

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

DEONTAE JOHNSON,

Respondent.

Case No. SC21-20

DCA No. 1D19-1474

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL OF FLORIDA

AMENDED JURISDICTIONAL BRIEF OF PETITIONER

ASHLEY B. MOODY
ATTORNEY GENERAL

TRISHA M. PATE
Chief Assistant Attorney General
Florida Bar No. 45489

DAMARIS E. REYNOLDS
Assistant Attorney General
Florida Bar No. 37176

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300

RECEIVED, 01/21/2021 04:23:34 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	4
CONCLUSION	9
CERTIFICATE OF SERVICE.....	10
CERTIFICATE OF COMPLIANCE.....	10

TABLE OF CITATIONS

Cases	Page(s)
<i>Deontae Johnson v. State</i> , 2020 WL 5509697, -- So. 3d -- , (Fla. 1st DCA September 14, 2020).....	3
<i>Hardy v. State</i> , 705 So. 2d 979 (Fla. 4th DCA 1998).....	3, 6
<i>Hoag v. State</i> , 511 So. 2d 401 (Fla. 5th DCA 1987).....	3, 6
<i>Herring v. State</i> , 435 So. 2d 865, 866 (Fla. 3d DCA 1983).....	9
<i>Peer v. State</i> , 983 So. 2d 34 (Fla. 1st DCA 2008).....	3, 6
<i>State v. Dumas</i> , 700 So. 2d 1223, 1225 (Fla. 1997).....	9
<i>Valdes v. State</i> , 3 So. 3d 1067, 1069 (Fla. 2009).....	4
Statutes	
Section 316.027(2), Florida Statutes.....	2, 3, 4, 5, 6, 7, 8, 9
Section 316.062(1), Florida Statutes.....	2, 3, 4, 6, 7, 8
Rules	
Florida Rule of Appellate Procedure 9.045(e).....	10
Constitutional Provisions	
Article V, § 3(b)(3) of the Florida Constitution	9

PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the Appellee in the District Court of Appeal and the prosecuting authority in the trial court. Petitioner will be referred to in this brief as the State. Respondent, Deontae Johnson, was the Appellant in the District Court of Appeal and the defendant in the trial court. Respondent will be referred to in this brief as such.

STATEMENT OF THE ISSUES

GIVEN THE REQUIREMENTS OF SECTION 316.062(1), FLORIDA STATUTES, DOES CONVICTION ON MULTIPLE COUNTS UNDER SECTION 316.027(2), FLORIDA STATUTES, STEMMING FROM A SINGLE CRASH INVOLVING MULTIPLE VICTIMS, EXPOSE A DEFENDANT TO MULTIPLE PUNSHMENTS FOR ONE OFFENSE IN VIOLATION OF THE DOUBLE JEOPARDY PROTECTIONS OF THE U.S. CONSTITUTION?

STATEMENT OF THE CASE AND FACTS

On December 26, 2016, Respondent ran a red light and struck a vehicle which struck another vehicle. Respondent left the scene of the crash without rendering aid to any of the crash victims. As a result, Respondent was convicted of Leaving the Scene of the Crash Involving the Death of Tyriq Roberts, and three counts of Leaving the Scene of the Crash Involving Personal Injury to Breanna Cotton,

Kristal Haynes, and Christian Debique. The trial court dismissed one conviction of leaving the scene of a crash involving personal injury, reasoning that Breanna Cotton and Kristal Haynes were in the same vehicle, and the unit of prosecution was each vehicle involved in the crash rather than each person injured in the crash. Respondent was sentenced for leaving the scene of a crash involving death and two counts of leaving the scene of a crash involving personal injury. On appeal, he argued that more than one conviction of leaving the scene of a crash without rendering aid constituted a double jeopardy violation. The First District Court affirmed his conviction for leaving the scene of a crash involving death but vacated the two convictions for leaving the scene of a crash involving personal injury in reliance on District Court precedent stating more than one conviction for leaving the scene of a crash constitutes double jeopardy.

The Honorable Thomas D. Winokur concurred with the majority because he believed they were bound by District Court precedent. However, he observed that section 316.027(2), Florida Statutes, permits separate punishments for each victim because the driver is required to remain at the scene until having fulfilled the requirements of section 316.062(1), Florida Statutes, which

prescribes a duty to render reasonable assistance to each person injured in the crash.

Judge Winokur noted in his concurrence that “neither [the First District] Court in *Peer v. State*, 983 So. 2d 34 (Fla. 1st DCA 2008), nor the courts in *Hardy v. State*, 705 So. 2d 979 (Fla. 4th DCA 1998) or *Hoag v. State*, 511 So. 2d 401 (Fla. 5th DCA 1987), considered the effect of section 316.062 in their analyses of whether leaving the scene permits multiple punishments based on multiple victims” even though section 316.062(1) is specifically referenced in section 316.027(2), and requires a driver to remain at the scene until each victim is rendered reasonable assistance.

Following the First District Court’s decision in *Deontae Johnson v. State*, 2020 WL 5509697, -- So. 3d -- , (Fla. 1st DCA September 14, 2020), the State filed a Motion for Certification of a question of great public importance, and argued that binding precedent from the First, Fourth, and Fifth District Courts has completely overlooked Florida statutory law. The State’s Motion for Certification was granted. On December 9, 2020, the First District Court certified its decision in the instant case as one which passes upon a question of great public importance.

ARGUMENT

The District Courts have engaged in a faulty double jeopardy analysis, as they have regarding other crimes involving traffic fatalities, overlooking the fact that “there is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal transaction as long as the Legislature intends to authorize separate punishments.” *Valdes v. State*, 3 So. 3d 1067, 1069 (Fla. 2009). One offense per victim is what section 316.027(2) prescribes and it does not violate double jeopardy. The statute is entirely constitutional.

Likewise, time and time again, the trial courts and District Courts have completely overlooked the reference to section 316.062(1) in section 316.027 and excised it altogether from their analysis of this issue. Whether this has been done intentionally or not, the fact remains that the plain language of the statute is clear and unambiguous and there is no need to interpret the statute in such a way as to preserve its constitutionality because it is constitutional on its face.

There is no valid reason for the conflict which exists between the plain language of the statute and the statutory interpretation

found in binding District Court precedent. Furthermore, it is an unfortunate reality that traffic crashes which result in death and injury occur daily. Very often, they involve more than one victim. Unfortunately, leaving the scene of a crash without rendering aid is not an isolated or unusual crime.

Whether section 316.027(2) is directed at the act of leaving the scene of a crash, or the act of abandoning injured victims at the scene without rendering aid, is a frequently recurring question of Constitutional magnitude.

If this Court does not intervene to address this frequently recurring question of Constitutional magnitude, binding precedent from the District Courts will continue to override Florida statutory law and will prevent crash victims from securing the justice they deserve. Therefore, this Court should exercise its discretionary jurisdiction to address the question certified by the First District Court.

The decision of the First District Court relies on binding precedent which improperly focuses on the act of leaving the scene rather than the act of abandoning injured victims at the scene without rendering reasonable aid. Section 316.027(2) requires a

driver to remain at the scene of the crash and fulfill the requirements of section 316.062(1). Section 316.062(1) requires a driver to render reasonable aid to each victim of the crash. The plain language of the statute provides for one count of leaving the scene of the crash with serious injury without rendering aid for each injured person who is abandoned at the scene. Because the plain language of the statute is clear and unambiguous, and does not violate double jeopardy, there is no need for the courts to attempt to discern the Legislature's intent or construe the statute any differently than its plain language prescribes.

Although the statute contains no ambiguity, the First, Fourth, and Fifth District Courts have undertaken a statutory analysis of section 316.027(2) without considering the requirements of section 316.062(1) and concluded that the Legislature did not intend to authorize separate punishments for each victim of the crime of leaving the scene of a crash.

As Judge Winokur noted in his concurrence, "neither [the First District] Court in *Peer v. State*, 983 So. 2d 34 (Fla. 1st DCA 2008), nor the courts in *Hardy v. State*, 705 So. 2d 979 (Fla. 4th DCA 1998) or *Hoag v. State*, 511 So. 2d 401 (Fla. 5th DCA 1987), considered the

effect of section 316.062 in their analyses of whether leaving the scene permits multiple punishments based on multiple victims.”

Judge Winokur also expressed his specific disagreement with the Fifth District’s holding in *Hoag*, that the Legislature did not intend to authorize separate punishments for each victim of the crime of leaving the scene. Judge Winkour concluded: “I see no such legislative intent. Instead, I see a statute that criminalizes behavior specific to each victim of a crash.”

Section 316.027(2), Florida Statutes, provides:

(2)(a) The driver of a vehicle involved in a crash occurring on public or private property which results in injury to a person other than serious bodily injury shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062...

(b) The driver of a vehicle involved in a crash occurring on public or private property which results in serious bodily injury to a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062...

(c) The driver of a vehicle involved in a crash occurring on public or private property which results in the death of a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062...

Section 316.062, Florida Statutes, provides:

316.062 Duty to give information and render aid.—

(1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, and shall upon request and if available exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and shall give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash and shall render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

Notably, when more than one person is injured, each victim is entitled to restitution pursuant to section 316.027(2)(d), Florida Statutes, which provides:

(d) Notwithstanding s. 775.089(1)(a), if the driver of a vehicle violates paragraph (a), paragraph (b), or paragraph (c), the court shall order the driver to make restitution to the victim for any damage or loss unless the court finds clear and compelling reasons not to order the restitution.

As Judge Winokur observed in his concurrence:

It should also be noted that the Florida Supreme Court has stated, “[o]ne of the main purposes of [section

316.027(2)] is to ensure that accident victims receive medical assistance as soon as possible.” *State v. Dumas*, 700 So. 2d 1223, 1225 (Fla. 1997) (citing *Herring v. State*, 435 So. 2d 865, 866 (Fla. 3d DCA 1983)). In my view, this statement recognizes that the statute is directed at individual victims, not at the mere act of leaving the scene.

CONCLUSION

The fact that the Legislature has made provision in section 316.027(2) for each victim speaks for itself. The Legislature has placed the focus on the number of injured persons abandoned at the scene. That is the allowable unit of prosecution, not the single act of leaving the scene. The plain language of the statute is directed at the individual victims abandoned without being rendered aid.

The District Courts seem to have employed the tools of statutory interpretation in an effort to avoid violating double jeopardy even though no interpretation is necessary because the plain language of the statute is constitutional. When each offense contains an element not contained in the other, they are not the same offense, they do not punish the same conduct, and they do not violate double jeopardy. Section 316.027(2) is constitutional, as written.

This Court should exercise its discretionary jurisdiction pursuant to Article V, § 3(b)(3) of the Florida Constitution to answer

the question posed by the First District Court in the instant case because it is a frequently recurring question of Constitutional magnitude.

CERTIFICATE OF SERVICE

I hereby certify a copy of this brief has been furnished to Kathryn.Lane@flpd2.com via the e-filing portal on this 21st day of January, 2021.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was computer generated using Bookman Old Style 14-point font, and the relevant portion contains 1854 words according to the word count feature in Microsoft Word, in compliance with Florida Rule of Appellate Procedure 9.045(e).

Respectfully submitted and certified,

ASHLEY B. MOODY
ATTORNEY GENERAL

/s/ Damaris E. Reynolds
DAMARIS E. REYNOLDS
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 37176
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Damaris.Reynolds@myfloridalegal.com
(850) 414-3300