

IN THE SUPREME COURT OF FLORIDA

NICOLE STOLETZ,  
Petitioner,

v.

STATE OF FLORIDA,  
Respondent.

Case No. SC03-168

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL  
SECOND DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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**OTHER AUTHORITIES**

§316.655(2), Fla. Stat. (Supp. 1996) . . . . .	3, 5, 6
§322.28, Fla. Stat. . . . .	3, 7, 8

**PRELIMINARY STATEMENT**

The record on appeal is contained in numerous volumes. Reference in Respondent's brief will only be to the first volume containing the court record and the transcript of the sentencing hearing of May 3, 2001, and a supplemental record containing the transcript of a hearing on May 9, 2002 on the 3.800 motion. Reference to these documents will be (R \_\_), using the stamped numbers appearing on the lower right of the page. No reference will be made to the transcript of the trial.

**STATEMENT OF THE CASE AND FACTS**

Respondent accepts Petitioner's statement of the case and facts with the following additions and corrections:

On the issue of the Petitioner's driver's license, at the sentencing hearing, the trial court stated:

On the driver's license, the driver's license will be suspended for life. You have a lifetime revocation of your driver's license because under 316.655, I'll find that the revocation of your license for life is warranted under the circumstances of your particular driving record, your history; your driving history.

I'll make the finding that the lifetime revocation of your driver's license is appropriate because when taking into consideration all of the circumstances that surround this case, a person is dead because you were driving a car when you shouldn't have been driving that car on a suspended driver's license; a person is dead because you were driving a car while you were drunk.

The issue of causation really doesn't even come into play in regard to this decision because it's axiomatic. If you hadn't been driving the car on the night in question at the time that the crash occurred, Brian Wilson would still have his leg and Ms. Levero would presumably still be alive. So whether causation was established or not -- and the jury found that it was not -- makes no difference in regard to the determination that your driver's license privileges should be revoked for life.

With your record, with your pertinacious disregard for the orders of court ordering you not to drive a car -- understanding that you're not to drive while you're drinking anyway, not to drive while you're drunk anyway -- you did. And so the maximum

safety for all of the persons who travel the highways of this state needs to be protected by ordering you never again to have the privilege of driving an automobile in the State of Florida. So your driver's license is revoked for life, and those are the reasons why.

(R 184-185)

No legal objection to the trial court's order was made. Prior to the actual pronouncement of sentence, during argument, the Petitioner's trial counsel asked the court:

A lifetime suspension for somebody who we know is going to be a young mother, Judge, it doesn't serve any purpose. If she's going to be productive member of society, she's going to be a productive member of society. And suspending her license for a lifetime is not going to serve anybody.

And I know, and I see the Court looking at her record and I understand it's lengthy, but look what we're talking about again: A young person gaining quite a driving history between age 16, 17, 18 to age 22 or 23. Now she is 25 years old. It's been two years since this happened. She's had certainly some events that occurred in her life. If this event doesn't impact her to not drive on a suspended license and to not drive after drinking or anything like that, then imposing a lifetime suspension certainly isn't, Your Honor. Thank you.

(R 174)

During a brief hearing on the motion to correct sentence held on May 9, 2002, the only issue presented was whether that portion of the Petitioner's sentence dealing with lifetime revocation of her driver's license was legal. (R 198)

The State argued that Whipple v. State, 789 So. 2d 1132 (Fla. 4th DCA 2001) did not apply to the case at bar since it dealt with only a second DUI offense. (R 199) The trial court indicated that that was the argument before and then denied the motion. (R 200)

The Second District Court of Appeal affirmed, saying:

We cannot agree with Whipple. Rather, we conclude that there is no conflict between sections 316.655(2) and 322.28(2)(a)(2), and that both permit the trial court's permanent revocation of Stoletz's license. Section 322.28(2) provides that upon a conviction of a driver for DUI, the trial court shall revoke the driver's license of the defendant "in accordance with the following provisions." Section 322.28(2)(a)(2) states:

Upon a second conviction for an offense that occurs within five years after the date of a prior conviction for a violation of the provisions of s. 316.193 or former s.316.1931 or a combination of such sections, the drivers license or driving privilege shall be revoked for not less than 5 years.

(Emphasis supplied.) Thus, nothing in section 322.28(2)(a)(2) prohibits a court from imposing a term of suspension or revocation longer than five years for a second conviction for DUI, and section 316.655(2) specifically permits a court to do so. There is no argument in this case that the trial court abused its discretion in determining that the totality of the circumstances here justify the lifetime revocation of Ms. Stolenz's license under section 316.655(2).

Stoletz v. State, 28 Fla. L. Weekly 234 (Fla. 2d DCA January 17,  
2003)



**SUMMARY OF THE ARGUMENT**

The trial court properly considered the totality of the circumstances of the accident, the Petitioner's driving history and the death and injuries caused by her actions in determining the length of revocation.

**ARGUMENT**

**ISSUE**

**THE TRIAL COURT PROPERLY ORDERED THE  
PETITIONER'S DRIVER'S LICENSE REVOKED FOR  
LIFE (RESTATED).**

Contrary to the Petitioner's claim, her driver's license was not revoked for her lifetime based upon only a second conviction for driving under the influence. In fact, the Petitioner was convicted not only of driving under the influence, but also on her prior plea, of driving while license suspended, habitual traffic offender. (R 115)

In this case, it is clear from the record as a whole, that her actions resulted in the death of one victim and the serious injury of others. (See Petitioner's brief, page 3), though the jury only convicted her of three counts of driving under the influence. (R 96-97)

As the Fourth District held in Reed v. State, 744 So.2d 1090 (Fla. 4th DCA 1999):

Reed was involved in a fatal automobile accident and was charged with manslaughter and vehicular homicide. He was found guilty of reckless driving, a lesser-included offense of vehicular homicide. It is undisputed that the victim died at the scene.

Section 316.655(2) provides in pertinent part:

Drivers convicted of a violation of any offense prohibited by this chapter or any other law of this state regulating

motor vehicles may have their driving privileges revoked or suspended by the court if the court finds such revocation or suspension warranted by the totality of the circumstances....In determining whether suspension or revocation is appropriate, the court shall consider all pertinent factors, including, but not limited to, such factors as the extent and nature of the driver's violation of this chapter, the number of persons killed or injured as the result of the driver's violation of this chapter, and the extent of any property damage resulting from the driver's violation of this chapter.

§ 316.655(2), Fla. Stat. (Supp.1996).

We recognize that a trial court may not impose punishment for an act with regard to which the defendant was acquitted. Here, however, although Reed was not convicted of manslaughter or vehicular homicide, the trial court had discretion to consider the totality of the circumstances, including the fact that a death occurred, in deciding whether to revoke or suspend Reed's driving privileges.

Reed at 1091.

The situation in this case is analogous to that in Reed and is distinguishable from Whipple v. State, 789 So. 2d 1132 (Fla. 4th DCA 2001) cited by the Petitioner. In Whipple, no allegation that a death resulted from the violation is found, nor was the defendant in that case driving on a revoked license as a habitual traffic offender. As support for Whipple, Petitioner also cites Jackson v. State, 634 So.2d 1103 (Fla. 4th DCA 1994). Though this case involves three DUI convictions,

added to a prior conviction, the three convictions, as in the instant case, arise from a single incident. Also, like Whipple, in Jackson there is no attendant conviction for driving while license suspended as a habitual offender.

In the instant case, as the Second District found, nothing in the language of section 322.28 mandates a five-year revocation. The statute clearly states "not less than five years." The trial court made a specific finding:

On the driver's license, the driver's license will be suspended for life. You have a lifetime revocation of your driver's license because under 316.655, I'll find that the revocation of your license for life is warranted under the circumstances of your particular driving record, your history; your driving history.

I'll make the finding that the lifetime revocation of your driver's license is appropriate because when taking into consideration all of the circumstances that surround this case, a person is dead because you were driving a car when you shouldn't have been driving that car on a suspended driver's license; a person is dead because you were driving a car while you were drunk.

The issue of causation really doesn't even come into play in regard to this decision because it's axiomatic. If you hadn't been driving the car on the night in question at the time that the crash occurred, Brian Wilson would still have his leg and Ms Levero would presumably still be alive. So whether causation was established or not -- and the jury found that it was not -- makes no difference in regard to the determination that your driver's license privileges should be revoked for life.

With your record, with your pertinacious disregard for the orders of court ordering you not to drive a car -- understanding that you're not to drive while you're drinking anyway, not to drive while you're drunk anyway -- you did. And so the maximum safety for all of the persons who travel the highways of this state needs to be protected by ordering you never again to have the privilege of driving an automobile in the State of Florida. So your driver's license is revoked for life, and those are the reasons why.

(R 184-185)

Petitioner argues that since section 322.28 is specific and only applies to DUI offenses it therefore controls. This argument completely ignores the fact that the Petitioner also pled to driving while her license was suspended, as a habitual offender.

The trial court did not err in revoking the Petitioner's driver's license for her lifetime, the Second District properly found that the sentencing options before the trial court included a minimum suspension of five years or as the trial court determined, a suspension for life.

**CONCLUSION**

Respondent respectfully requests that Petitioner's convictions and sentences be affirmed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert D. Rosen, Assistant Public Defender, P.O. Box 9000, Drawer PD, Bartow, Florida 33831-9000, this \_\_\_\_ day of March, 2003.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

**CHARLES J. CRIST, JR.**  
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