IN THE SUPREME COURT OF FLORIDA

CASE NOS.: SC08-2394
Lower Tribunal No(s).: 2D07-4891

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,	vs.	GEORGE F. MCLAUGHLIN
Petitioner		Respondent

ON DISCRETIONARY REVIEW FROM
THE FIRST AND SECOND DISTRICT COURTS OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

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REPLY ARGUMENT

THE PROVISIONS OF SECTION 322.2615 ARE SUFFICIENTLY CLEAR ON THEIR FACE SUCH THAT SECTION 322.2615 CANNOT BE READ *IN PARI MATERIA* WITH SECTION 316.1932 TO CREATE AN AMBIGUITY THAT DOES NOT EXIST.

Respondent asserts that because section 316.1932, Florida Statutes still requires a lawful arrest as part of the implied consent, the Legislature could not have intended to remove the issue from the hearing officer's scope of review. However, the Legislature intended to do just that when it amended Section 322.2615 and eliminated all references to sections 316.1932 and 316.193 throughout the statutes. The language of section 322.2615 is not ambiguous; it permits the hearing officer to address only those three issues enumerated in the statute to the exclusion of all other issues, including the lawfulness of the arrest. Nevertheless, Respondent ignores the clear legislative intent as well as the staff analysis for the bill that amended section 322.2615(7) which provides that the legislative intent was to "…negate the need for DHSMV to show during the administrative review of a driver license suspension that a lawful arrest for a violation of § 316.193, F. S. occurred in order to suspend the driver's license." House of Representatives Staff Analysis, HB 7079 CS, P.25. (April 26, 2006) available online at

(http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7079e.SIC.doc&DocumentType=Analysis&BillNumber=7079&Session=2006).

Respondent's suggestion that the provisions of section 322.2615 and section 316.1932 must be read *in pari materia* because section 322.2615 does not have any provisions that otherwise require a driver to take a chemical test is simply a misstatement. The lawful test contemplated in section 322.2615 is a breath, blood or urine test. The Court in Pelham however, held that "lawful test" refers to a test conducted pursuant to a "lawful arrest." This statement once again ignores the clear legislative intent that the lawfulness of the arrest be removed from the hearing officer's consideration. The Legislature must be presumed to be aware of the provisions of section 316.1932 when it amended section 322.2615. State of Florida, Department of Highway Safety and Motor Vehicles v. Killen, 667 So.2d 433, 436(Fla. 4th DCA 1996). The Hernandez and Pelham opinions would render the Legislature's removal of the lawfulness of the arrest requirement a meaningless nullity.

The language of s. 322.2615, as amended, is plain on its face. The previous requirement, that the hearing officer must determine "whether the person was placed under lawful arrest for a violation of s. 316.193," was removed. See §§ 322.2615(7)(a) and (b), Fla. Stat. (2005). As this Court reiterated in Kasischke v. State, 991 So.2d 803 (Fla. 2008), "[i]t is a basic rule of statutory construction that

'the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.'" (citing Martinez v. State, 981 So.2d 449, 452 (Fla. 2008), quoting State v. Bodden, 877 So.2d 680, 686 (Fla. 2004))). As this Court recognized in Martinez, "[w]e cannot construe the plain language of the statute in a manner that renders this language superfluous." Kasischke, 991 So.2d at 808. Respondent's entire argument invites this Court to construe the amended language of s. 322.2615 in a manner that renders the language superfluous.

CONCLUSION

For the foregoing reasons, the Department respectfully requests this Court affirm the Second District Court of Appeal's opinion McLaughlin.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FONT SIZE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief on the Merits has been mailed by United States mail to Tony C. Dodds, Esquire, 1628 S. Florida Avenue, Lakeland, Florida, 33803, on this ____ day of June, 2009.

I HEREBY CERTIFY that the font size used in the Department's Reply Brief is Times New Roman 14 point.

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