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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC13-310

STATE OF FLORIDA

Petitioner,

v.

ZACHARIAH DORSETT
Respondent.

On Discretionary Review from the District Court of Appeal,
Fourth District of Florida

ANSWER BRIEF OF RESPONDENT ZACHARIAH DORSETT

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PRELIMINARY STATEMENT

Respondent, Zachariah Dorsett, was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, and the Appellant in the District Court of Appeal, Fourth District. Petitioner was the prosecution (State of Florida) and Appellee in the lower courts. The parties will be referred to as they appear before this Court.

References to the Record on Appeal will be by the symbol "R" followed by the appropriate volume and page number. Petitioner's Initial Brief to this Court will be referenced as "I.B" followed by the appropriate page numbers.

STATEMENT OF THE CASE AND FACTS

Respondent was convicted under Florida Statute §316.027(1)(a) for failing to stop his vehicle at the scene of a crash with injuries. Respondent appealed his conviction to the Fourth District Court. The Fourth District Court reversed Respondent's conviction due to the failure of the trial court to give an appropriate jury instruction. More specifically, and as a matter of first impression, the Fourth District Court held that under §316.027, Fla. Stat., actual knowledge of the accident is required in order to convict under §316.027, Fla. Stat. Because the jury was not instructed that actual knowledge of the accident had to be proved by the State to convict Respondent under §316.027, Fla. Stat., the Fourth District Court reversed Respondent's conviction and remanded for a new trial. Because this issue

has never been addressed, the Fourth District Court certified the following question to this Court as one of great public importance: "In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require actual knowledge of the crash?" Pursuant to Art. 5 §3(b)(4), of the Florida Constitution, this Court has jurisdiction, and therefore, took discretionary jurisdiction to answer the certified question.

For the sake of brevity, Respondent agrees with Petitioner that the facts as presented by the Fourth District Court in its opinion, Dorsett v. State, ___ So. 3d ____; 38 Fla. L. Weekly D233, 2013 WL 331602 (Fla. 4th DCA, January 30, 2013), adequately present the facts of the case as to the certified question on appeal. As such, Petitioner incorporates by reference the Fourth District Court's description of the facts underlying this appeal as the Statement of the Case and Facts to this Answer Brief.

SUMMARY OF ARGUMENT

As will be discussed in greater length below, this Court should answer the certified question, "In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require actual knowledge of the crash?" in the affirmative. More specifically, this Court has already held in State v. Mancuso 652 So. 2d 370, 371 (Fla. 1995), that §316.027, Fla. Stat., creates only one crime, the felony of "willfully" leaving the scene of an accident and that

an essential element of §316.027, Fla. Stat., is knowledge that an accident occurred, because one cannot "willfully" leave an accident without awareness that an accident has occurred. Additionally, out-of-state case law interpreting other state's hit and run statutes have held that actual knowledge of the defendant being involved in an accident must be proven by the State in order to convict the defendant. Therefore, this Court must affirm the decision of the Fourth District Court of Appeal, hold that actual knowledge of the accident is required to convict under §316.027, Fla. Stat., and remand the matter for a new trial.

ARGUMENT

A. Standard of Review

The Fourth District Court of Appeal certified a question of great public importance to this Court, which this Court then took discretionary jurisdiction over to decide. Fla. Const. Art. 5§3(b)(4). In deciding a certified question, this Court has held that: "[b]ecause of the certification we are authorized to examine the record of the trial court and measure the correctness of the decision of the District Court by our own conclusions based upon such examination. Carraway v. Revell Motor Co., Fla. 1959, 116 So. 2d 16." James v. Keene, 133 So. 2d 297, 298 (Fla. 1961).

B. Merits

At issue in this matter is whether the standard jury instruction for §316.027, Fla. Stat., accurately reflects the appropriate *mens rea* needed to convict a

defendant. Florida Statute §316.027, Crash involving death or personal injuries, provides:

> The driver of any vehicle involved in a crash occurring on public or private property that results in injury of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. Any person who **willfully violates this paragraph** commits a felony of the third degree, punishable as provided in s.775.082, s. 775.083, or s. 775.084. (emphasis added).

This Court has held that §316.027, Fla. Stat., creates only one crime, the felony of "willfully" leaving the scene of an accident involving injury. State v. Mancuso 652 So. 2d 370, 371 (Fla. 1995) citing Stanfill v. State, 384 So. 2d 141, 143 (Fla. 1980). Thus, this Court has "implicitly recognized that **knowledge of an accident** is an essential element of §316.027, for one cannot "willfully" leave an accident without awareness that an accident has occurred." Id. (emphasis added). However, the Standard Jury Instruction for §316.027, Fla. Stat., provides:

28.4 LEAVING THE SCENE OF A CRASH INVOLVING INJURY §316.027(1), Fla. Stat.

> To prove the crime of Leaving the Scene of an Accident, the State must prove the following four elements beyond a reasonable doubt:
>
> 1: Defendant was the driver of a vehicle involved in an accident resulting in injury to any person.
>
> 2: Defendant **knew or should have known** that he/she was involved in a crash.

3: Defendant knew or should have known of the injury to the person.

4: Defendant willfully failed to stop at the scene of the accident or as close to the accident as possible and remain there until he/she had given "identifying information" to the injured person and to any police officer investigating the crash.

Or

Defendant willfully failed to render "reasonable assistance" to the injured person if such treatment appeared to be necessary or was requested by the injured person.

If the State proves that the defendant willfully failed to give any part of the "identifying information" or willfully failed to give reasonable assistance, the State satisfies this element of the offense.

"Identifying information" means name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

"Reasonable assistance" includes carrying or making arrangements to carry the injured person to a physician or hospital for medical treatment.

"Willfully" means intentionally or purposefully.

Even though this Court held that knowledge of being involved in an accident is an essential element of §316.027, Fla. Stat., the standard jury instruction allows a conviction if a defendant "should have known" that he/she was involved in an accident. This "should have known" language does not accurately reflect the appropriate *mens rea* needed to convict under §316.027, Fla. Stat., and thus,

lessens the State's burden of proof to an impermissible civil standard (i.e. negligence) burden of proof. When analyzing the history §316.027, Fla. Stat., and out-of-state case law which interpret criminal statutes regarding leaving the scene of an accident as requiring a defendant to have actual knowledge of a crash/accident, it is Respondent's position that the "should have known" language regarding whether a defendant knew he/she was involved in a crash was erroneously placed in the standard jury instruction in the first instance.

i. The history of §316.027, Fla. Stat., and the creation of its standard jury instruction.

Prior to 1995, Florida did not have a standard jury instruction regarding the criminal offense of §316.027, Fla. Stat. Because there was no such standard instruction, the Fourth District Court in the case State v. Mancuso, 652 So. 2d 370 (Fla. 1995), certified the following question to the Florida Supreme Court: "In a prosecution for violation of section 316.027, Fla. Stat., must the State show that the Defendant **knew or should have known** of the **injury or death**; and the jury be so instructed?" Thus, the certified question in Mancuso related to what would become the third prong of the standard jury instruction (whether the State must show that a defendant knew or should have known of the injury or death), and not the second prong of the standard jury instruction (whether the State must show that a defendant had actual knowledge of the crash), which is at issue here.

In Mancuso, this Court relied upon State v. Tennant, 173 W.Va. 627 (W.Va.1984), when it held that "knowledge of an accident is an essential element of section 316.027, for one cannot "willfully" leave an accident without awareness that an accident occurred." The Mancuso Court focused on the knowledge element as it **relates to the defendant's knowledge of injury,** and held that a defendant must have either **actual or constructive knowledge *of the injury*** to support a conviction for leaving the scene of an accident resulting in injury. However, and pertinent to this appeal, this Court did not decide in Mancuso whether a driver charged with leaving scene of an accident must have actual knowledge of being involved in an accident. Thus, the Petitioner is patently wrong in its Initial Brief when it states that the §316.027 standard jury instruction is correct and accurately states the law (based upon Mancuso) as applicable to the facts of this case, because this issue was never addressed by the Court in Mancuso and, as the Fourth District Court points out, is a matter of first impression. See Dorsett v. State, 2013 WL 331602 *5 (Fla. 4th DCA, January 30, 2013).

At the close of the Mancuso opinion, this Court referred the matter to the Supreme Court Committee on Standard Jury Instructions in Criminal Cases for "consideration of an instruction consistent with our holding in this case." In 1995, the Supreme Court Committee recommended a new instruction on "Leaving a Scene of an Accident Involving Death or Injury" based upon the holding in

Mancuso. 665 So. 2d 212 (Fla. 1995). The jury instruction parroted the language from Mancuso as it relates to a defendant's knowledge of an injury by using the "knew or should have known" language (prong three of the standard jury instruction). However, the jury instruction also used the same "knew or should have known" language in regard to a defendant's knowledge of being involved in an accident (prong two of the standard jury instruction). This was clear error because the holding in Mancuso reveals that this Court did not approve of the "knew or should have known" language regarding a defendant's knowledge of whether he/she was involved in a crash. Rather, a closer reading of the holding in Mancuso reflects that an essential element under §316.027, Fla. Stat., is knowledge of being involved in an accident and not whether the defendant should have known of being involved in an accident, because "one cannot "willfully" leave an accident without awareness that an accident has occurred." This Court reiterated this position in State v. Dumas, 700 So. 2d 1223, 1225 (Fla. 1997)(emphasis added) were it held:

> In *Mancuso*, we determined that **knowledge was an essential element** of section 316.027 because (1) the statute imposes a **more severe penalty** for leaving an accident where personal injuries are involved than does a similar statute imposing sanctions where only property damage is involved; and (2) the statute requires a driver to take **an affirmative course of action** which **necessarily requires that the driver be aware of the facts giving rise to the duty.** 652 So.2d at 372.

As such, the appropriate *mens rea* needed to convict a defendant under § 316.027, Fla. Stat., is actual knowledge of being involved in an accident. If this Court were to hold that a defendant can be convicted under § 316.027, Fla. Stat., if a defendant "should have known" of being involved in an accident, a defendant, who had no criminal intent, could be convicted of a felony and be sentenced to jail based upon what he/she should have known at the time of the accident (in other words, the proverbial "reasonable man" civil standard of negligence). This flies in the face of the U.S. Constitution, Florida's Constitution and the right to due process, because our criminal system punishes citizens with a jail sentence who have a guilty mind (i.e. the appropriate *mens rea*), and does not punish citizens with a jail sentence based upon what a "reasonable man" would know or do under like circumstances. See e.g., Morissette, 342 U.S. at 250-264.

ii. Petitioner's argument that the standard jury instruction is correct, because this Court approved the instruction is not dispositive of the certified question on appeal.

The crux of the Petitioner's argument is that the "should have known" language in the jury instruction as it relates to knowledge of whether the defendant was in an accident, is correct because it was placed in the Standard Jury Instructions and approved by this Court. However, this Court has held in regard to Standard Jury Instructions that: "the Court will, accordingly, authorize the publication and use of such instructions, but **without prejudice to the rights of**

any litigant objecting to the use of one or more of such approved forms of instructions." In re: Standard Jury Instructions, 240 So. 2d 472, 473 (Fla. 1970) (emphasis added). Moreover, this Court has further held in regard to the use of Standard Jury Instructions that:

> The forms of Florida Standard Jury Instructions in Criminal Cases published by the Florida Bar pursuant to the authority of the Court may be used by the trial judges of this State in charging the jury in every criminal case **to the extent that the forms are applicable,** unless the trial judge shall determine that an applicable form of instruction **is erroneous or inadequate,** in which event he **shall modify or amend such form or give such other instruction** as the trial judge shall determine necessary accurately and sufficiently to instruct the jury in the circumstances of the case.

Id.; see also, Willcox v. State, 258 So. 2d 298, 300 (Fla. 2d DCA 1972) (defendants have the right to question substantive accuracy or validity of an instruction taken verbatim from standard jury instructions in criminal cases as promulgated by the Supreme Court)(emphasis added). Therefore, Standard Jury Instructions should be used to the extent "as may be applicable," and thus, "it does not follow that such instructions must be literally given in each and every case." State v. Bryan, 287 So. 2d 73, 75 (Fla. 1974). Moreover, this Court's approval of the Standard Jury Instructions is a "general approval" of the "theory and technique involved." Id. As such, Petitioner's reliance on the Standard Jury Instruction's use of the "knew or should have known" language to show that actual knowledge is

not required in regard to a defendant's knowledge of whether he/she was involved in an accident is not dispositive of this issue on appeal.

Moreover, a close reading of the Fourth District Court's opinion and this Court's opinion in Mancuso reflect that two different instructions on the requirement of defendant's knowledge of the accident were proposed to the trial court. See State v. Mancuso, 652 So. 2d 370, 370 (Fla. 1995); Mancuso v. State, 636 So. 2d 753, 754 (Fla. 4th DCA 1994). Defendant's proposed instruction used the words "knowing" or "knew" in relation to being involved in an accident. Mancuso v. State, 636 So. 2d 753, 754 (Fla. 4th DCA 1994). In contrast, the State's proposed instruction use the "knew or should have known" language in relation to being involved in an accident. Id. However, this issue was never appealed in the Mancuso matter. State v. Mancuso, 652 So. 2d 370, 370 (Fla. 1995). Thus, the Fourth District Court and this Court never decided which instruction was correct as to the knowledge requirement of a defendant in relation to being involved in an accident. As such, when the Standard Jury Instruction on § 316.027, Fla. Stat., was presented to this Court for approval, it is Respondent's position that the Committee incorrectly **added** the "knew or should have known" language in regard to whether a defendant was involved in an accident. In fact, the State in its Initial Brief concedes this by stating that "the Standard Jury Instruction **added** the requirement that a defendant "knew or should have known" of the accident involving injury."

See I.B. 14. As stated through-out trial and on appeal, the Standard Jury Instruction incorrectly defines the necessary *mens rea* as "knew or should have known that he/she was involved in a crash" in order to convict a defendant under § 316.027, Fla. Stat.

iii. Out-Of-State Cases supports Respondent's position that actual knowledge of the crash is required under §316.027, Fla. Stat.

This Court has held that in "construing a statute modeled after a uniform law, 'it is pertinent to resort to holdings in other jurisdictions where the act is in force.'" Mancuso, 652 So. 2d at 371 citing Valentine v. Hayes, 102 Fla. 157, 160, 135 So. 538, 540 (1931). See also, 40 Fla. Jur. 2d Statutes §170 (1984). Here, §316.027, Fla. Stat., was modeled after the Uniform Vehicle Code. See Ch. 71-135, at 433, Laws of Fla. Therefore, and as this Court did in Mancuso, this Court can look to other states that construe similar hit and run statutes.

Many out-of-state cases (including Alabama, Alaska, Arizona, California, Idaho, Iowa, Maine, Vermont and Virginia) agree with Respondent's position that a driver must have actual knowledge that he/she was involved an accident in order to convict a defendant for failing to leave a scene of an accident with injury. Specifically, Touchstone v. State, 155 So. 2d 349, 351 (Ala. 1963), holds that a *defendant must know that his vehicle was in an accident* to be convicted under Alabama's hit and run statute. Touchstone further quotes Herchenbach v.

Commonwealth, 38 S.E. 2d 328, 329 (Va. 1946), by stating that the duty imposed upon a driver of a vehicle involved in an accident is not passive; rather it requires affirmative action which is to stop and give aid. Thus, the Alabama court, as the Virginia court did in Herchenbach, reasoned that: "How can a person perform these affirmative acts unless he knows that his vehicle has struck a person or an object? Knowledge necessarily is an essential element of the crime." Not surprisingly, Mancuso also cites to Herchenbach.

Mancuso also relies upon People v. Holford, 403 P.2d 423 (Cal. 1965), under which the California Supreme Court held that criminal liability attaches to a driver who *knowingly* leaves the scene of an accident. Additionally, in State v. Porras, 610 P.2d 1051 (Ar. Ct. App. 1980), Arizona adopted the reasoning and interpretation of the scienter requirement made by the California court in Holford. Porras, 610 P.2d at 1054.

Furthermore, the Idaho Supreme Court held that knowledge of the collision is an essential element of its hit and run statute. State v. Parish, 310 P.2d 1082, 1083-84 (Idaho 1957). The Idaho Supreme Court held "the element of knowledge of the fact of the collision is necessarily to be implied from the requirements of the act." It further recognized that "it is *inconceivable* to us that the Legislature ever intended to make the provisions of this section applicable to a *person who was ignorant* of the fact that the automobile which he was driving had struck another

person." Id. at 84 quoting People v. Graves, 240 P. 1019 (emphasis added). The Supreme Court of Montana also adopted the holding in State v. Parrish, 310 P.2d 1082, 1083-84 (1957). State v. Stafford, 678 P. 2d 644, 649-50 (Mont. 1984). Again, this Court cites to both Stafford and Parish in Mancuso.

Also interesting to note is that the Florida legislature specifically stated in §316.027, Fla. Stat., that "[a]ny person who *willfully* violates this paragraph commits a felony of the third degree." Thus, the Florida legislature by using the word "willful" could not have intended to place a Florida citizen in jail if that citizen had no knowledge of being involved in an accident, and as such, did not stop and provide aid.

Further supporting Respondent's position and in a case eerily similar to the facts of this matter, the Supreme Court of Iowa held that *actual knowledge* of the defendant's knowledge of the accident must be proved, not the theoretical knowledge of a reasonable person. State v. Miller, 308 N.W. 2d 4, 6-7 (Iowa 1981); See also State v. Sidway, 431 A. 2d 1237, 1239 (Vt. 1981) (actual knowledge on the part of the accused that he/she was involved in an accident is an essential element of the offense). Not surprisingly, this Court relied upon Miller in Mancuso.

In State v. Fearing, 284 S.E.2d 487, 490-92 (N.C. 1981)[1], the North Carolina Supreme Court held that the State must prove that a defendant knew that he had been involved in an accident or collision. Like Florida, the North Carolina hit and run statute states that the person must *willfully* violate the statute. Id. at 490. In support, the North Carolina Supreme Court held that:

> It would be a manifest *absurdity* to expect or require the driver of a motor vehicle to perform the acts specified in the statute in absence of knowledge that his vehicle has been involved in an accident resulting in injury to some person. Hence, both reason and authority declare that such knowledge is an essential element of the crime created by the statute now under consideration. ... This position is expressly sustained by our statute prescribing the punishment for persons "convicted of *willfully* violating G.A. 20-166, relative to the duties to stop in the event of accidents ... involving injury or death to a person." G.S. 20-182.

Id. (emphasis added).

Furthermore, the Supreme Judicial Court of Maine held in regard to Maine's hit and run statute that even though the statute "does not expressly define "involve[ment] in an accident," because the statute imposes an affirmative duty to act, actual knowledge of involvement in an accident is implied within the statute's

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[1] The North Carolina legislature eventually amended its hit and run statute to include the "knew or should have known" language as to the driver's knowledge of an accident. State v. Wenyss, 722 N.E. 2d 14 (N.C. App. 2012). However, Florida's legislature has not amended §316.027, Fla. Stat., in a similar fashion. Thus, it is Respondent's position that until the Florida legislature changes §316.027, Fla. Stat., the Florida legislature intended that the State must prove that a defendant had actual knowledge of being involved in an accident.

structure." State v. Medeiros, 997 A. 2d 95, 100 (Me. 2010). Thus, actual knowledge of involvement in an accident is required before criminal liability can be imposed. Id.

Finally, in Kimoktoak v. State, 584 P. 2d 25 (Ak. 1978), also relied upon in Mancuso, the Alaskan Supreme Court held that before one gets to the issue of the defendant's knowledge of the injury, "it must be shown that the Defendant knew of the nature of the accident before the jury can determine whether such knowledge would reasonably lead one to conclude that injury had occurred." Id. at 32-33. In making the decision that the requisite criminal intent must be shown in convicting a defendant pursuant to Alaska's hit and run statute, the Alaskan Supreme Court held that it is "well-settled that an act or omission can result in serious criminal liability only when the person has the requisite intent." Id. at 29. It then quoted the United States Supreme Court by stating:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and consequent ability and duty of the normal individual to choose between good and evil.

Id. at 29 quoting Morissette v. United States, 342 U.S. 246, 250 (1952). The Alaskan Supreme Court further held that:

> Although an act may have been objectively wrongful, *the mind and will of the doer of the act may have been innocent.* In such a case the person cannot be punished for a crime, unless it is one such as the 'public welfare' type of offense, which we have discussed, where the

> penalties are relatively small and conviction does no great damage to an offender's reputation... To make (an inadvertent, unwitting) act, without consciousness of wrongdoing or intention to inflict injury, a serious crime, and criminals of those who fall within its interdiction, is inconsistent with the general law. *To convict a person of a felony for such an act, without proving criminal intent, is to deprive such person of due process of law.*

Id. at 29 (emphasis added). Like Alaska, Florida's hit and run statute, §316.027, Fla. Stat., is not a "public welfare" type of offense. A person convicted under §316.027, Fla. Stat., commits a felony of the third degree and is punishable by being sentenced to prison. See §316.027(1)(a), Fla. Stat. Here, Respondent was convicted of a felony and sentenced to two years in jail without the Petitioner having to prove the requisite consciousness of wrongdoing, (i.e. actual knowledge that Respondent was involved in a crash). [RVIII. 594-95, 608, 658; RXI. 791]. This could not be more clear from the Petitioner's closing argument where the Petitioner exploited the "should have known" language of the jury instruction by stating to the jury that the State's burden of proof was "if the circumstances of the event, of the incident are such that a *reasonable person should have known* and the state proves that case, the state proves that element, then he's guilty. So what – and use your common sense – what do you think the defendant should have known that day?" [RXI 1006-08 (emphasis added)]. Thus, Petitioner was convicted solely based upon the knowledge of what a reasonably prudent man should have known under the circumstances. Moreover, even if there was evidence that the jury could

properly conclude that Respondent had actual knowledge of the accident, the jury was not instructed that Respondent had to have actual knowledge of the accident in order to convict, nor did the Petitioner argue that Respondent had actual knowledge of the accident to the jury during closing argument. A mature system of law, as the United States has, cannot allow Respondent's conviction to stand. To allow a conviction to stand without having the State prove the requisite criminal intent defies basic principles of the United States Constitution, the Florida Constitution, and due process of law. See Morissette v. U.S., 342 U.S. 246, 250 (1952). Therefore, the Standard Jury Instruction which states that a defendant "should have known" of a crash is incorrect.

iv. Actual knowledge is required to convict under §316.027, Fla. Stat., because of the Florida legislature's use of the word "willfully."

The "knew or should have known" language regarding a defendant's knowledge that he/she was involved in an accident as stated in the current jury instruction is patently wrong, because it is not consistent with the use of the term "willful" in §316.027, Fla. Stat. Florida law provides that:

> when a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002). Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Id.

State v. Burris, 875 So. 2d 408, 401 (Fla. 2004). It is clear that the Florida legislature intended that the word "willful" apply to the entire offense rather than apply only to the latter part of the offense as the Petitioner contends in the Initial Brief, because the term willfully applies to the entire paragraph. Specifically, §316.027(1)(a), Fla. Stat., states that "any person who willfully violates *this paragraph* commits a felony of a third degree, ..." Thus, the plain language of §316.027(1)(a), Fla. Stat., expressly states that the word willfully is to apply to the entire offense. Moreover, this Court recognized in Mancuso that §316.027, Fla. Stat., addresses only one crime, the felony of willfully leaving the scene of an accident, and such, "knowledge of an accident is an essential element of §316.027, for one cannot "willfully" leave a scene of an accident without awareness that an accident occurred."

In further support, Black's Law Dictionary defines "willful" as "voluntary and intentional, but not necessarily malicious." Black's Law Dictionary (7th Edition, 2003). Also, in defining "willfully," the United States Supreme Court provides:

> The word often denotes an act which is intentional, *or knowing*, or voluntary, as distinguished from accidental. But, when used in a criminal statute, it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely.

U.S. v. Murdock, 290 U.S. 389, 394; 54 S.Ct. 223, 225 (U.S. 1933), overruled on other grounds, Murphy v. Waterfront Com'n of N.Y. Harbor, 378 U.S. 52; 84 S.

Ct. 1594 (U.S. 1964). Because the term "willfully" applies to the entire offense, it is clear that the Florida legislature intended that to convict a defendant under §316.027, Fla. Stat., the State would have to prove the defendant's actual knowledge of being involved in an accident, because a person cannot willfully (i.e. intentionally, knowingly, or with a bad purpose) leave the scene of an accident, if one did not know that one was in an accident.

Moreover, the rule of lenity "requires that when language of a statute is susceptible of differing constructions, it must be construed most favorably to the accused." State v. Chubback, 83 So. 3d 918, 922 (Fla. 4th DCA 2012) citing §755.021(1), Fla. Stat. Because the Petitioner and Respondent have different interpretations of how the term "willfully" is used in §316.027(1)(a), Fla. Stat., Florida law holds that this Court must use Respondent's interpretation. Based upon the express language of §316.027(1)(a), Fla. Stat., and the rule of lenity, "willfully" applies to the entire offense. Thus, to convict under §316.027(1)(a), Fla. Stat., the State must prove that a defendant has actual knowledge that he/she was involved in an accident.

Finally, to support the position that §316.027, Fla. Stat., only requires that the defendant "should have known" of the crash, Petitioner focuses on the mandatory language used in §316.027, Fla. Stat.; more specifically, that a driver "must stop" and "must remain" at the scene of a crash. However, the use of the

mandatory language actually supports Respondent's position that §316.027, Fla. Stat., requires a defendant to have actual knowledge of the crash. In other words, how can a driver of vehicle comply with the mandatory requirements of §316.027, Fla. Stat., (to stop and render aid) if the driver has no actual knowledge of being involved in a crash? The answer to this rhetorical question is that it is impossible for a driver who has no actual knowledge of a crash to stop and remain at the scene of a crash, because one cannot perform an affirmative duty related to being involved a crash, if one has no knowledge of being involved in a crash in the first place. Thus, the mandatory language supports Respondent's position that §316.027, Fla. Stat., requires actual knowledge of a crash.

v. Petitioner's argument that the actual knowledge standard will create strict liability is unfounded.

Petitioner argues that should this Court interpret §316.027, Fla. Stat., to require proof of actual knowledge of a crash, it would essentially turn §316.027, Fla. Stat., into a strict liability statute. This argument is nonsensical. As this Court is well aware, actual knowledge can be proven with direct evidence (i.e. the defendant states/confesses/admits that he/she was involved a crash and/or eye-witness testimony that the defendant was involved in a crash) and/or circumstantial evidence. Thus, if the defense is that the defendant does not have actual knowledge of being involved in a crash, which is the case here, the State can discredit the

defendant's testimony by producing contradicting evidence showing that the defendant had actual knowledge of the crash (i.e. contradictory eye-witness testimony). As such, it becomes a function of the jury to shift through the conflicting evidence (whether direct and/or circumstantial), and to weigh the credibility of the testimony (including the defendant), in order to make a determination as to whether the defendant had actual knowledge of the crash.[2] See e.g., Morissette, 342 U.S. at 276 (based upon the evidence provided to the jury, the jury could have concluded that defendant was innocent or a thief; however, because the jury was not given the proper jury instruction, the case required reversal). This point was recognized by the Fourth District Court wherein it stated that "[w]e recognize there was testimony from which a jury may have determined that the defendant actually knew of the accident, but the jury was not instructed that actual knowledge of the accident had to be proven." Dorsett v. State, 2013 WL 331602 *4. Therefore, it cannot be said that by having to prove actual knowledge of a crash, it turns §316.027, Fla. Stat., into a strict liability statute.

Additionally, and as pointed out by the Fourth District Court in its underlying opinion in Mancuso v. State, 636 So. 2d 753, 756 (Fla. 4th DCA 1994),

[2] This did not occur in Respondent's criminal trial because the jury was told that Respondent could be convicted if he "should have been aware" that he was involved in a crash. This allowed the Petitioner to argue to the jury that if the jury believed, based upon the evidence, that Respondent should have known of the crash, they could convict the Respondent.

§316.027, Fla. Stat., is not a strict liability statute, because it expressly requires a willful act. This is directly in contrast to the Washington State statute which the Fourth District interpreted to be a strict liability statute, because the Washington State statute **did not** require a willful act. Id. (emphasis added).

vi. Petitioner's argument that that actual knowledge standard will allow for "willful blindness," ignorance, and/or voluntary intoxication defenses is unfounded.

The Petitioner argues that if it has to prove actual knowledge of a crash, an absurd result would occur because actual knowledge could not be proven if the defendant's defense was "willful blindness," ignorance, or voluntary intoxication. First, intoxication is not at issue in this matter. Moreover, the issue of the defense of voluntary intoxication has already been addressed by the Florida legislature in §775.051, Fla. Stat. Pursuant to §775.051, Fla. Stat., voluntary intoxication is "not a defense to any offense proscribed by law." Thus, Petitioner's argument that the State would be unable to prove actual knowledge when a defendant claims a defense of voluntary intoxication is completely unfounded and without merit.

Second, and in response to the "willful blindness" defense, courts have held that the "willful blindness" rule is an unstable rule that it is "very limited in scope." U.S. v. Jewell, 532 F.2d 687, 700 fn 7 (U.S. 9th Cir. 1976). Moreover, willful blindness can be properly found "only where it can almost be said the defendant **actually knew**." Id. (emphasis added). As such, in cases where it is alleged as a

defense that defendant was willfully blind to the crash, it will be up to the jury to decide whether the evidence that supports a "willful blindness" defense actually proves that the defendant had actual knowledge of the crash. Thus, Petitioner's concern that construing §316.027, Fla. Stat., to require actual knowledge would allow for a defense of "willful blindness" is unfounded as well.

vii. Petitioner's argument that that actual knowledge standard will create an "unreasonable result" is unfounded.

Petitioner also argues that an unreasonable result would occur should this Court hold that §316.027(1)(a), Fla. Stat., requires actual knowledge of the accident. However, it is Respondent's position that it is the State's interpretation which will provide for an unreasonable result, because the "should have known" interpretation subjects a defendant to imprisonment when he/she never had the requisite criminal intent. Thus, under the State's interpretation an innocent defendant who had absolutely no criminal intent (i.e. actual knowledge of being involved in an accident) of leaving a scene of an accident would be subject to imprisonment in violation of the U.S. Constitution, the Florida Constitution and due process of law. See e.g., Morissette, 342 U.S. at 250-264.

viii. Petitioner's Reliance on Commonwealth v.Kauffman, 470 A.2d 634 (Pa. 1983), is unfounded, because the statute in Kauffman does not concern leaving a scene of an accident with injuries.

Petitioner also argues that this Court should construe Florida's hit and run statute as the Pennsylvania Superior Court construed Pennsylvania's hit and run statute in Commonwealth v. Kauffman, 470 A.2d 634 (Pa. 1983). However, Kauffman is not mentioned by this Court in Mancuso. Additionally, if this Court intended to include Kauffman in its Mancuso opinion, this Court could have done so, because Mancuso was decided in 1995, twelve years after Kauffman was decided. Another distinguishing factor is that the Pennsylvania statute does not use the word "willfully" in defining the offense. Further, the offense at issue in Kauffman concerned leaving the scene of the accident where there was **property damage**, and not injury, as is the case here. Thus, the conviction appealed was an imposition of a $300 fine, and did not concern imprisonment. Therefore, Kaufmann is not applicable to the facts of this case and should not be considered by this Court in determining whether §316.027, Fla. Stat., requires proof of actual knowledge of the crash by a defendant.

CONCLUSION

Based upon the foregoing legal authorities and legal argument, Respondent respectfully requests that this Court affirm the Fourth District Court's decision which reversed Respondent's, ZACARIAH DORSETT, conviction under §316.027, Fla. Stat., held that actual knowledge of the accident is required to convict under §316.027, Fla. Stat., and remanded the matter for a new trial.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Answer Brief has been furnished vie email to: JEANINE M. GERMANOWICZ, ASSISTANT ATTORNEY GENERAL, 151 N. Flagler Drive, Suite 900, West Palm Beach, FL 33041, at CrimAppWPB@myfloridalegal.com this 10th day of DECEMBER, 2013.

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CERTIFICATE OF COMPLIANCE

In compliance with Florida Rule of Appellate Procedure 9.210(2), counsel for Respondent certifies that the size and style of type used in this Answer Brief are 14 point type, Times New Roman.

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