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IN SUPREME COURT OF FLORIDA

JACOB THOMAS GAULDEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC14-399

ON DISCRETIONARY REVIEW FROM THE

DISTRICT COURT OF APPEAL, FIRST DISTRICT

RESPONDENT'S ANSWER BRIEF

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

GISELLE D. LYLEN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 508012

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

PAGE#

TABLE OF CITATIONS

CASES PAGE#

Statutes

Rules

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Jacob Thomas Gaulden, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of six volumes, which will be referenced according to the respective number designated in the Index to the Record on Appeal. "IB" will designate Petitioner's Initial Brief. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State accepts Defendant's statement of the case and facts as generally supported by the record, subject to the following supplementation and corrections:

The First District Court of Appeal reversed the trial court's order granting appellant's motion to dismiss charges alleging appellant violated Section 316.027(1)(b), Florida Statutes (2010) on the ground that in the absence of any evidence that the truck hit the victim, the victim's impact with the pavement did not constitute a "crash" within the meaning of the statute. State v. Gaulden, 37 Fla. L. Weekly D867 (Fla. 1st DCA April 12,

2012) (Gaulden I). Therein, the District Court held:

> Because the statute exists mainly to protect people, not vehicles, we have no hesitation about interpreting the term "crash" as including any collision resulting in death or injury to a person.
>
> Here, a passenger of Appellee's moving vehicle collided with the road as he became separated from the vehicle and suffered fatal injuries. This collision constituted a crash. Because the movement of Appellee's vehicle significantly contributed to causing this collision, Appellee's vehicle was involved in it. Under these circumstances, Appellee is properly subject to criminal prosecution for failing to stop his vehicle and fulfill the requirements of section 316.062(1), which included rendering reasonable assistance to his passenger.

Following remand for retrial, the following pertinent facts were presented at trial. Willie King testified that while he was talking to the victim, Christopher Holland, his cousin, at the car, a truck caught his attention. The victim stated it looked like the truck that belonged to the guy who had taken the victim's money a few days before. (IV, 152-55). Mr. King called the victim after learning the victim had gotten into the truck and it drove off. The victim sounded normal. (IV, 155-56). Mr. King called back a second time and not a minute later, the truck came "flying by." (IV, 156). "He had it to the floor and the truck swerved and you heard it when it swerved, like he was leaving tire tracks." (IV, 156-57). He could see ashes flying inside the truck. (IV, 158). Mr. King tried to follow the truck and was driving pretty fast, but could not catch up with it. (IV, 159). When he caught up with the truck at the Burger King, appellant was outside, with both doors open, leaning inside. (IV, 160-62).

Mr. King asked appellant where his cousin was and appellant said Mr. Holland got in and started hitting him. Mr. King told appellant he did not

have a problem with appellant and asked him to just tell him where his cousin was. Appellant pretended to be armed, jumped into his truck, and drove off. (IV, 163-64). Appellant did not tell Mr. King he had pulled over to let Mr. Holland out of the truck or that Mr. Holland had gotten out of the truck to walk. (IV, 164-65).

Maurice Brown observed the victim being waved into the truck by the driver which drove off normally. (V, 205-06). Ten to fifteen minutes later, he observed the truck in the middle of the road with the interior light on and he could see fighting going on inside. (V, 207-09). The victim opened the door, the driver "accelerated real fast and the door closed." (V, 209). The driver was "going pretty fast" "like zero to 30 because that's how fast it seemed like he was going... he was going so fast that the door actually closed, snapped like when he sped off..." (V, 212). The victim was found a couple of feet past where Mr. Brown saw appellant accelerate. (V, 215).

The truck made no stops between the chicken stand and the Burger King and where the victim was found. (V, 210-11). At the Burger King, appellant was outside the vehicle on the phone and as Mr. Brown got closer, appellant cuffed his phone under his shirt and pretended he had a gun. Appellant said he dropped the victim off on Hollywood. (V, 211-12).

Crime scene investigators William Barnes and Jennifer Norman prepared a sketch of the crime scene including measurements of where items of property and clothing belonging to the victim were located. (III, 428; V, 224). The clothing included one sock and one shoe. (V, 229). The distance from blood where the victim had been lying on the ground to the location of the sock

and shoe on the roadway was approximately one hundred feet. (V, 231).

Investigator Larry Meadows interviewed appellant who stated he was driving his truck with the victim as a passenger. (V, 302). Appellant claimed the victim approached him at the chicken shack. He stated the victim jumped out of his vehicle, leaving behind a shoe and a piece of his shirt. (V, 303, 310). When asked if he called for help for the victim after the victim separated from the vehicle, appellant did not give a response. Appellant admitted he did not call to report the incident. (V, 304). Appellant stated there was no way that he opened the door and pushed the victim. (V, 311). Appellant stated, "He must have not shut it all the way or something and it flew open or if he was planning on shooting me and then jumping out..." (V, 318). Appellant admitted that he never stopped the vehicle when the victim got out and stated "I didn't even know, I wasn't thinking I was going fast enough for him to even get hurt like that. Is that how he died by falling out of my car?" (V, 319).

Medical Examiner Andrea Minyard testified that the victim had road rash consistent with tumbling across the surface of the road after becoming separated from a moving vehicle. (V, 331). He also sustained lacerations from blunt force trauma to the skin surface. (V. 331). A contact injury to the exterior skull was present as were interior contusions to the brain and a skull fracture. She could not determine if the victim jumped, or was pushed from the vehicle. (V, 332). Once the body left the door, the door would block forward momentum as gravity took over. (V, 342).

Dr. Minyard could not tell with any degree of medical or scientific

certainty how far the victim skidded, but based upon her training and experience, the injuries to the back of the head and the back and side of the body were not consistent with a two inch skid and probably not consistent with a two foot skid. It would probably have to be more than that and could certainly be a hundred foot skid. (V, 344). With the skull fracture it was unlikely the victim was conscious long enough to have walked 90 feet, it was probable he would have lost consciousness immediately upon suffering the skull fracture. (V, 345).

SUMMARY OF ARGUMENT

The First District Court of Appeal has certified a question to this Honorable Court as one of Great Public Importance "WHEN A PASSENGER SEPARATES FROMA MOVING VEHICLE AND COLLIDES WITH THE ROADWAY OR ADJACENT PAVEMENT, BUT THE VEHICLE HAS NOT PHYSICAL CONTACT EITHER WITH THE PASSENGER, AFTER THE PASSENGER'S EXIT, OR WITH ANY OTHER VEHICLE, PERSON OR OBJECT, IS THE VEHICLE "INVOLVED IN A CRASH" SO THAT THE DRIVER MAY BE HELD CRIMINALLY RESPONSIBLE FOR LEAVING THE SCENE?"

The Statute at issue, Section 316.027, Florida Statutes (2010) is clear and unambiguous and therefore there is no need to resort to tenants of statutory construction and the statute must be given it plain and ordinary meaning. Amendments to the statute establish the Legislature has intended an even more broad application of the term "crash" which is completely in keeping with the societal driven intent of ensuring the protection of the public by imposing a public duty to render aid. Therefore, to not extend application of the statute to a situation such as occurred in the instant case, in which a passenger separates from a vehicle and the vehicle has no further contact with either the passenger or another vehicle, passenger or object would yield the type of absurd and unreasonable result to be avoided by canons of statutory interpretation. The certified question should be answered in the affirmative.

ARGUMENT

ISSUE I: WHEN A PASSENGER SEPARATES FROM A MOVING VEHICLE AND COLLIDES WITH THE ROADWAY OR ADJACENT PAVEMENT, BUT THE VHEICLE HAS NO PHYSICAL CONTACT EITHER WITH THE PASSENGER, AFTER THE PASSENGER'S EXIT, OR WITH ANY OTHER VEHICLE, PERSON, OR OBJECT, IS THE VEHICLE "INVOLVED IN A CRASH" SO THAT THE DRIVER MAY BE HELD CRIMINALLY RESPONSIBLE FOR LEAVING THE SCENE?

Standard of Review

Statutory interpretation is a question of law subject to de novo review. Hilton v. State, 961 So.2d 284 (Fla. 2007).

Burden of Persuasion

Appellant bears the burden of demonstrating prejudicial error. Section 924.051(7), Fla. Stat. (2008), provides:

> In a direct appeal ..., the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court.

"In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error." Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979). Moreover, because the trial court's decision is presumed correct, "the appellee can present any argument supported by the record even if not expressly asserted in the lower court." Dade County School Bd. v. Radio Station WQBA, 731 So. 2d 638, 645 (Fla. 1999); see Robertson v. State, 829 So. 2d 901, 906-907 (Fla. 2002).

Merits

The language of Section 316.027(1)(b) is unambiguous as to the meaning of the word "crash" and therefore is not subject to principles of statutory interpretation

When a statute is clear and unambiguous, the courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent, Jones v. State, 966 So. 2d 319 (Fla. 2007), unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Tillman v. State, 934 So. 2d 1263 (Fla. 2006). This basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences. See Thompson v. State, 695 So.2d 691, 693 (Fla. 1997). Appellant's claim the lower court failed to conduct this analysis fails, since the court was inherently required to do so in reaching its ruling.

Unambiguous language in a statute is not subject to judicial construction, see Antonin Scalia, A Matter of Interpretation 29 (Amy Gutmann, ed. 1997), however wise it may seem to alter the plain language. Florida Farm Bureau Cas. Ins. Co. v. Cox, 943 So.2d 823 (Fla. 1st DCA 2006), quashed on other grounds, 967 So.2d 815 (Fla. 2007). If the intent of the legislature is clear within the statute, that is the end of the matter regarding interpretation. Id.

Section 316.027(1)(b), Florida Statutes (2010) provides:

> The driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop that 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. 316.02. Any person who willfully violates this paragraph commits a felony of the first degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The State submits that the term crash is clear and unambiguous. This Court has held the mere fact that appellate courts may differ in their interpretations of a statute alone does not alone render a statute ambiguous. Seagrave v. State, 802 So.2d 281, 291 (Fla. 2001). Therefore the existence of a dissent in Gaulden I certainly does not render the statute ambiguous.

The plain and ordinary meaning of a word can be ascertained by reference to a dictionary, Green v. State, 604 So.2d 471, 473 (Fla. 1992), or one may look to case law or related statutory provisions which define the term. State v. Fuchs, 769 So.2d 1006, 1008 (Fla. 2000). Only where the plain language of the statute or the common dictionary definition of the term fail to convey a clear and unambiguous meaning of the term at issue are the courts required to resort to principles of statutory construction. Furthermore, related statutory provisions must be read together to achieve a consistent whole. Raymond James Financial Services, Inc. V. Phillips, 126 So.3d 186, 191 (Fla. 2013).

Meeriam Webster's Dictionary defines the word crash as to hit something hard enough to cause serious damage or destruction. Similarly, the Oxford Dictionary defines the term as to collide with an obstacle or another vehicle. Synonyms of crash in the Oxford Dictionary include: smash into, collide with, be in collision with, come into collision with, hit, strike, ram, smack into, slam into, bang into, cannon into, plough into, meet head-

on, run into, drive into, bump into, knock into, crack into/against; dash against; impact. The definitions and synonymous terms for crash clearly contemplate the hitting of an individual with some other object, and do not limit the term to the striking of one automobile with another.

The interpretation of crash applied below is also in accordance with that used in State, Department of Highway Safety and Motor Vehicles v. Williams, 937 So.2d 815 (Fla. 1st DCA 2006) in which the First District Court of Appeal applied Section 316.645, Florida Statutes (1999), a statute related to the one at issue in the instant case. There, the trial court found that Ms. Williams' warrantless arrest at the scene of a crash was unlawful based upon its conclusion that no crash occurred because Williams' vehicle was the only property damaged and the property was only minimally so. On review, the First District Court relied upon the use of the common dictionary definitions of the word "crash," "a breaking into pieces as if by collision," "an instance of crashing," and to "collide." Id. at 817. Based upon those definitions, the court reasoned that, "[although the term "traffic crash" reasonably contemplates some degree of damage, it clearly does not imply that damage must have occurred to the property of another, nor does it set a minimum amount necessary in order for such an incident to legally occur. Id. The court thus reversed the trial court's order which erroneously interjected a requirement that property, other than that of the defendant be damaged in an amount above a minimum threshold, while ignoring the plain meaning of the word "crash" as requiring more than just some type of collision.

The lower court, in Gaulden I, defined the word "crash" in a consistent manner to the related statute in Williams. There, the court found,

> Chapter 316 does not define the terms "involved" or "crash." However, district courts of this state have already analyzed the meaning of these two terms as used in chapter 316 according to their ordinary definitions. State, Dep't of Highway Safety & Motor Vehicles v. Williams, 937 So.2d 815, 817 (Fla. 1st DCA 2006); State v. Elder, 975 So.2d 481, 483 (Fla. 2d DCA 2007). In State v. Elder, the Second District determined that the most pertinent definitions of the term "involved" as used in section 316.027(1)(b) are "to draw in as a participant," to "implicate," "to relate closely," to "connect," "to have an effect on," to "concern directly," and to "affect." 975 So.2d at 483 (quoting Webster's Collegiate Dictionary, 271, 226 (10th ed. 1998)). In State, Department of Highway Safety & Motor Vehicles v. Williams, this Court concluded that the dictionary definitions most descriptive of the noun "crash" as used in chapter 316 are "a breaking to pieces by or as if by collision" and "an instance of crashing." 937 So.2d at 817 (quoting Webster's Collegiate Dictionary, 271 (10th ed. 1998)). After noting that "crash" means "an instance of crashing," the Williams Court observed that the verb "crash" is synonymous with the term "collide," which means "to come together with solid or direct impact." 937 So.2d at 817 (quoting Webster's Collegiate Dictionary, 226 (10th ed. 1998)). Applying these definitions to section 316.027, we hold that a driver must stop when his vehicle is a participant in, or has an effect on, a collision that results in injury or death.

> The statute does not require that the driver's vehicle be one of the colliding objects; it requires only that the vehicle be "involved" in the collision. For this reason, the Elder court held that a driver was required to stop when she turned into the path of another car, causing the driver of that car to swerve, lose control of the car, and drive off the road. 975 So.2d at 482. The car flipped, ejecting a passenger and killing its driver. Id. The defendant in Elder argued that a crash had not occurred because there was no "actual contact between the two vehicles." 975 So.2d at 482, 484. The Second District rejected this argument, holding that because the defendant's "driving caused the crash, she was 'involved in a crash resulting in the death of any person' and was required by the statute to remain at the scene." Id. at 484. In consideration of the facts of the instant case as applied to the statutory language, we note further that the statute does not require

that the collision be between two vehicles or even that a vehicle be one of the colliding objects. Id. At 1-2.

The court specifically held that neither the Legislature nor the history of Chapter 316, nor the rule of lenity justified dismissal, concluding, the courts should apply canons of statutory construction and explore legislative history only when the statutory language is unclear. The Gaulden I Court concluded:

> The rule of lenity, in particular, is a "canon of last resort," to be employed only when statutory language is so ambiguous as to be susceptible of differing, irreconcilable interpretations, even after application of other rules of statutory construction. See Kasischke, 991 So.2d at 814. The language of section 316.027(1)(b) is broad, but it is not unclear. Consequently, it is unnecessary to apply the rule of lenity or any other canon of statutory construction. See Hayes v. David, 875 So.2d 678, 680 (Fla. 1st DCA 2004) (noting that when a statute is clear and unambiguous, "there is no occasion to resort to other rules of statutory construction"). We emphasize, however, that our interpretation not only honors the plain language of the statute, but also safeguards the implementation of one of the statute's main purposes, which is to ensure that crash victims receive medical assistance as soon as possible. See State v. Dumas, 700 So.2d 1223, 1225 (Fla. 1997); § 316.062(1) (requiring a driver who has stopped pursuant to section 316.027 to provide reasonable assistance to anyone injured from a crash involving the driver's vehicle, including the making of arrangements for medical treatment). Because the statute exists mainly to protect people, not vehicles, we have no hesitation about interpreting the term "crash" as including any collision resulting in death or injury to a person.

Here, a passenger of Appellee's moving vehicle collided with the road as he became separated from the vehicle and suffered fatal injuries. This collision constituted a crash. Because the movement of Appellee's vehicle significantly contributed to causing this collision, Appellee's vehicle was involved in it. Under these circumstances, Appellee is properly subject to criminal prosecution for failing to stop his vehicle and fulfill the requirements of section 316.062(1), which included

rendering reasonable assistance to his passenger. For these reasons, we reverse the dismissal of this charge. Id. at 2.

Both decisions in Gaulden and Williams deal with statutes in which the Legislature amended the statute to substitute the word "crash" for "accident." Multiple sections in Chapter 316 were simultaneously amended to reflect this change to avoid the limiting definition afforded to the word accident. Accident is defined as an unintended and unforseen occurrence. Amendment of the statutes to use of the word "crash" rather than "accident" clearly shows that the Legislature intended to elucidate the fact that two things, either an object with an object or a person with an object must come together with some degree of force for a crash or collision to occur. The majority simply did not misinterpret Williams, but instead, correctly recognized its consistent application of Legislative intent, to still cover accidental unintentional occurrences, while extending them to intentional, non-accidental scenarios.

The Court, in Gaulden I also properly relied upon State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007) which also interpreted Section 316.027(1)(b), Florida Statutes (2004). While appellant asserts the issue in Elder was causation, making the case distinguishable, the defendant made the exact same assertion as in this case, challenging criminal liability for leaving the scene of an accident absent actual contact of two vehicles. The Elder Court correctly rejected this contention, holding that the term involved meant that the car caused the crash even though the car was not in the

crash. As in Elder, in this case, the fatal injuries were caused by the car.

Significantly, the Elder Court stated:

> Although Elder's car did not crash, Elder was nevertheless "involved" in the crash because her driving caused it. We do not agree with Elder that before a driver can be found to have been "involved" in a crash, the driver's car must collide with another car. Section 316.027(1)(b) does not limit its application to the driver of any vehicle that collides with another vehicle but instead requires the driver of any vehicle "involved" in a crash to stop. "Involved" is a word of common usage, not defined in the statute, and as such should be construed in its plain and ordinary sense. Francis v. State, 808 So.2d 110, 138 (Fla. 2001). "Involve" is defined, in pertinent part, as "to draw in as a participant," to "implicate," "to relate closely," to "connect," "to have an effect on," to "concern directly," to "affect." Webster's Third New International Dictionary 1191 (1986). Clearly, a driver of a vehicle that causes a crash is "involved" in the crash.

> Although no Florida appellate court has addressed this precise issue, courts of other states have likewise held that drivers who caused accidents were "involved" in those accidents even if the car they were driving did not collide with another car. See State v. Korovkin, 202 Ariz. 493, 47 P.3d 1131, 1135 (2002) (holding in a prosecution for leaving the scene of an accident that a driver, by racing with another driver, actively participated in the immediate chain of events culminating in a collision between the other driver and a third car); Armstrong v. State, 848 N.E.2d 1088, 1092 (Ind.) (holding that the duties imposed under a statute governing a driver's failure to stop after an accident causing death are triggered regardless of whether the driver's vehicle struck anything), cert. denied, 549 U.S. 996, 127 S.Ct. 513, 166 L.Ed.2d 370 (2006); Steen v. State, 640 S.W.2d 912, 914 (Tex. Crim. App. 1982) (holding in a prosecution for failure to stop and render aid that the defendant was "involved" in the collision where his improper lane change caused a passing vehicle to swerve to avoid hitting the defendant, resulting in a head-on collision between the passing vehicle and an oncoming vehicle); cf. State v. Perebeynos, 121 Wash. App. 189, 87 P.3d 1216, 1218-19 (2004) (holding that the evidence was sufficient to support the finding that the defendant was "involved in an accident" within the meaning of the hit-and-run statute, even though he made no contact with another vehicle because the defendant's erratic driving caused another driver to swerve and hit a truck), review granted, 153 Wash.2d 1002, 103 P.3d 1247 (2005).

> In this case, because Elder's driving caused the crash, she was "involved in a crash resulting in the death of any person" and was required by the statute to remain at the scene. Therefore, the trial court erred in dismissing the charges against her. Accordingly, we reverse and remand for further proceedings.

This Court, in State v. Dumas, 700 So.2d 1223, 1225 (Fla. 1997), found, with regard to the Legislature's intent with regard to Section 316.027, Florida Statutes, that:

> Florida law imposes an affirmative duty on a driver to stop, render aid, and provide certain information necessary for an insurance claim and an accident report whenever there is an injury. § 316.062, Fla. Stat. (1995). Florida law further makes it a felony to fail to complete these duties. § 316.027(2), Fla. Stat. (1995). One of the main purposes of the statute is to ensure that accident victims receive medical assistance as soon as possible. Herring v. State, 435 So.2d 865, 866 (Fla. 3d DCA 1983) ("It is apparent that the purpose of sections 316.027 and 316.062 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."). The fact that a death rather than an injury has occurred does not trigger a different set of duties. Thus, the knowledge element that triggers the affirmative duty is the same in each circumstance, but the sanction imposed is determined by the results of the accident. This result-driven sanction implicitly recognizes the possibility that a fleeing driver's failure to stop and render aid may be the reason that an injured person dies. Moreover, requiring proof that a driver had knowledge of death would lead to an absurd result: a driver who callously leaves the scene of a serious accident can avoid a second-degree felony conviction by disavowing knowledge of death.

> Contrary to the district court's conclusion, we find this construction of section 316.027 to be consistent with our opinion in Mancuso. We noted that there are two primary rationales for interpreting the statute as requiring knowledge of injury: (1) the statute imposes a more severe criminal penalty for leaving the scene of an accident where personal injuries are involved than does a similar statute which imposes sanctions where only property damage is involved; and (2) a driver must be aware of the facts giving rise to the affirmative duties imposed by

the statute in order to be held liable for not performing those duties. Mancuso, 652 So.2d at 372. These rationales are not undercut by a single knowledge standard. There is a vast gulf between the sanctions imposed for leaving the scene of an accident where only property damage is involved, and where knowledge need not be proven, and the criminal penalties for leaving the scene of an accident where injury or death is involved. Compare § 316.061(1), Fla. Stat. (1995) (sanction for leaving scene of accident involving property damage is fine of not more than $500 or imprisonment for not more than sixty days or both) with § 316.027(1)(a) (sanction for leaving scene of accident involving personal injury is fine not exceeding $5000 or term of imprisonment not exceeding five years or both) and § 316.027(1)(b) (sanction for leaving scene of accident involving death is fine not exceeding $10,000 or term of imprisonment not exceeding fifteen years or both). Also, the State must still prove that the driver was aware of the facts giving rise to the affirmative duty: that personal injury has occurred.

As previously stated, subsequent amendments to the statute establish the Legislature has intended an even more broad application of the term "crash" which is completely in keeping with the societal driven intent of ensuring the protection of the public by imposing a public duty to render aid. Therefore, to not extend application of the statute to a situation such as occurred in the instant case, in which a passenger separates from a vehicle and the vehicle has no further contact with either the passenger or another vehicle, passenger or object would yield the type of absurd and unreasonable result to be avoided by canons of statutory interpretation.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the affirmative, and the decision of the District Court of Appeal should be approved.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to M.J. Lord, Esquire, Assistant Public Defender, by E-MAIL to mj.lord@flpd2.com on 5th May, 2014.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

//Trisha Meggs Pate
TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

//Giselle D. Lylen
By: GISELLE D. LYLEN
Assistant Attorney General
Florida Bar No. 508012
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300 (VOICE)
(850) 922-6674 (FAX)
L14-1-5724

Attorney for the State of Florida

IN SUPREME COURT OF FLORIDA

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APPENDIX TO RESPONDENT'S ANSWER BRIEF

TABLE OF CONTENTS

132 So.3d 916, 39 Fla. L. Weekly D379

Briefs and Other Related Documents
Judges and Attorneys

District Court of Appeal of Florida,
First District.
Jacob Thomas GAULDEN, Appellant,
v.
STATE of Florida, Appellee.

No. 1D12–3653.
Feb. 17, 2014.

Background: Defendant charged with leaving the scene of a crash that resulted in death filed motion to dismiss. The Circuit Court, Escambia County, Jan Shackelford, J., granted motion. State appealed. The District Court of Appeal reversed and remanded. On remand, defendant was convicted as charged. Defendant appealed.

Holdings: The District Court of Appeal, Benton, J., held that:
(1) proof that defendant knew or should have known that either injury or death had likely resulted from accident was sufficient to support conviction, and
(2) trial court's failure sua sponte to instruct jury that state was required to establish defendant's actual knowledge that crash had occurred did not amount to fundamental error.

Affirmed; question certified.

West Headnotes

[1] KeyCite Citing References for this Headnote

48A Automobiles
48AVII Offenses
48AVII(A) In General
48Ak336 k. Neglect of duty after accident. Most Cited Cases

Proof that defendant knew or should have known that either injury or death had likely resulted from accident in which he was involved was sufficient to support conviction of leaving the scene of a crash that resulted in death; conviction did not require proof of defendant's knowledge that death had actually resulted, as defendant's statutory duty to stop, render aid, and provide information was triggered by his knowledge that injury or death had occurred. West's F.S.A. § 316.027(1).

[2] KeyCite Citing References for this Headnote

48A Automobiles
48AVII Offenses
48AVII(A) In General
48Ak336 k. Neglect of duty after accident. Most Cited Cases

48A Automobiles KeyCite Citing References for this Headnote
48AVII Offenses
48AVII(C) Sentence and Punishment
48Ak359.1 k. In general. Most Cited Cases

Knowledge element that triggers the affirmative duty to stop at the scene of an accident, namely,

whether the defendant knew or should have known that injury or death had occurred, is the same whether a defendant is charged with the first-degree felony of leaving the scene of a crash involving death or the third-degree felony of leaving the scene of a crash involving injury, but the sanction imposed is determined by the results of the accident. West's F.S.A. § 316.027(1).

[3] KeyCite Citing References for this Headnote

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1 In General
110k1038 Instructions
110k1038.2 k. Failure to instruct in general. Most Cited Cases

Assuming that state was required to establish defendant's actual knowledge that crash had occurred, in prosecution for leaving the scene of a crash that resulted in death, trial court's failure sua sponte to so instruct jury did not amount to fundamental error, where fact that crash had occurred within meaning of applicable statute was not at issue at trial. West's F.S.A. § 316.027.

[4] KeyCite Citing References for this Headnote

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1 In General
110k1038 Instructions
110k1038.2 k. Failure to instruct in general. Most Cited Cases

Failing to instruct on an element of the crime over which the record reflects there was no dispute is not fundamental error; thus, a defective instruction in a criminal case can only constitute fundamental error if the error pertains to a material element that is disputed at trial.

[5] KeyCite Citing References for this Headnote

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1 In General
110k1038 Instructions
110k1038.1 Objections in General
110k1038.1(2) k. Plain or fundamental error. Most Cited Cases

To justify not imposing the contemporaneous objection rule with respect to an alleged error in jury instruction, the alleged error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error; in other words, fundamental error occurs only when the omission is pertinent or material to what the jury must consider in order to convict.

***917** Nancy A. Daniels, Public Defender, and M.J. Lord, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Assistant Attorney General, and Giselle Lylen, Assistant Attorney General, Tallahassee, for Appellee.

BENTON, J.

Jacob Thomas Gaulden appeals his conviction and sentence for leaving the scene of a "crash ... that result[ed] in ... death," in violation of section 316.027(1)(b), Florida Statutes (2010). We affirm.

A passenger in a pickup truck Mr. Gaulden was driving "separated" from the vehicle,[FN1] landed on the pavement, and suffered fatal injuries. Although aware of his passenger's exit from the moving truck, Mr. ***918** Gaulden did not stop at the scene, or as close to the scene as possible, much less remain at the scene until he had fulfilled the requirements of section 316.062, Florida Statutes (2010) (requiring the driver of a vehicle involved in a crash resulting in injury or death to provide information such as the driver's name, address, vehicle registration number, and license, and to render reasonable assistance, including arranging for medical treatment if necessary).

> FN1. In a recorded interview with law enforcement officers, Mr. Gaulden stated that the decedent jumped out of the vehicle after they scuffled, but that he did not think the truck was traveling so fast that the decedent would be hurt. One witness described seeing the decedent open the passenger door and the interior light come on, before seeing Mr. Gaulden and the decedent fighting in the cab. The same witness testified that the truck then accelerated so rapidly that the passenger door closed on its own. A second witness described observing Mr. Gaulden's truck "flying by," and stated the driver "had it to the floor and the truck swerved." These two witnesses, friends of the decedent, said they followed the truck, but that, when they reached it a few minutes later, the decedent was not in the truck with Mr. Gaulden. The decedent's body was eventually found near where the truck swerved and accelerated.

Charged with violating section 316.027(1)(b), Florida Statutes (2010), Mr. Gaulden moved to dismiss, and the trial court granted the motion. Section 316.027(1) provides in pertinent part:

> (a) The driver of any vehicle involved in a crash ... 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....
>
> (b) The driver of any vehicle involved in a crash ... that results in the death 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 first degree....

In the absence of any evidence that the truck hit the decedent, the trial court ruled that the decedent's hitting the pavement did not constitute a "crash" within the meaning of section 316.027(1)(b). Disagreeing with this interpretation of the statute, the state appealed the order dismissing the charge.

A different panel of this court ruled that the "statute does not require that the driver's vehicle be one of the colliding objects; it requires only that the vehicle be 'involved' in the collision," and reversed, holding that "a driver must stop when his vehicle is a participant in, or has an effect on, a collision that results in injury or death." *State v. Gaulden*, ---So.3d ----, ----, 2012 WL 1216263, 37 Fla. L. Weekly D867, D868 (Fla. 1st DCA Apr. 12, 2012) [*Gaulden I*]. We held:

> Because the statute exists mainly to protect people, not vehicles, we have no hesitation about interpreting the term "crash" as including any collision resulting in death or injury to a person.
>
> Here, a passenger of [Mr. Gaulden's] moving vehicle collided with the road as he became separated from the vehicle and suffered fatal injuries. This collision constituted a crash. Because the movement of [Mr. Gaulden's] vehicle significantly contributed to causing this collision, [Mr. Gaulden's] vehicle was involved in it. Under these circumstances, [Mr. Gaulden] is properly subject to criminal prosecution for failing to stop his vehicle and fulfill the requirements of section 316.062(1), which included rendering reasonable assistance to his passenger.

Id. On remand, the trial court proceeded from this premise. *See* *Engle v. Liggett Grp., Inc.*, 945 So.2d 1246, 1266 (Fla.2006); *Fitchner v. Lifesouth Cmty. Blood Ctrs., Inc.*, 88 So.3d 269, 275 (Fla. 1st DCA 2012) (stating when "an appellate court decides a point of law, that point is no longer open for debate on remand to the trial court"). After a jury trial on remand, Mr. Gaulden was found guilty of leaving the scene of a crash involving death.

[1] [2] He now appeals the conviction and sentence predicated on that verdict. For the first time on appeal, he argues the ***919** trial court committed fundamental error in instructing the jury (consistently with the standard jury instruction [FN2]) that he could be found guilty if he knew or should have known that injury *or* death had occurred. Because leaving the scene of a crash involving death is a first-degree felony, while leaving the scene of a crash involving injury, but not death, is a third-degree felony, he argues, the state was required to prove that he should have known (from the nature of the "crash") that a fatal injury had occurred, not merely that an injury of some kind had resulted. In *State v. Dumas*, 700 So.2d 1223, 1225–26 (Fla.1997), however, our supreme court rejected this argument, explaining its decision, as follows:

FN2. The standard jury instruction for section 316.027(1), Florida Statutes, reads as follows:

To prove the crime of Leaving the Scene of a Crash, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash resulting in [injury to] [death of] any person.

2. (Defendant) knew or should have known that [he][she] was involved in a crash.

Give 3a if death is charged or 3b if injury is charged.

3.a. (Defendant) knew or should have known of the injury to-or death of the person.
b. (Defendant) knew or should have known of the injury to the person.

Give 4a, 4b, or both as applicable.

4.a. (Defendant) willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he][she] had given "identifying information" to the [injured person] [driver] [occupant] [person attending the vehicle] and to any police officer investigating the crash.

[or]

b. (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.
Definitions.
"Identifying information" means the 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 and purposely.

Fla. Std. Jury Instr. (Crim.) 28.4.

Florida law imposes an affirmative duty on a driver to stop, render aid, and provide certain information necessary for an insurance claim and an accident report whenever there is an injury. Florida law further makes it a felony to fail to complete these duties. One of the main purposes of the statute is to ensure that accident victims receive medical assistance as soon as possible. The fact that a death rather than an injury has occurred does not trigger a different set of duties. Thus, the knowledge element that triggers the affirmative duty is the same in each circumstance, but the sanction imposed is determined by the results of the accident. This result-driven sanction implicitly recognizes the possibility that a fleeing driver's failure to stop and render aid may be the reason that an injured person dies. Moreover, requiring proof that a driver had knowledge of death would lead to an absurd result: a driver who callously leaves the scene of a serious accident can avoid a [more serious] felony conviction by disavowing knowledge of death.
(citations omitted). The *Dumas* court had no difficulty reading the statute as requiring the same duty whether the driver had reason to believe death or mere injury had occurred. It could, indeed, be argued that it is more important to stop to help an injured survivor than to assist with a corpse. In any event, we are bound to ***920** reject appellant's first claim of fundamental error as foreclosed by the decision in *Dumas.*

[3] We also reject the argument that the trial court committed fundamental error in failing to instruct the jury that the state had to prove the defendant had actual knowledge of the accident. For this point, appellant relies principally on *Dorsett v. State,* --- So.3d ----, 2013 WL 331602, 38 Fla. Law Weekly D233 (Fla. 4th DCA Jan. 30, 2013), *review granted,* 122 So.3d 869 (Fla.2013), a case in which fundamental error was not even argued.[FN3] The defendant in *Dorsett* insisted that he did not stop the car he was driving when he ran over somebody lying in the street because he did not know he had hit anyone. *Id.* at D233, at ----. In contrast, Mr. Gaulden conceded he knew his passenger suddenly left the moving vehicle, and could not have been unaware that, whether the passenger jumped or was pushed, he was destined to hit the paved shoulder, if not the roadway itself.

FN3. The trial court rejected Dorsett's requested special instruction that the state had to prove the defendant "knew that he was involved in an accident." *Dorsett v. State,* --- So.3d ----, ----, 2013 WL 331602, 38 Fla. L. Weekly D233, D233 (Fla. 4th DCA Jan. 30, 2013), *review granted,* 122 So.3d 869 (Fla.2013). Instead, the jury was given the standard instruction that the state must prove the defendant "knew or should have known that" he was involved in an accident. *Id.* at D234, at ----. The trial court also rejected the following special jury instruction requested by the defendant:

> The Defendant's knowledge that his car caused the personal injuries to [the victim] is a necessary element of the offense of failing to remain at the scene of an accident under Florida Statute Section 316.027.

> Actual knowledge of the accident is an essential element of this crime, for one cannot "willfully" leave an accident without awareness that an accident has occurred.

> Further, the State must prove that [the defendant] had actual or constructive

> knowledge of the resulting injury to [the victim]—that is, [the defendant] either knew of [the victim's] resulting injury, or reasonably should have known of such injury from the nature of the accident.

Id. at D233, at ---- (emphasis omitted). On appeal, Dorsett argued the standard jury instructions included an incorrect statement of law because section 316.027 requires actual knowledge of the accident. The *Dorsett* court reversed, remanded for a new trial, and certified the following question to the supreme court: "In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require *actual* knowledge of the accident?" *Id.* at D235, at ----.

For purposes of decision, we assume that the state must establish that the driver knew that a "crash" had occurred,[FN4] in ***921** order to prove that the driver had reason to know of a death or injury caused by the crash, an accident which the driver was legally obligated not to leave without, *inter alia,* offering assistance. As then Chief Judge May explained, "While our supreme court addressed the knowledge issue as it related to 'injury,' it has not been asked to address knowledge of the 'accident' as an element of the crime. Even so, the supreme court explained that 'knowledge of the accident is an essential element of section 316.027, for one cannot "willfully" leave an accident without awareness that an accident has occurred.' " *Dorsett,* 38 Fla. L. Weekly at D234, --- So.3d at ---- (quoting *State v. Mancuso,* 652 So.2d 370, 371 (Fla.1995)).

> FN4. We need not decide the question because there was no objection to the standard jury instruction and any error would not be fundamental in this case but, as the *Dorsett* court acknowledged, "a quick review of [*State v. Mancuso,* 652 So.2d 370 (Fla.1995),] might suggest that the standard jury instruction accurately reflects the law." 38 Fla. L. Weekly at D234–35, --- So.3d at ---- - ----. Subsequent to the decision in *Mancuso,* the Florida Supreme Court approved the standard jury instruction providing that the element that must be proven is that the defendant "knew or should have known that [he] [she] was involved in an accident." *Standard Jury Instructions in Criminal Cases (95–2),* 665 So.2d 212, 215 (Fla.1995).

> The *Dorsett* court noted that "[o]ther jurisdictions, such as Virginia, require that the defendant possess *actual* knowledge of the accident to be found guilty under the 'hit-and-run' statute." 38 Fla. L. Weekly at D235 n. 2, --- So.3d at ----. But still other jurisdictions hold otherwise. *See, e.g., Clancy v. State,* --- Nev. ----, ---- - ----, 313 P.3d 226, 229–30 (2013) (concluding the trial court did not err in instructing the jury it had to find the defendant "knew or should have known that he had been involved in accident" instead of the requested instruction that the jury had to find the defendant "had actual knowledge of the accident," and noting that, although "knowledge of involvement in an accident is required for criminal liability, ... '[d]irect evidence of absolute, positive, subjective knowledge may not always be obtainable[, and w]e think it sufficient if the circumstances are such as to induce in a reasonable person a belief that collision has occurred; otherwise a callous person might nullify the humanitarian purpose of the statute by the simple act of immediate flight from an accident scene without ascertaining exactly what had occurred' " (quoting *State v. Wall,* 206 Kan. 760, 482 P.2d 41, 45 (1971) (emphasis omitted)); *Comstock v. State,* 82 Md.App. 744, 573 A.2d 117, 123 (Md.Ct.Spec.App.1990) ("[B]efore a defendant can be convicted under a 'hit and run' statute, the State must first show knowledge by the accused of the 'hit,' and that the 'run' or leaving was also knowing. As with any case in which *scienter* is an element, it may be proved circumstantially. The trier of fact may infer from an examination of the circumstances of the event that a defendant knew that an accident occurred or that people were injured. Where conditions were such that the driver should have known that an accident occurred, or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present."); *contrast State v. Miller,* 308 N.W.2d 4, 7 (Iowa 1981) (holding actual knowledge of accident is required, but noting that knowledge is seldom capable

of direct proof and usually is established from the circumstances).

Mr. Gaulden argues that the present case is factually similar to *Dorsett* and asserts fundamental error on the ground that the jury instruction that was given below—requiring the jury to find, not that he had actual knowledge of a crash, but only that he "knew or should have known" that he had been involved in a crash—pertained to an element the jury had to decide on in order to convict. But the present case is unlike *Dorsett,* because the trial judge was never alerted to Mr. Gaulden's desire for any jury instruction other than the standard instruction that was actually given. In *Dorsett,* the defendant requested that the jury be instructed that "actual knowledge" of the collision was "an essential element" of the offense. *Id.* Mr. Gaulden neither objected to the standard jury instruction nor requested a special instruction.

[4] [5] Nor, again unlike *Dorsett,* was the fact of a "crash" really in dispute in the present case. " 'Failing to instruct on an element of the crime over which the record reflects there was no dispute is not fundamental error.' Thus, a defective instruction in a criminal case can only constitute fundamental error if the error pertains to a material element that is disputed at trial." *Daniels v. State,* 121 So.3d 409, 417–18 (Fla.2013) (citation omitted). "To justify not imposing the contemporaneous objection rule, 'the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.' In other words, 'fundamental error occurs only when the omission is pertinent or material to what the jury must consider in order to convict.' " *State v. Delva,* 575 So.2d 643, 644–45 (Fla.1991) (citations omitted). The dispute over whether a crash occurred was legal, not factual. If, as the court held the last time this case was before it, a passenger's hitting the pavement is a crash within ***922** the meaning of the statute, giving the standard jury instruction did not constitute fundamental error.

Finding no merit in Mr. Gaulden's remaining arguments, we affirm his conviction and sentence. Now that proceedings have concluded in the trial court, however, we do certify as a question of great public importance the following for possible review and decision by our supreme court:

> WHEN A PASSENGER SEPARATES FROM A MOVING VEHICLE AND COLLIDES WITH THE ROADWAY OR ADJACENT PAVEMENT, BUT THE VEHICLE HAS NO PHYSICAL CONTACT EITHER WITH THE PASSENGER, AFTER THE PASSENGER'S EXIT, OR WITH ANY OTHER VEHICLE, PERSON, OR OBJECT, IS THE VEHICLE "INVOLVED IN A CRASH" SO THAT THE DRIVER MAY BE HELD CRIMINALLY RESPONSIBLE FOR LEAVING THE SCENE?

We specifically decline to reexamine the decision in *Gaulden I* ourselves at this juncture. The rule it laid down has become the law of the case. *See Engle,* 945 So.2d at 1266; *Fitchner,* 88 So.3d at 275 ("When an appellate court decides a point of law, ... with limited exceptions, it is no longer open for debate in a subsequent appeal [to the same court]." (citation omitted)).

Affirmed. Question certified.

LEWIS, C.J. and SWANSON, J., concur.

Fla.App. 1 Dist.,2014.
Gaulden v. State
132 So.3d 916, 39 Fla. L. Weekly D379