598 So.2d 267, 268 n. 1 (Fla. 3d DCA 1992); State v. Leyva, 599 So.2d 691, 694 n. 6 (Fla. 3d DCA 1992). Moreover, such biographical information could not incriminate a defendant in an accident-related criminal prosecution. As such, there was clearly no need to create a privilege in criminal cases solely as to § 316.062, or to subsequently abrogate such by way of the 1991 amendment.

By contrast, § 316.066, Fla. Stat. does specify a privilege, with the 1991 limiting language. Because the lower court believed that traffic accident suspects have an affirmative duty to report, the court rejected the State's contention that a traffic accident suspect who is not in custody should be treated no differently than a suspect in any other temporary investigatory detention. However, subsections (1) and (2) of § 316.066 specify that in cases where an investigating officer has made a written report, a driver of a vehicle involved in the accident has no duty to report. In cases where an officer does not make a written report, the only duty on the driver is to complete a "short-form" report providing date, time, location, description of vehicles involved, name and addresses of parties involved, witnesses, and proof of insurance. Therefore, the duty referred to in § 316.066 is not the duty of a suspect to report information regarding the cause or potential

cause of an accident to police. As such, the information that Respondent gave the police in this case, regarding his drinking, was not pursuant to any statutory duty.

Consequently, to require reading of *Miranda* warnings to traffic accident suspects who are not in custody would give drivers more protection than ordinary citizens subject to police questioning, for absolutely no public purpose. The legislature recognized in 1991 that there is no longer a need for a privilege in criminal trials relating to statements made during a traffic accident investigation. Therefore, the legislature specifically chose to abrogate this privilege in all cases where statements are made that did not result from the violation of the right against self-incrimination.

The lower court theorized that the purpose of the 1991 legislative amendment was to permit the result later reached by this Court in State v. Norstrom, 613 So. 2d 437 (Fla. 1993). However, in Norstrom it was undisputed that *Miranda* warnings were necessary as the defendant was in custody prior to the time his statements were solicited. *Miranda* warnings have never been required previously upon a non-custodial stop or detention. Rather, the issue has always been examined on a case-by-case basis to determine whether detention rose to the level of an actual or

formal arrest. Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); Allred v. State, 622 So. 2d 984 (Fla. 1994); Traylor v. State, 596 So. 2d 957 (Fla. 1992).

To assume that § 316.066 automatically requires that police officers read *Miranda* warnings to all suspects involved in traffic accidents prior to any questioning, and without regard to their custodial status, could serve to significantly confuse drivers. Florida courts have held that a driver does not have a constitutional right to counsel before deciding whether or not to submit to a breath or blood test. State v. Burns, 661 So. 2d 842 (Fla. 5th DCA 1995), rev. dism., 676 So. 2d 1366 (Fla. 1996); Nelson v. State, 508 So. 2d 48 (Fla. 4th DCA 1987); State v. Hoch, 500 So. 2d 597 (Fla. 3d DCA 1986). Therefore, the lower court incorrectly found that § 316.066 necessitates that *Miranda* warnings must be given prior to questioning a DUI suspect following a traffic accident, where the suspect is not in custody. The courts cannot create or expand a statutory privilege. As the 1991 legislature clearly intended to limit the accident report privilege, this Court must give effect to the statutory limitation of § 316.066(4), Fla. Stat. The decision of the lower court should be reversed with directions to reinstate of the trial court's judgment and sentence.

CONCLUSION

WHEREFORE, based on the foregoing authorities and arguments, Petitioner respectfully submits that the decision of the District Court should be quashed with directions to enable the reinstatement of the judgment and sentence of the trial court.

Respectfully submitted,

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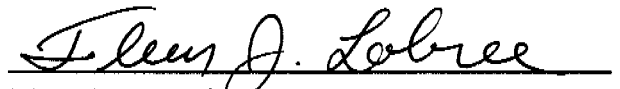

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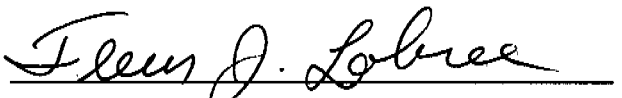
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER ON THE MERITS was mailed to LAURIE D. HALL, ESQ., Attorney at Law, 89240 Overseas Highway #1, P.O. Box 1126, Tavernier, Florida 33070, on this 28th day of January, 1997.



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