IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,
Cross-Respondent,

v. CASE NO. 89,769

TODD E. DUMAS,

Respondent,
Cross-Petitioner.
_____/

PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE

After a jury trial, Todd Dumas was convicted of vehicular homicide and leaving the scene of an accident with death. (R. 1264-66). He was given a guidelines sentence of five years imprisonment, followed by five years probation. (R. 1352-56).

On direct appeal, the district court reversed Dumas' conviction for leaving the scene of an accident with death, finding that the jury had been improperly instructed as to the knowledge element for this offense. Dumas v. State, 21 Fla. L. Wkly. D2455 (Fla. 5th DCA Nov. 15, 1996). On rehearing, the court certified this issue as a question of great public importance. Dumas v. State, 22 Fla. L. Wkly. D184 (Fla. 5th DCA Jan. 3, 1997).

This Court has jurisdiction under article V, section 3(b)(4) of the Florida Constitution.

STATEMENT OF FACTS

On August 3, 1994, a group of friends went to Church Street Station for 'Nickel Beer Night." (T. 311). Todd Dumas gave his friend Debra Anderson a ride, and they arrived at the first bar at 7 or 7:30 p.m. (T. 437).

While none of Dumas' friends could estimate how much he drank that night, they did admit that they saw him drinking. (T. 312, 438). Debra testified that Dumas was drinking beer, but she was not sure how much. (T. 438). However, when she talked to the police the day after they went out, Debra had stated that their group of 4 split 4 pitchers of beer. (T. 438). Bella Gauthier, another friend, testified that everyone drank approximately 2-3 glasses of beer, but she was not sure exactly how much Dumas drank. (T. 312, 319).

At approximately 7:30 or 8 p.m., the group left the first bar and went down the street to Chillers, where frozen drinks are served. (T. 313). Bella left Chillers at 10:30 or 11 p.m., and Dumas and Debra were still at the bar. (T. 322). Debra testified that she saw Dumas with a frozen drink at Chillers, but she didn't spend much time with him there so she didn't know how much he drank. (T. 440).

While at Chillers, Debra met James Vaughn, who agreed to give her a ride home. (T. 441). They left the bar and were headed west on 1-4 when Vaughn's car skidded off the road into a ditch. (T. 442). Vaughn called AAA at 11:57 p.m. from his cellular phone, then walked up to the highway with his phone in hand. (T. 443). He called back at 12:10 a.m. to ask where the wrecker was. The AAA operator put Vaughn on hold, and when he came back to the phone Vaughn was not there. (T. 411-14).

At approximately 12 or 12:30 a.m., Robert Apperson was driving west on 1-4 between 55 and 60 miles per hour when he saw a red Honda come up behind him at a high rate of speed. The car passed him and disappeared. (T. 73-75).

A few minutes later, Apperson saw the Honda driving back onto the highway from the side of the road. The Honda came to a complete stop perpendicular to I-4. (T. 76). Apperson stopped his car, and he saw the driver of the Honda look down like he was trying to start his car. (T. 78). Apperson identified Dumas as the driver of the Honda. (T. 82). Dumas never signaled to Apperson for help, so Apperson drove on. (T. 92-93). Apperson saw the car move into the right lane of I-4, and as he passed the car he noticed extensive damage to the windshield. (T. 80).

The first exit after the site of the collision is the exit for the Florida Turnpike. (T. 92). The supervisor at that toll plaza, David Springer, testified that he saw Dumas around midnight that night. (T. 105). Dumas approached the plaza in a very erratic manner, speeding up and slowing down. Dumas was hanging out the window of his car instead of looking through the windshield, and there was extensive damage to his vehicle. (T. 98). The windshield had collapsed on Dumas, and there was blood on him. (T. 99-100).

Dumas got to the toll booth and tried to pay Springer, fumbling with pennies. Springer explained to him that payment isn't made at entrances on the Turnpike, only at exits, but Dumas just kept saying "I'm getting off." (T. 98-99). Dumas was in very bad shape, according to Springer; he appeared completely incapacitated and out of control. He also smelled of alcohol, his eyes were glassy, and his speech was slurred. (T. 99).

springer testified that he has extensive experience with drunk drivers, and in his opinion Dumas was intoxicated. (T. 97, 102, 116-17). Springer told Dumas to pull into the employee parking lot. (T. 100). Four or five more cars came through the toll plaza, and Springer then noticed Dumas driving back to the road.

(T. 100-01). Springer called the Florida Highway Patrol to report Dumas as a drunk driver. (T. 102).

Dumas never told Springer he had been in an accident, and he never asked Springer to call the police. (T. 102, 105). Toll booth operators are not law enforcement officers, and they are not authorized to investigate traffic accidents or write citations. (T. 96, 123).

Approximately 15 minutes after Dumas drove away, Springer heard a radio transmission regarding the red Honda at the South Orlando exit plaza. (T. 104). When Springer saw Dumas leave, it appeared to him that Dumas went north on the Turnpike. (T. 110). Accordingly, arriving so quickly at the South Orlando exit would have required Dumas to cut across the median on the Turnpike. (T. 104).

Anival Medina was the toll collector at the South Orlando exit that night. (T. 122). Shortly after midnight, he saw a severely damaged red Honda pull up to his booth. (T. 124). The driver of the car was identified as Dumas. (T. 153). Medina asked Dumas for his toll ticket, and Dumas replied that he didn't have one. Dumas appeared to be nervous, and he pulled out a movie ticket and then stated again that he didn't have a toll ticket. (T. 125).

Medina told Dumas that he would have to pay the maximum toll, $10.50, because of his lost ticket; Dumas said he had no money. (T. 125). Medina then told Dumas he would have to provide a driver's license and registration, and he could pay the toll later; Dumas said he had lost his wallet. (T. 125). At this point, Medina contacted his supervisor. (T. **125).** While Dumas mentioned that he had been in an accident on I-4, he never said anyone was injured and he never asked Medina to call the police. (T. 126-27, 138).

Denise Smith, the supervisor at the toll plaza, went out to Medina's booth and was briefed on the situation -- the driver must have been in an accident, and he had no money and no toll ticket. (T. 144). Smith asked Dumas if he needed her to call the police, and Dumas said no, he just wanted to take care of what needed to be taken cafe of. (T. **145,** 152).

As Smith was filling out the unpaid toll report, Dumas got out of his car and walked over to her, repeating that he would do anything he needed to do. (T. 146). Dumas provided Smith with his driver's license and signed the toll report. (T. 146). He then left, accidentally leaving behind his wallet and license. (T. 149).

Smith testified that Dumas smelled of alcohol, although he did not appear to her to be intoxicated. (T. 152, 158). The defense presented the testimony of Dr. Robert Kirkland, who stated that Dumas' unusual behavior that night was consistent with three possible alternatives -- emotional shock, a concussion, or intoxication. (T. 704-08).

Around 3 a.m., Dumas' mother woke up and went to get a drink of water. She looked out the window and noticed the Honda in the driveway, so she went outside to see why the car was not in the garage. (T. 848). Upon observing the damage to the car, she moved it into the garage so the neighbors wouldn't see it. (T. 851). She then woke her son and screamed at him about the damage, asking "did you hit someone, something." Dumas replied by saying something about a toll booth. (T. 851).

Mrs. Dumas said her son did not appear drunk at all, nor were there any signs that he had been hurt. He did, however, smell of alcohol. (T. 853).

Mrs. Dumas testified that she had no idea, by looking at the car, that it had hit a person. (T. 864). However, she also testified that she was so concerned that she stayed up the rest of the night, listening to the radio and television every 15 minutes to see if there was anything about an accident. (T. 854, 862).

Mrs. Dumas stated that her son had been in an accident in Miami, when he rear-ended someone, and he had waited for the police to come at that time. (T. 863).

Early the next morning, Nelson Turnbelt was on his way to work when he noticed what appeared to be a dummy on the side of 1-4. (T. 57). He pulled off onto the asphalt shoulder of the road and saw that it was in fact a body, lying 25-30 feet off the asphalt in the grass. (T. 58). Turnbelt noted that there was no need to travel on the grass in order to get off the highway, as there was a wide paved shoulder in the area. (T. 60). Turnbelt flagged down a truck driver, who called the police. (T. 59).[1]

After the Florida Highway Patrol recovered Dumas' wallet from the toll plaza (T. 400), two officers from the Orlando Police Department were sent to Dumas' house to speak to him. (T. 191, 221). As they approached the front door, they could hear someone inside crying. (T. 192, 222-23). They rang the doorbell, and the crying stopped. They then rang the doorbell a second time, and

[1]The defense presented several witnesses who drove along 1-4 in that area the night of the accident, looking for Vaughn's stranded car. These witnesses did not notice Vaughn's body, as it was very dark in that area. (T. 674, 679, 684). However, these witnesses also testified that they were not looking for a body that night. (T. 675, 680, 685). Vaughn's body was eventually found down a small incline, 39 feet from the fog line, so it wasn't readily noticeable from the road. (T. 547, 589).

Dumas opened the door. (T. 193, 223). Dumas' eyes were red, and he appeared to have been crying. (T. 193). No one else was in the house. (T. 194).

The police asked Dumas if he owned a red Honda. Dumas said he did, and he told them it was "in the garage all f---ed up." He asked the police if they wanted to see it and then took them to the garage. (T. 194). The car had extensive front end damage, (T. 194).

The police secured the car until the crime scene technicians arrived. Smith asked Dumas for identification; Dumas said his wallet was in his room and went to get it, but couldn't find it. (T. 196). Dumas did not appear to be injured in any way. (T. 218).

Dumas' Honda was analyzed by crime scene technicians from the Orlando Police Department. The front bumper of the car tested positive for blood, and there was blood and hair on the windshield. (T. 253, 256). The technicians also analyzed the shirt Dumas was wearing the night of the accident. It was covered with over 150 glass particles from the windshield and the sunroof; the glass had sprayed onto his shirt. (T. 624, 633, 645).

A DNA analysis was performed on the human blood stains on the windshield glass and on Dumas' shirt, and the parties stipulated

that this blood was Vaughn's. (T. 263, 294). Finally, a micro-analysis of paint chips found at the scene of the accident showed that the chips originated from Dumas' car. (T. 427-30).

Detective Lydia Bass, a civilian traffic homicide detective, testified as to the circumstances of the accident. (T. 459). Detective Bass had extensive training in this area, and she had personally investigated approximately 2000 crashes, 200 of which involved pedestrians. (T. 461-67). She was qualified as an expert in accident reconstruction, with no objection by the defense. (T. 468).

Detective Bass went to the scene of the accident the morning Vaughn's body was found. (T. 468). Because of a miscommunication with the evidence technicians, not everything found at the scene was measured. However, Bass testified that the items which were not measured were not crucial to her conclusions, and in fact all the necessary measurements were taken, as well as comprehensive photographs. Bass had all the data she needed to draw a conclusion in this case. (T. 483, 575-78, 606).

When she first arrived at the scene, Bass was informed that a patrol car had driven through the area before the scene was secured. Bass identified the tire marks from the patrol car and

testified that this incident did not affect her conclusions. (T. 468).

Bass stated that she could not determine the exact point of impact in the accident because of the weight difference between a car and a pedestrian. (T. 486-87). However, considering all the evidence in the case -- the placement of the victim's belongings (specifically, his shoes and his cellular phone), the injuries to the victim, the lack of markings on the victim's shoes, and the tire marks in the grass, Bass concluded that the collision took place when the victim was completely off the paved road in the grass. (T. 490-500). She relied partially on the 'cone of evidence" theory of reconstruction, which she testified is scientifically accepted. (T. 606).

Bass identified the tire marks of the car that struck the victim, and she could trace the whole scene from where the car went off the road into the grass to where it reentered the road. (T. 478-79). There was no evidence of braking and no skid marks at the scene. (T. 484). Bass concluded that there was no evidence this was an intentional collision on the part of the driver, but it was a case of driver error. (T. 608).

After Dumas' red Honda was entered into evidence (T. 516-19), Detective Bass explained to the jury how the victim's injuries

coincided with the specific damage to the car. (T. 529-32). Bass testified that Vaughn's body was struck by the front of the car, thrown onto the car and across the windshield, and remained there for approximately two seconds; Vaughn's head would have been partially inside the car at that time. (T. 532).

From the victim's injuries, Bass concluded that the vehicle was traveling between 60 and 75 mph at the time of impact. (T. 535, 608). Bass further testified that, based on available studies and her experience, her "educated guess" was that the vehicle was traveling between 60 and 65 mph. (T. 599). The speed limit in that area was 55 mph. (T. 600).[2]

Dr. Merle Reyes, a medical examiner in Orange County, described the victim's numerous injuries. (T. 345). Vaughn's limbs were fractured, he had multiple abrasions, and he was struck with such force that his spinal column was dissected. (T. 347-57). After examining the evidence at the scene and the injuries on the

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[2]The defense expert disagreed with these conclusions. According to James Clark, a consulting engineer who does accident reconstruction, the vehicle struck Vaughn while Vaughn was on the hard surface of the road. (T. 712, 734). Clark also estimated the car's speed as 50-55 mph, and he noted that the driver would not even be aware of the fact that he had struck a human being, given the unexpected nature of the collision and the extremely short time span of the accident. (T. 736-37). Clark further testified that the cone of evidence theory was not a good basis for accident reconstruction, as studies showed no conclusions can be drawn from the location of the victim's belongings. (T. 812).

body, Dr. Reyes concluded that Vaughn was on the grass when he was struck by the car. (T. 361-77). If he had been on the pavement, there would have been much more trauma to his lower legs than she observed in this case. (T. 396). Vaughn died at approximately 12:15 a.m. that evening. (T. 360).

Detective Bass testified that if Dumas had stayed at the scene of the accident, the police would have drawn his blood for a blood alcohol test, assuming they had probable cause to do so. (T. 605). She also noted that consumption of alcohol increases reaction and perception time. (T. 605).

Dumas was charged with DUI manslaughter, leaving the scene of an accident with death, and vehicular homicide. (R. 746). The jury acquitted Dumas of the DUI charge and found him guilty of the latter two charges. (T. 966). Dumas was given a guidelines sentence of five years imprisonment, followed by five years probation. (R. 281-82).

On appeal, the district court reversed Dumas' conviction for leaving the scene of an accident with death, finding that while the evidence supported this conviction a reversal was warranted because the jury had been improperly instructed as to the knowledge element of this crime. Dumas v. State, 21 Fla. L. Wkly. D2455 (Fla. 5th

DCA Nov. 15, 1996). The court also certified **the following as a question of great public importance:**

> UNDER THIS COURT'S RULING IN STATE V. MANCUSO, **652 SO. 2D** 370 (FLA. 1995), REQUIRING THAT THE JURY BE CHARGED REGARDING THE KNOWLEDGE REQUIRED PRIOR TO CONVICTING A DEFENDANT OF **LEAVING** THE SCENE OF AN ACCIDENT WITH **INJURY** OR DEATH, DID THE 1993 **AMENDMENTS** TO FLORIDA **STATUTE** 316.027, WHICH DIVIDED THE OFFENSE OF LEAVING THE SCENE OF *AN* **ACCIDENT** INTO TWO **FELONIES, ONE** A SECOND DEGREE FELONY IF A DEATH WAS INVOLVED, AND THE OTHER A THIRD DEGREE FELONY IF ***AN*** INJURY WAS INVOLVED, THEN REQUIRE THAT THE **JURY BE** CHARGED REGARDING THE MANCUSO KNOWLEDGE REQUIREMENT BASED ON THE **ACTUAL** OFFENSE CHARGED, **TO** WIT: DEATH IF SO **CHARGED** OR **INJURY** IF **SO** CHARGED?

Dumas v. State, 22 Fla. L. Wkly. D184 (Fla. 5th DCA Jan. 3, 1997) **(on rehearing).**

The certified question should be answered in the negative. Once a driver is aware that an accident has occurred wherein a person is injured or dead, he is obligated to stop and comply with certain statutory duties. The failure to do so is a crime, whether the driver correctly guesses as to the severity of the victim's injuries or not.

The degree of felony is determined not by the defendant's knowledge, but by the magnitude of the result of the accident. If a driver leaves the scene of an accident and the victim dies, and the defendant knew or should have known he had hurt someone, then he has committed the second degree felony of leaving the scene of an accident with death.

ARGUMENT

THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE NEGATIVE, AS THE AMENDMENT TO THE STATUTE WAS NEVER INTENDED TO CHANGE THE KNOWLEDGE REQUIREMENT.

The issue presented by the certified question in this case can be more simply phrased as follows -- is the knowledge requirement for the second degree felony of "leaving the scene of an accident with death" different from the knowledge requirement for the third degree felony of "leaving the scene of an accident with injury." The State submits that this question should be answered in the negative.

Under section 316.027 of the Florida Statutes, the driver of any vehicle involved in an accident resulting in injury or death is required to remain at the scene to provide information and render aid to those harmed. The failure to do so is a felony offense.

In State v. Mancuso, 652 So. 2d 370 (Fla. 1995), this Court addressed the knowledge requirement for this crime. Because the statute requires an affirmative course of action to be taken by the driver, this Court reasoned that it necessarily requires knowledge

of the facts giving rise to such affirmative duty.[3] Accordingly, this Court held that the statute requires proof that the driver not only was aware of the accident, but also "either knew of the resulting injury or death or reasonably should have known from the nature of the accident." Id. at 372. The jury was so instructed in this case.[4]

The statute construed in Mancuso provided that leaving the scene of an "accident resulting in injury or death" was a third degree felony. Id. at 370 n. 1. The statute was subsequently amended to provide that leaving the scene of an "accident resulting in injury" is a third degree felony, while leaving the scene of an "accident resulting in death" is a second degree felony. Ch. 93-140, Laws of Florida.

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[3]Knowledge of the accident itself is not enough, given the vast difference between a misdemeanor conviction for leaving the scene of an accident with property damage (§ 316.061, Fla. Stat. (1993)) and a felony conviction for leaving the scene of an accident involving death or injury to a person. Mancuso, 652 So. 2d at 372.

[4]The court instructed the jury that the State was required to prove that Dumas "knew or should have known that the death of or injury to [the victim] resulted from the collision." (T. 950). Cf. Jones v. State, 666 So. 2d 995, 998 (Fla. 5th DCA 1996) (reversing under Mancuso where trial court omitted knowledge requirement completely); Cordier v. State, 652 So. 2d 505 (Fla. 4th DCA 1995) (same).

The district court found that because the statute has now been split into two subsections, the knowledge requirement has changed as well. According to the district court, in order to prove the second degree felony the State must now prove that the defendant left the scene of an accident wherein the victim died and that the defendant knew, or should have known, the victim was dead at the time he left. The State submits that this decision is contrary to the language and intent of the statute, the reasoning in Mancuso, and common sense.

The purpose of section 316.027 is "to assure that any injured person is rendered aid and that all pertinent information concerning insurance and names of those involved, in the traffic accident is exchanged by the parties." Herring v. State, 435 So. 2d 865, 866 (Fla. 3d DCA), cert. denied, 464 U.S. 1018 (1983). The obligation to provide this information and/or render aid applies in all accidents where the driver knew, or should have known, that the facts were such as to trigger this duty -- where the driver knew or should have known of the injury or death. Mancuso, 652 So. 2d at 372. Without knowledge of the consequences of the accident -- that someone was hurt or killed -- the driver cannot be expected to fulfill a duty that arises solely because of those consequences.

Such a duty is not, however, dependent upon knowledge of whether the victim was killed or only wounded. The driver's obligation is the same in either case -- to stay at the scene, provide the relevant information, and render aid, if aid is necessary. As long as the driver is aware, or should be aware, that his duty under the statute has been triggered, he must perform that duty. It simply does not matter whether the driver was aware of a death or merely aware of an injury -- the statutory requirements remain the same.

This analysis is not changed by the fact that leaving the scene results in a heightened penalty if the victim actually dies, rather than is simply injured. The purpose of the amendment of the statute was to "increas[e] the penalty imposed on a driver who fails to stop and remain at the scene of such accident if the accident results in a death." Ch. 93-140 (emphasis added).[5] This amendment changed the degree of crime based on the ultimate result

[5]In fact, the staff analysis reflects that the amendment was intended to make it easier to establish a second degree felony where someone dies in a traffic accident and the responsible party leaves the scene. Under the old law, a prosecutor would have to prove vehicular homicide in order to convict such a driver of a second degree felony; under the new law the driver could be convicted of this type of felony without the burden of establishing culpable negligence. Staff of Fla. s. Comm. on Crim. Justice, SB 90 Staff Analysis p. 1 (rev. 3/15/93) (attached hereto for the Court's convenience as Appendix B).

of the accident. It is the fact that the victim was so seriously injured that he died which increases the degree of the offense; whether the driver could have correctly guessed the severity of the victim's injuries is irrelevant.

Categorizing the crime on the basis of the result is certainly not unusual in criminal law. For example, a person who, intending to kill, shoots at someone and kills him is guilty of first degree murder, a capital felony. § 782.04, Fla. Stat. (1995). A person who, with the same intent, shoots at someone and misses is guilty of attempted first degree murder, a felony of the first degree. § 777.04(4)(b), Fla. Stat. (1995). The result is the only factor which separates these crimes.

That it is the result, rather than the driver's knowledge, which increases the severity of the crime is further reflected in the fact that the crime is punished more severely where the result is more serious -- the death of the victim -- rather than where the driver is more culpable -- as a driver who leaves an injured victim in fact does more harm than a driver who leaves a dead victim. If the Legislature had intended to base the degree of felony on the driver's knowledge, then leaving an accident with an injured victim would have been punished more severely than leaving an accident with a dead victim.

Once the driver is aware that his responsibility to stay at the scene has been triggered, whether by a death or by an injury, the failure to fulfill this responsibility constitutes a "willful" violation of the statute and a felony offense. The degree of that felony does not depend on whether the State can prove the driver knew the victim was dead, injured, or comatose, as the district court held.

Rather, as the Legislature set forth in the statute, the degree of the felony depends on the result of the accident. In this case, the victim undeniably died as a result of the collision, and the jury found that Dumas knew or should have known that his duties had been triggered under the statute. The district court's decision overturning Dumas' conviction should be reversed by this Court, and the certified question answered in the negative.

Finally, even if the jury should have been instructed that the State had to prove the defendant knew or should have known of the death -- that knowledge of injury was insufficient -- any error was harmless. The defense in this case was that Dumas did not know he had run into a person; the defense was not that he knew he had run into a person but was innocent because he thought he had only

injured the person, not killed him.[6] Accordingly, the alleged deficiency in the knowledge instruction would not have affected the verdict in this case, and any error was harmless. See Bolen v. State, 375 So. 2d 891, 892 (Fla. 4th DCA 1979). Dumas' conviction should be affirmed on this basis as well.

[6]In fact, such a defense is obviously absurd, yet it is the logical result of the construction of knowledge sought by Dumas on appeal. It is a fundamental principle that statutes should not be construed in such a way as to lead to absurd results. See, e.g., State v. Iacovone, 660 So. 2d 1371, 1373 (Fla. 1995).

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner/Cross-Respondent respectfully requests this Court reverse the district court's decision and answer the certified question in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Initial Brief has been furnished by U.S. mail to H. Manuel Hernandez, P.O. Box 916448, Longwood, Florida 32791, this 28th day of February, 1997.

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,
Cross-Respondent,

v. CASE NO. 89,769

TODD E. DUMAS,

Respondent,
Cross-Petitioner.
_____/

PETITIONER'S APPENDIX

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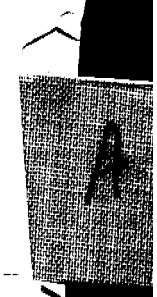

Criminal law—Attempted second degree murder—No error in reclassifying offense from second degree to first degree felony based on use of weapon—Use of weapon is not essential element of attempted second degree murder—Fact that charging document alleged that defendant used knife does not make use of knife an essential element of attempted second degree murder

STATE OF FLORIDA. Appellant. v. DELEON FRANKLIN TINSLEY, Appellee. 5th District. Case No. 96-966. Opinion filed November 15, 1996. Appeal from the Circuit Court for Orange County. Reginald K. Whitehead. Judge. Counsel: Roben A. Butterworth, Attorney General. Tallahassee. and David H. Foxman, Assistant Attorney General, Daytona Beach, for Appellant. James M. Sowell, Jr., Leesburg, for Appellee.

(SHARP, W., J.) The state appeals from the trial court's order which granted Tinslcy's motion filed pursuant to rule 3.800 by reducing his attempted second degree murder chargc from a first degree felony to a second degree felony. The trial court reasoned that it had been improper to enhance the attempted second degree murder offense pursuant to section 775.087(1) to a first degree offense because use of a weapon was an essential element of the offense as charged. We disagree and reverse.

In this case, Tinsley pled guilty to three attempted first degree murder charges, which included one count of attempted second degree murder with a weapon, and two counts of attempted third degree murder. Based on section 775.087(1), Florida Statutes (1993), the trial COUR reclassified the second degree murder offense to a first degree felony.[1] The information charged that Tinsley attempted to kill the victims with a knife.

Section 775.087(1) provides:

> Unless otherwise provided by law. whenever a person is charged with a felony, except a felony in which *the use of a weapon or firearm is* an essential element. and during the commission of such felony the defendant carries. displays, uses. threatens, or attempts to use *any* weapon or firearm, or during the commission of such felony the defcndant commits an aggravated battery. the felony for which the person is charged shall be reclassified.... (emphasis supplied)

Whether the attempted second degree murder charge should have been enhanced pursuant to section 775.087(1) depends on whether section 775.087(1) refers to an "essential element" set forth in an *information*, or whether it refers *to* a required and necessary element of the crime as *set* forth by the *particular substantive criminal statute*. In this case, the element of use of the knife appears solely in the information. Second degree murder can be attempted in a variety of ways other than by use of a knife or weapon, That statute does not require as an essential element that a knife or any other weapon be used.[2]

The proper reference in section 775.087(1) is to the substantive criminal law which defines the crime in question. In an analogous case, *Strickland v. State*, 437 So. 2d 150 (Fla. 1983), the Florida Supreme Court held that a first degree attempted murder charge was properly enhanced by section 775.087(1) to a life fclony. The defendant had been charged by information with attempting to murder a victim with a shotgun. In affirming the enhancement, the court said: "We find the use of a firearm not to be an essential element of the crime of attempted first degree murder." 438 So. 2d at 152.

In Miller v. *Stare*, 460 So. 2d 373 (Fla. 1984), the court reaffirmed this interpretation of section 775.087(1). Miller had been charged with second degree murder by shooting a victim with a handgun. The jury returned a verdict of attempted second degree murder and the trial judge enhanced the crime from a second degree fclony to a first dcgrcc felony, as in this case. The court upheld that reclassification, although the issue argued in that appeal was whether reclassification was proper when a dcfcndant is convicted of a lesser included offcnse. However, implicit in the court's affirmance in *Miller*, is its holding in *Strickland*, that the "essential clcmcnt of the crime" language of section 775.087(1) rcfcrcnccs the substantive criminal law, and not the allegations of the information or indictment.

REVERSED. (GOSHORN and THOMPSON, JJ., concur.)

---

[1]Attempted second degree murder is a second degree felony. In this case, the trial judge originally enhanced this charge to a first degree felony pursuant to section 775.087(1).

[2]Second degree murder is defined as: "The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual." § 782.04(2), Fla. Stat. (1993).

* * *

Criminal law—Leaving sccnc of accident—Jury instructions—Where evidence supported verdict that dcfcndant left sccne of accidcnt involving dcath and also supported finding that defendint left sccnc of accidcnt involving injury, but jury was instructcd that it could convict dcfcndant of sccond dcgrcc felony if it found that dcfcndant left scene knowing only that an injury had occurred, tlic only sustainable charge was lcaving the scene of an accidcnt involving injury—Bccausc amcndcd statute imposes more severe penalty for leaving sccne of accidcnt involving *dcatb*, defendant could not be convietcd of that offense absent finding that he knew of death—Issue certified as one of statewidc importance—On remand, state may elect to retry defendant on sccond degrec felony of leaving sccnc involving death or accept conviction for third degree fclony of lcaving scene involving injury

TODD E. DUMAS. Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 95-2842. Opinion filed November 15, 1996. Appeal from the Circuit Court for Orange County. Alice Blackwell White. Judge. Counsel: H. Manuel Hernandez, Longwood. for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Kristen L. Davenport, Assistant Attorney General, Daytona Beach, for Appellee,

(HARRIS, J.) We agree that the record supports the jury verdict of guilt on the charge of vehicular homicide. And while we agree that the record would support the verdict that the defendant lcft the scene of an accident involving death, it would also support a verdict of leaving the scene of an accidcnt involving injury and, because of the charge given to the jury, we believe that the only sustainable charge is leaving the scene of an accidcnt involving injury. Since this appears to be a case of first impression, we certify the issue to the supreme court as an issue of statewidc importance.

The problem arises because of the amendment to section 316.027(1), Florida Statutes, made in 1993. That amendment divided what had been the offense of leaving the scene of an accident involving death or injury into two separate offenses: leaving the scene of an accident involving injury. which remained a third degree felony, and leaving the scene of an accident involving death, which became a second degrec felony. In either case, under the statute as amended, the State is required to prove that the defendant "willfully violates" the specific prohibition. However, the court instructed the jury that it could convict for the second degree felony if it found that the defcndant lcft the scene knowing only that an injury had occurred (a requirement of the third degree felony).

The State makes a good policy argument that the evil being addressed in both sections of the statute is leaving the scene without rendering assistance or reporting. It contends that whether death or mere injury results should not affect one's obligation to remain at the scene. But the issue of whether the victim lives or dies, since the 1993 amendment, makes a material difference, at least at law. in the obligation to remain at the sccnc. Literally years of difference.

Although we arc aware of no case that has addrcsscd this issue since the amendment, we are guided by the supreme court's analysis in *State v. Mancuso*, 652 So. 2d 370 (Fla. 1995). In *Mancuso*, the defendant was chargcd under the statute bcforc the amendment; that is, he was chargcd with leaving the sccnc of an accidcnt involving death *or* injury. In fact, in *Mancuso*, one victim died and the other was seriously injured. Mancuso requested an instruction that before the jury could convict him of

the charge, it must find that he knew that death or injury had occurred. The State apparently prevailed on an argument similar to the one it makes here: that it was only necessary that the jury find Mancuso knew he was involved in an accident and failed lo remain at the scene. This argument is based on the fact that since the law [F.S. 316.061] requires that one involved in an accident resulting only in property *damage* must remain at the scene for the purpose of reporting, the fact that death or injury results is only incidental. The logic of the State's argument made in *Mancuso* is the same as argued herc, The supreme court in *Mancuso* rejected this argument,

Mancuso found that in the pre-amendment crime of leaving the scene of an accidcnt involving death or injury. proof of knowledge that a death or injury occurred was essential to obtain a conviction. Merely knowing that one left the scene of an accident involving property damage would not bc sufficient because a more severe *criminal penalty is imposed* when death or injury results. Now that the statute has been amended, the same logic applies here, a more severe penalty is imposed if a death occurs. Further, the statute involved in this case provides: "Any person who willfully violates *this paragraph*, [leaving the scene of an accident involving death] is guilty of a felony of the second degree. . . ." [Emphasis added.] As the court stated in *Mancuso*, one can not "willfully" do something that he is unaware has occurred. How can he "wilfully" leave the scene of an accident involving death, if he is unaware of the death?.

The court in *Mancuso* directed the Committee on Standard Jury Instructions in Criminal Cases to prepare an instruction consistent with the *Mancuso* holding. The Committee has now done so and although the new instruction relates to the amended version of section 316.027(1) and was not approved in time to be applicable to our case, it is nevertheless persuasive. The new instruction, as does the statute itself, distinguishes between the knowledge that must be proved in order to convict. It provides:

> Before you can find the defendant guilty of Leaving the Scene of an Accident, the State must prove the following four elements beyond a reasonable doubt: * * *
>
> (. . Defendant) knew or should have known of *the* [injury to] [death of] the person.

We believe that the bracketed portions of the instruction are to be given in the alternative depending on the charge. This is consistent with the reasoning of *Mancuso*.

We affirm the conviction for vehicular homicide but remand the case for further proceedings on the charge of leaving the scene. The State may elect to retry the defendant on the second degree charge or accept a conviction for the third degree felony. See Smith *v. State*, 340 *So.* 2d 1216 (Fla. 4th DCA 1976).

AFFIRMED IN PART; REVERSED IN PART and REMANDED. (PETERSON, C.J., and ANTOON, J., concur.)

* * *

Wrongful death—Neither nonprofit corporation which provided room and board to ex-convict in exchange for rent and had purpose of assisting ex-convict with reintegration nor corporation's executive director was liable for ex-convict's sexual battery and murder of child who lived next door to corporation's facility where neither defendant had right or ability to control ex-convict's conduct—Absent right or ability to control ex-convict's conduct, no special relationship existed which *would* give rise to legal duty on part of defendants tocontrol that conduct

THE LIGHTHOUSE MISSION OF ORLANDO. INC., et al., Appellants, v. ESTATE OF CHRISTINE McGOWEN, etc., et al., Appellees. 5th District, Case No. 95-3144. Opinion filed November 15, 1996. Appeal from the Circuit Court for Orange County, Jeffords D. Miller, Judge, Counsel: Robert E. Bonner of Eubanks, Hilyard, Rumbley, Meier & Lengauer, P.A., Orlando. for Appellants. Sharon Lee Stedman of Sharon Lee Stedman, P.A., Orlando. for Amicus Curiae Florida Defense Lawyers Association. James R. Lavigne of Lavigne & Lane, P.A., Orlando, for Appellees.

(PER CURIAM.) The Lighthouse Mission of Orlando, Inc. ("the Mission") and Margaret Powell, its founder and executive director, timely appeal the final judgment and order denying their motion for judgment notwithstanding the verdict and new trial in favor of the Estate of Christine McGowen ("the Estate"). The judgmcnt awarded the Estate $1.5 million following a trial in which the jury found the Mission and Powell negligent after one of the Mission's residents, an ex-convict with a history of sexual crimes, raped and murdered 11 year old McGowen, who lived next door to the Mission. While the Mission and Powell make eight arguments on appeal, only one merits discussion. They contend that the Estate failed to establish that the Mission and Powell owed a legal duty to rhe plaintiff, and thus, the trial court erred in failing to direct a verdict in their favor. We agree and reverse.

THE FACTS

In 1983. Elmer Leon Carroll was convicted of sexual assault upon a girl under the age of 14 and sentenced to 15 years in prison. Carroll was released from the Department of Corrections' custody after serving 7 years, having fully satisfied the term of his sentence. Carroll's release was not conditional and there were no restrictions placed on his liberty; he was a free man.

Following Carroll's release, Teleois Ministries referred him to the Mission, a nonprofit organization formed to assist transients and/or cx-convicts in functioning as contributing members of society and to prepare those individuals spiritually, physically, and psychologically for productive reintegration. Carroll was a voluntary tenant and could leave at will. He paid rent in exchange for his room and board.

Carroll resided at the Mission for several months and then left to move in with his girlfriend. He returned a short time later and lived there until his arrest for McGowen's rape and murder.

Carroll was convicted of first degree murder and sexual battery on a child under the age of 12 and was sentenced to death. The Florida Supreme Court has upheld his conviction and sentence. See Carroll *v. State*, 636 *So.* 2d 1316 (Fla. 1993). *cert. denied.* __ U.S. __, 115 S. Ct. 447, 130 L. Ed. 2d 357 (1994).

Julie Rank, McGowen's mother and personal representative of her estate, filed a civil action for wrongful death against the Mission and Powell alleging that their negligence caused McGowen's death. The Estate alleged that because the Mission and Powell knew or should have known of Carroll's violent tendencies, they breached their duty of care to McGowen. or alternatively, they breached their duty to control Carroll's Conduct,

The case was tried by jury. At the close of the Estate's case, the Mission and Powell moved for a directed verdict, arguing that the Estate had failed to establish a legal duty or right to control Carroll's behavior. The trial court denied their motion and the jury returned a verdict in favor of the Estate for $1.5 million. Following the trial, the Mission and Powell filed a motion for judgment in accordance with the directed verdict or new trial, which was denied.

THE LAW

Florida courts have refused to find that a party owes a duty to control the conduct of another absent a special relationship. *See Garrison Retirement Home Corp. v. Hancock*, 484 So. 2d 1257, 1261 (Fla. 4th DCA 1985). Implicit in the "special relationship" exception to the general rule that no duty is owed is the proposition that the party must have the right or ability to control the third party's behavior, See Palmer v. *Shearson Lehman Hutton, Inc.*, 622 So. 2d *1085*, 1089 (Fla. 1st DCA 1993); *Garrison*, 484 So. 2d at 1261. Florida courts have adopted section 319 of the Restatement (Second) of Tons (1964) which states:

> One who *fakes charge* of 3 third person whom be knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him fromdoing such harm.

Garrison, 484 So. 2d at 1261 (emphasis added).

ttery[illegible] lewd and lascivious assault upon a child under the e o[illegible]. While we affirm the judgment, we reverse the sentence imposed in Count II and remand for resentencing citlicr in cordance with Williamson's plea agreement, or if the trial urt docs not sentence Willliamson pursuant to the agreement, to rmit him to withdraw his plea. See *Hooks v. Slate,* 61 So. 2d 7 (Fla. 3d DCA 1993); see *also Baldwin v. State. 558* So. 2d 3(5th DCA 1390).

W. .amson also argues that it was error to impose restitution the victim's parents' or guardian's counseling expenses. The te properly conccdcs error, See *Gluesenkamp v. State,* 636 *So.* 1367, 1368 (Fla. 1st DCA 1994) ("Family members do not l within the statutory definition of 'victim' unless the aged evcd party is deceased as a result of the offense."). *Ocasio v. ue,* 586 So. 2d 1177 (Fla. 4th DCA 1991)(holding that mother child victim was not entitled to recover restitution for her own sonal psychological injuries, vicariously suffered as result of Id's experience, because mother was not "victim" within aning of statute providing for restitution as child was not dened). Accordingly, we direct the trial court to delete that porn of the special condition of probation mentioning the victim's ents' or guardian's counseling costs. In all other respects, the tence is affirmed.

REVERSED IN PART; AFFIRMED IN PART; REMAND-. (PETERSON, C.J., and SHARP. W., J., concur.)

[1]§§ 777.04.794.011(2), 794.011(1), Fla. Stat. (1995).
[2]§ 800.04(3), Fla. Stat. (1995).

* * *

Criminal law—Probation—Record supported finding that defendant violated conditioii requiring that he live and remain at erty without violating any law—Defendant's threats to former c a[illegible]er present husband constituted violation of criminal ortion statute—Findings that defendant violated other proba- conditions are vacated where conditions were imposed by probation officer rather than by tlic scntcncing court

BAK PARISSAY. Appellnnt, v. STATE OF FLORIDA, Appellee. 5th ri Case No. 96-72. Opinion filed January 3, 1997. Appeal from the Cir- C for Orange County. Dorothy J. Russell, Judge. Counsel: James B. so ublic Defender, and Brynn Newton, Assistant Public Defender, Day- Bench, for Appellant. Robert A. Butterworth, Attorney General, Talla- ee, and David H. Foxman, Assistant Attorney General, Daytona Beach, for ellee.

IR CURIAM.) Babak Parissay appeals an order revoking bation in which the trial court found that Parissay violated e conditions of probation. We affirm the trial court's finding Parissay violated condition five of his probation but vacate other findings of violation for the reason that those conditions e imposed by the probation officer rather than by the sentencourt. A probation officer may implement routine supervisolirections to carry out conditions imposed by the court, but the cer may not impose new conditions of probation. *Haynes v. 'e,* 440 *So.* 2d 661 (Fla. 1st DCA 1983).

Condition five of Parissay's probation order required that he ve and remain at liberty without violating any law....'' The ord supports the trial court's finding that Parissay's threats to formcr wife and her present husband constituted a violation of criminal extortion statute. See § 836.05, Fla. Stat. (1995).

AFFIRMED IN PART; VACATED IN PART. (PETERN, C.J., THOMPSON and ANTOON, JJ., concur.)

* * *

Criminal law—Jury instructions—Leaving scene of accident olving death or injury—Where defendant is charged with ving scene of nccidcnt involving death, jury must be charged ard[illegible]equircmcnt that defendant have actual knowledge of th—Question certified

E. DUMAS, Appellant, v. STATE OF FLORIDA, Appellee. 5th Dis- Case No. 95-2842. Opinion filed January 3, 1997. Appeal from the Cir- Court for Orange County. Alice Blackwell White, Judge. Counsel: lanuel Hernandez, Longwood, for Appellant. Robcn A. Butterworth, General, Tallahassee, and Kristen L. Davenport, Assistant Attorney Daytona Beach, for Appellee.

ON MOTION FOR REHEARING
[Original Opinion nt 21 Fla. L. Weekly D2455b]

(HARRIS, J.) Wc grant Appellee's motion for clarification and amend our prcvious opinion to certify the following question of great public importance to the supreme court under Article V, Section 3(b)(4) of the Florida Constitution:

UNDER THIS COURT'S RULING IN STATE *V. MANCUSO,* 652 SO.2D 370 (FLA. 1995), REQUIRING THAT THE JURY BE CHARGED REGARDING THE KNOWLEDGE REQUIRED PRIOR TO CONVICTING A DEFENDANT OF LEAVING THE SCENE OF AN ACCIDENT WITH INJURY OR DEATH, DID THE 1993 AMENDMENTS TO FLORIDA STATUTE 316.027, WHICH DIVIDED THE OFFENSE OF LEAVING THE SCENE OF AN ACCIDENT INTO TWO FELONIES, ONE A SECOND DEGREE FELONY IF A DEATH WAS INVOLVED, AND THE OTHER A THIRD DEGREE *FELONY* IF AN INJURY WAS INVOLVED, THEN REQUIRE THAT THE JURY BE CHARGED REGARDING THE *MANCUSO* KNOWLEDGE REQUIREMENT BASED ON THE ACTUAL OFFENSE CHARGED, TO WIT: DEATH IF SO CHARGED OR INJURY IF SO CHARGED?

(PETERSON, C.J., and ANTOON, J., concur.)

* * *

Criminal law—Counsel—Self-representation—Where court concluded, after proper inquiry, that defendant was competent to represent himself at trial, thcrc was mistrial because of a statement by one of the witnesses, and rctrial was conducted shortly thcrcafter, retrial was not a "subsequent stage of the proceedings" within contcmplntion of rule requiring that offer of counsel bc renewed "at each subsequent stage of the proceedings"—Although trial court should have renewed offer of counsel prior to sentencing, failure to do so was harmless error where dcfcndant was scntenccd within guideline range and record did not support finding that dcfcndant would have gotten lesser scntcncc had court appointed counsel to speak for him

PAUL HARRIS, Appellant. v. STATE OF FLORIDA, Appellee. 5th District. Case No. 96-943. Opinion filed January 3, 1997. Appeal from the Circuit Court for Orange County, Jay Paul Cohen, Judge. Counsel: James B. Gibson. Public Defender, and M. A. Lucas, Assistant Public Defender. Daytona Beach. for Appellant. Robert A. Butterworth, Attorney General, Tallahassee. and David H. Foxman, Assistant Attorney General, Daytona Beach. for Appellee.

(HARRIS, J.) Paul Harris was convicted of several counts of aggravated stalking, burglary of a structure. criminal mischief, and grand theft. He was sentenced within the guideline rag. Harris, who received consent to represent himself, now seeks reversal because the court did not renew the offer of assistance of counsel "at each subsequent stage of the proceedings." See Rule 3.111(d)(5), Florida Rules of Criminal Procedure.

The court properly conducted a *Faretta* hearing and concluded that Harris was competent to represent himself at trial. Although there was a mistrial because of a statement by one of the witnesses, we conclude that the retrial conducted shortly thereafter was not a "subsequent stage of the proceedings'' within the contemplation of the rule. Harris had just been given the opportunity to represent himself at trial and the retrial was the repetition af the previous stage rather than a subsequent one. He gave no indication that he desired to change his mind about self-representation.

While we agree that the court should have renewed the offer of assistance of counsel prior to sentencing, we find such error to be harrnlcss in this case. Harris was scntcnced within the guideline range and, based on this record, we do not believe that he would have gotten a lcsscr scntcnce had the court appointed ten lawyers to speak for *him. State v. DiGuilio,* 491 *So.* 2d 1129 (Fla. 1986).

AFFIRMED. (COBB and THOMPSON, JJ., concur.)

* * *

Appendix B

SENATE STAFF ANALYSIS AND **ECONOMIC** IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Liepshutz	CJ	Fav/1 amend.
2.			AP	
3.				
4.				

SUBJECT: Vehicular Accidents Resulting In Death Or Personal Injury

BILL NO, AND SPONSOR: SB 90 by senator Weinstein

I. ***SUMMARY:***

A. Present Situation:

Currently, it is **a** third degree felony for any driver involved in an accident resulting in injury or **death** to willfully fail to stop, give the requisite information, and render reasonable assistance at the accident scene. **s. 316.027, F.S.** There is no enhanced penalty under this statute for leaving the scene of an accident involving death. Under the vehicular homicide statute, however, it is **a** second degree felony to commit vehicular homicide and willfully fail to stop and provide the requisite information and assistance. **s. 782.071, F.S.**

Vehicular homicide, **a** third **degree felony,** occurs when someone kills another person by operating **a** motor vehicle in **a** reckless manner likely to cause death or great bodily harm. The degree of negligence which must **be** proved to sustain **a** vehicular homicide conviction is less than culpable negligence but is more than mere failure to **use** ordinary care. McCreary **v.** State, **317** So.2d **1024** (Fla. 1979). Culpable negligence is **a** much higher standard of proof involving "gross and flagrant character evincing reckless disregard of human **life. . . .**" Filman v. State, 336 So.2d 586 **(Fla. 1976).**

B. Effect of Proposed Changes:

SB ***90*** would enhance **the** penalty for **a** driver who willfully **left the** scene of an accident when it resulted in the death of **any** person, from **a** third degree felony to **a** second degree felony under **s. 316.027, F.S.** Leaving the **scene** of an accident resulting in injury would remain **a** third degree felony under the bill. **As a** result of SB 90, **a** prosecutor could convict **a** driver who willfully left **the** scene of an accident resulting in death of **a** second degree felony under s. **316.027, F.S.,** without first having to prove the driver committed vehicular homicide, which is currently required under **s. 782.071,** F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department: **of Corrections,** the bill would have no fiscal impact on the department.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

#1 by Criminal Justice:
Provides *that* a court may not dismiss any citation for a traffic infraction that resulted in an accident causing death unless the prosecutor has been given at least 72 hours' notice of the motion to dismiss and has been given an opportunity to be heard an the motion.

(WITH TITLE AMENDMENT)

BILL VOTE SHEET

(VS-90: File with **Secretary** of Senate) BILL **NO.** SB 90

COMMITTEE ON: Criminal Justice

DATE: March 15, 1993

TIME: 01:00 PM -- 05:00 PM

PLACE: **Room 2C**

OTHER COMMITTEE REFERENCES:
(in order shown)

AP

ACTION:

- X **Favorably with** 1 **amendments**
- ___ **Favorably with Committee Substitute with** ___ **amendments**
- ___ **Unfavorably**
- ___ **Submitted as a Committee Bill**
- ___ **Temporarily Passed**
- ___ **Reconsidered**
- ___ **Not Considered**
- ___ **NO** QUORUM

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	03/15/93 Amend. #1 by Siegel									
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Bankhead										
		Grogan										
X		Meadows										
		Scott										
X		Siegel										
X		Silver										
X		VICE CHAIRMAN Harden										
X		CHAIRMAN Wexler										
6	0	TOTAL	FWO	-								
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

Please **Complete:** **The key** sponsor **appeared** ( )
A Senator **appeared** ( )
Sponsor's aide appeared ( )
Other appearance ( )

FLORIDA SENATE - 1993 SB 90

BY Senator Weinstein

3-202-93

A bill to be entitled

An act relating to vehicular accidents that result in death or personal injury; amending s. 316.027, F.S.; increasing the penalty imposed on a driver who fails to stop and remain at the scene of such accident if the accident results in a death; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.027, Florida Statutes, is amended to read:

316.027 Accidents involving death or personal injuries.--

(1)(a) The driver of any vehicle involved in an accident resulting in injury or death of any person must ~~shall~~ immediately stop the ~~such~~ vehicle at the scene of the accident, or as close thereto as possible, and must ~~shall forthwith return to, and in every event shall~~ remain at the scene of the accident until he has fulfilled the requirements of s. 316.062.

~~(2)~~ Any person who willfully *violates* this paragraph ~~failing to stop or to comply with the requirements of subsection (1) under such circumstances~~ is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The driver of any vehicle involved in an accident resulting in the death of any person must immediately stop the vehicle at the scene of the accident, or as close thereto as possible, and must remain at the scene of the accident until he has fulfilled the requirements of s. 316.062. Any person

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

who willfully violates this paragraph *is* guilty *of* a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)~~(3)~~ The department shall revoke the driver's license of the person so convicted.

(3)~~(4)~~ Every stop must ~~shall~~ be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of the ~~such~~ vehicle must ~~shall~~ make every reasonable effort *to* move *the* vehicle or have it moved so as not to obstruct the regular flow of traffic. Any person who fails ~~failing~~ to comply with the ~~provisions of~~ this subsection shall be punished as provided in s. 316.655.

Section 2. This act shall take effect July 1, 1993.

****

SENATE SUMMARY

fncreases, from a third-degree to a second-degree felony, the penalty for a driver who fails to stop his vehicle and remain at the scene of the accident when the vehicle he is driving is involved in an accident resulting in the death of any person.

STORAGE NAME: h0127.cj
DATE: April 20, 1993

AS PASSED BY THE LEGISLATURE
CHAPTER #: 93-140, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 127

RELATING TO: Vehicular Accidents That Result in Death or Personal Injury

SPONSOR(S): Representative Rayson

STATUTE(S) AFFECTED: 316.027, Fla. Stat,
COMPANION BILL(S): SB 90 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIMINAL JUSTICE YEAS 14 NAYS 0
(2) APPROPRIATIONS WITHDRAWN
(3)
(4)
(5)

****

I. **SUMMARY**:

Currently, s. 316.027, Fla. Stat., requires the driver of any vehicle involved in an accident resulting in injury or death to stop at the scene of the accident and remain at the scene until the requirements of s. 316.062, Fla. Stat,, have been met. Section 316.062, Fla. Stat., requires the driver of a vehicle involved in an accident resulting in injury or death *to* give the person's name, address, and the registration number of the vehicle being driven, and if requested, exhibit the person's driver's license or driver's permit to any person injured in the accident, and upon request, to the officer who is investigating the accident. Additionally, the driver of such vehicle is required to give aid to any injured person. Any person who willfully fails *to* stop, or comply with the requirements of s. 316.062, Fla. Stat., is guilty of a third degree felony. The Department of Highway Safety and Motor Vehicles is required *to* revoke the driver's license of any person convicted under this part.

This bill amends s. 316.027, Fla. Stat. by increasing the penalty from a 3rd *to* a 2nd degree felony for the failure to stop and remain at the scene of an accident resulting in death.

TO the extent that this bill results in persons being incarcerated in state prisons for longer periods of time, this bill may have a fiscal impact on state and local governments.

II. SUBSTANTIVE ANALYSTS:

A. PRESENT SITUATION:

Currently, s. 316.027, Fla. Stat., requires the driver of any vehicle involved in an accident resulting in injury or death to stop at the scene of the accident and remain at the scene until the requirements of s. 316.062, Fla. Stat., have been met.

Section 316.062, Fla. Stat..,requires the driver of a vehicle involved in an accident resulting in injury or death to give his/her name, address, and the registration number of the vehicle being driven, and if requested, exhibit his/her driver's license or driver's permit to any person injured in the accident, and upon request, to the officer who is investigating the accident. Additionally, the driver of such vehicle is required to give aid to any injured person.

Any person who willfully fails to comply with the requirements of Ss. 316.027 and 316.062, Fla. Stat., is guilty of a third degree felony. Moreover, the Department of Highway Safety and Motor Vehicles is required to revoke the driver's license of any person convicted under this part.

B. EFFECT OF PROPOSED CHANGES:

This bill amends s. 316.027, Fla. Stat., by providing that the driver of any vehicle involved in an accident resulting in the death of any person must immediately stop at the scene of the accident and remain at the scene until such person has fulfilled the requirements of s. 316.062, Fla. Stat. Any person who willfully fails or refuses to meet the requirements of s. 316.027, Fla. Stat., commits a felony of the second degree, punishable as provided in sections 775.082, 775.083, or 775.084, Fla. Stat.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 316.027, Fla. Stat. as described above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

None anticipated.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector *Costs:*

None anticipated,

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets :

None anticipated.

D. FISCAL COMMENTS:

According to the Department of Corrections, there is not enough available data *to* estimate the impact of the bill upon the DOC offender population. If offenders were convicted of this crime the imposition of second degree felony penalty may create an impact on the offender populations of the department.

DOC indicates that the extent of such impact cannot be accurately estimated.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:
Prepared by: Wayman W. Favors

Staff Director: Susan G. Bisbee

FINAL ANALYSIS PREPARED BY COMMITTEE ON CRIMINAL JUSTICE:
Prepared by: Wayman Walter Favors
Wayman W. Favors

Staff Director: Susan G. Bisbee
Susan G. Bisbee

House of Representatives

COMMITTEE INFORMATION RECORD

Committee on CRIMINAL JUSTICE

Date of Meeting February 22, 1993

Time 1:30 PM

Place 214 C **Bill** No.: HB 127

FINAL ACTION: X **Favorable**

_____ **Favorable** with _____ **Amendments**

_____ **Favorable with Substitute**

_____ ***Unfavorable***

VOTE:

YEA	MEMBER	NAY
	Armesto-Garcia	
X	Bainter	
X	Charles	
X	Couch	
X	Crist	
X	Dennis	
X	Feren	
X	Hanson	
X	Kerrigan	
X	Klein	
X	McAndrews	
X	Schultz	
X	Sindler	
X	Staffard	
	Valdes	
X	Martinez, Chr.	

YEA	MEMBER	NAY

Total Yeas 14

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Elaine F. Martinez

Chairman

APPEARANCE RECORD

The following persons (other than **legislators) appeared before** the **committee during the consideration** *of* **this bill:**

Name	Representing	Address

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

(FILE **WITH THE CLERK AND** ATTACH **SUBCOMMITTEE REPORT IF APPLICABLE**)

H-22(1989)

An act relating to vehicular accidents that result in death or personal injury; amending s. 316.027, F.S.; increasing the penalty imposed on a driver who fails to stop and remain at the scene of such accident if the accident results in a death; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.027, Florida Statutes, is amended to read:

316.027 Accidents involving death or personal injuries.--

(1)(a) The driver of any vehicle involved in an accident resulting in injury or death of any person must shall immediately stop the such vehicle at the scene of the accident, or as close thereto as possible, and must shall forthwith return to, and in every event shall remain at the scene of, the accident until he has fulfilled the requirements of s. 316.062.

(2) Any person who willfully violates this paragraph failing to stop or to comply with the requirements of subsection (1) under such circumstances is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The driver of any vehicle involved in an accident resulting in the death of any person must immediately stop the vehicle at the scene of the accident, or as close thereto as possible, and must remain at the scene of the accident until he has fulfilled the requirements of s. 316.062. Any person

who willfully violates this paragraph is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(3) The department shall revoke the driver's license of the person so convicted.

(3)(4) Every stop must shall be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of the such vehicle must shall make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic. Any person who fails failing to comply with the provisions of this subsection shall be punished as provided in s. 316.655.

Section 2. This act shall take effect July 1, 1993.

HB 127

By Representative Rayson

A bill to ba entitled

An act relating to vehicular accidents that result in daath or personal injury; amending s. 316.027, F.S.; increasing the penalty imposed on a driver who fails to stop and remain at the scene of such accident if the accident results in a death; providing an effective date.

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(2) Any person who willfully violates this paragraph failing to stop or to comply with the requirements of subsection (1) under such circumstances is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The driver of any vehicle involved in an accident resulting in the death of any person must immediately stop the vehicle at the scene of the accident, or as close thereto as possible, and must remain at the scene of the accident until he has fulfilled the requirements of s. 316.062. Any person

CODING: Words stricken are deletions; words underlined are additions.

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Section 2. This act shall take effect July 1, 1993.

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SENATE SUMMARY

Increases, from a third-degree to a second-degree felony, the penalty for a driver who fails to stop his vehicle and remain at the scene of the accident when the vehicle he it driving is involved in an accident resulting in the death of any person.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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