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IN THE SUPREME COURT OF FLORIDA

JACOB THOMAS GAULDEN,

Petitioner,

v.

CASE NO. SC14-399
L.T. No. 1D12-3653

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL

PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

OTHER

IN THE SUPREME COURT OF FLORIDA

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PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

I. PRELIMINARY STATEMENT

Jacob Gaulden was charged with leaving the scene of an accident involving death. Initially the case was dismissed, but the dismissal was reversed on the state's appeal and a trial took place. Following his conviction and second appeal, the First District Court of Appeal certified a question of great public importance with regard to the meaning of the term "crash" as used in Section 316.027(1)(b), Florida Statutes.

Mr. Gaulden will be referred to in this brief as "petitioner," "defendant" or by his proper name. Reference to the record on appeal will be by use of the volume number (in roman numerals) followed by the appropriate page number in parentheses.

II. STATEMENT OF THE CASE AND THE FACTS

Jacob Gaulden was charged with leaving the scene of a crash involving death, in violation of Section 316.027(1)(b), Florida Statutes. (I-1) After a hearing on the defense motion to dismiss, the trial court dismissed the charge, determining that there had been no "crash" within the meaning of the applicable statute. (I-98, II-261) The First District Court of Appeal reversed the trial court's ruling in a 2-1 decision, State v. Gaulden, __ So. 3d __ (Fla. 1st DCA April 12,2012) [37 FLW D867] (hereinafter, "Gaulden I"), with Judge Davis dissenting, and the case was remanded for trial. Following a jury trial, the defendant was found guilty of leaving the scene of a crash involving death, and the court imposed a 12 year sentence. (II-360) The jury was instructed, upon the state's motion, consistent with the First District Court of Appeal's majority opinion, that "A 'crash' includes a person becoming separated from a vehicle and that person colliding with the road." (II-300) In effect, the jury was directed to find that a crash had occurred.

Before the trial began, defense counsel noted for the record that, but for the majority ruling of the First District Court of Appeal, she would be arguing to the jury that no crash had taken place. (IV-5) After the state rested its case, the defense again preserved its argument that there had been no crash, thus the statute did not apply at all, and there was no crime. (V-350) The

issue was therefore preserved for review, and the issue was again raised in the First District Court of Appeal.

In his opinion on the second appeal, Gaulden v. State, 132 So. 3d 916 (Fla. 1st DCA 2014) (hereinafter, "Gaulden II"), Judge Benton noted: "Now that proceedings have concluded in the trial court, however, we do certify as a question of great public importance the following . . . ."

> 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?

Trial

While a full presentation of the facts surrounding the exit of the deceased victim from the truck is included herein, it was undisputed at trial that the victim jumped from the vehicle. (V-303) The two eye-witnesses, King and Brown, did not see how or when the victim exited the vehicle. Gaulden, the only other person inside the truck, maintained that the victim jumped from his vehicle and was not pushed. (V-310)

The victim, Chris Holland, had voluntarily entered the vehicle and, according to the petitioner, begun to argue with him and threaten him shortly thereafter. (V-308) Because he was alarmed by this behavior, petitioner acted as though he had a weapon, and the victim then jumped from the vehicle, and ultimately sustained a

fractured skull. (V-310, 332)

Officer Bull testified that he arrived on the scene at about 3:30 AM on December 19, 2010. (IV-122) An ambulance crew was already there rendering aid to Holland. Bull testified that everyone congregates at the chicken stand and at around 2:30 AM it becomes very crowded in the area on Saturday nights, with a lot of traffic. (IV-137) The area was poorly lit and there was a dip in the road nearby. The victim was located about 10-20 yards diagonally from the chicken stand. Bull also went to the Burger King nearby based on information from witnesses, and observed tire tracks through the grass in front of that restaurant.

Willie King, the victim's cousin, testified that they had gone to the Blue Bar that night, and later to the chicken stand. He said there were always a lot of people there after the clubs closed on Saturday night. (IV-151) When he was ready to leave, he had not been paying attention to Holland, but called him to say he was ready to go. Holland told him to wait for a bit. Later he saw a truck that looked familiar, and Holland said it was the guy who took his money. (IV-152) A few days earlier, the truck had been outside King's house, and Holland said the driver had grabbed the drugs and left without paying him. (IV-154) Holland went to see if it was the same truck. A few minutes later, Maurice Brown told King that Holland had gotten into the truck. (IV-155) King phoned Holland, who sounded calm and said he would be right back. After

King called Holland a second time, King saw the truck "fly by" and swerve. (IV-156)

King could not see what was happening inside the truck, and he did not know how many people were inside the truck. (IV-158) Brown got into King's car and they drove after the truck, although they did not catch up with it. They lost sight of the truck, but minutes later saw it parked at the Burger King with the defendant standing outside. (IV-160) King pulled up and he and Brown got out and walked toward the defendant, asking where his cousin was. The defendant told him that Holland got out walking, and also said Holland had gotten into his car and started hitting him. (IV-163) The defendant put his hand under his shirt, which made King think he had a gun. King was mad and he said the defendant appeared mad, and King continued to walk toward the defendant, who got into his truck and drove off over the grass. (IV-164-5) Nothing was said about where Holland got out of the truck and started walking or whether the defendant had pulled over to let him out. King and Brown drove back to the chicken stand and saw Holland lying unconscious on the grass next to the light pole near where the truck had swerved. (IV-165) They called the police and waited for the ambulance.

On cross-examination, King testified that he did not see Holland get in the truck. (IV-183) He never saw the truck when it was parked or stopped, nor did he see it pull onto the street from

the parking lot. (IV-185, 196) He did not see Holland in the truck, but was told by someone else that he had gotten into the truck. (IV-188)

Maurice Brown testified that he was also at the chicken stand with King and Holland that night. (V-205) Holland saw someone he knew in a red truck and got in the truck. (V-205-6) The truck driver was driving normally when the truck pulled off. Brown saw two people in the truck: Holland and the other guy. The truck left and came back after about 10-15 minutes. The truck stopped in the middle of the road, but was still running, (V-207) and it was not in a parking spot. He saw the interior light come on, but he could not see what was going on inside the truck. (V-208) Then he saw a fist fight, he saw Holland open the door, the truck accelerated, and the door closed. Brown then told King that Holland was in the car fighting, and they followed the truck. (V-209) It was dark; the lighting conditions were not good. There were two cars between his car and the truck until the cars turned left, so he could not see the truck the whole way. They turned right and saw the truck at Burger King. (V-210) Holland was not there. He did not see the truck stop between the chicken stand and Burger King. He did not see the truck stop in the location where Holland was later found. He could not see what was going on in the truck as it drove on Hollywood Ave. When he parked at Burger King, he did so in a manner that would not permit the red truck to back out. The driver was on

the phone and made it seem like he had a gun. The driver said he dropped Holland off on Hollywood. The truck driver went over the curb when he left Burger King. (V-211) Holland was found a couple of feet from where he saw the truck accelerate, near the chicken stand. (V-215)

On cross-examination, Brown testified that he saw the interior dome light come on just as the truck stopped in the road. He saw the door open; then he saw the truck accelerate and the door close. This occurred near the chicken stand. (V-216) That is when he told King that his cousin was in the truck and they were fighting, and they drove after them. (V-217) When they encountered the defendant at the Burger King, Brown told the defendant he knew he had a cell phone and not a gun, and the defendant jumped in the truck and took off over the curb. (V-219)

Investigator Meadows talked to the defendant, who acknowledged that he had been driving the truck that night and that Holland had approached him at the chicken stand. He said that Holland had jumped out of the vehicle. (V-303) A recording of their interview was played for the jury. He said he had stopped to talk to some people he knew when Holland came up and accused him of having robbed him, but then Holland said it might have been someone else and asked for a ride. They got in the truck and Holland kept bringing it up. Gaulden repeated that he did not rob him last night, and Holland pulled a gun. Holland was on his cell phone, his

window was down, and he was telling his people to follow them, that this was "the cracker" from last night. (V-308) They pulled off and the guy got really crazy, pulled out a gun, and Gaulden said "please don't shoot me, I'll get you some money." Holland said he was not going to kill him, but he was going to get some money. They began scuffling, and Gaulden decided to tell Holland he had a gun too, because other people were coming. He was terrified he was going to get shot one way or the other. He acted like he had a gun, but he didn't. Holland opened the door as if he believed Gaulden had a gun. Gaulden was grabbing him because they were still driving down the road and scuffling. A piece of the shirt and one shoe were still in the truck after Holland jumped. (V-310) Gaulden said Holland jumped out of the truck, and that he did not open the door and push him out. (V-311) He did not hit Holland on the side of the head, although Holland punched him in the eye twice. He fled to the Burger King and was planning to call law enforcement when the other guys came. Gaulden said he did not realize it would be such a big deal because Holland had pulled a gun on him. (V-312) Gaulden said he didn't want to get killed and he was scared; Holland pulled a gun on him after he got in the truck, and he kept going because he did not want to stay and get shot. (V-313) Gaulden also said he did not think he was going fast enough for anyone to get hurt. (V-324)

The medical examiner, Dr. Minyard, testified that she observed scrapes and abrasions that occur from scraping against an uneven

surface, consistent with "a person being separated from a moving vehicle" and perhaps tumbling along the ground. (V-331) She also observed a laceration, which is basically a blunt force injury, on the scalp above the left ear. She said the victim may have struck his head on the ground. She found no broken bones other than the skull fracture. The injuries she observed were consistent with separation from a vehicle and landing on a road, however, she testified that she had no way of knowing whether the deceased jumped from a vehicle or was pushed from a vehicle. (V-332)

Dr. Minyard testified that the most common injuries she sees when a pedestrian is hit by a vehicle are leg or thigh fractures, because generally a bumper makes contact with the lower extremity. (V-333) In addition, she testified that when someone is run over she often sees crush injuries. She did not observe these injuries on the deceased. (V-334) The cause of death was blunt impact to the head. (V-335) Dr. Minyard testified she could not determine the speed of the vehicle, and that all of the injuries she observed were consistent with the deceased voluntarily leaving or jumping from the vehicle. (V-336) The injuries were also consistent with someone leaving the vehicle and then walking 90 feet, which she said would be possible. She could not determine the order in which the injuries occurred, or whether they occurred at one time or at several different times. (V-336)

Officer Tony Godwin testified that after he received a BOLO

for the red and black pickup truck, he spotted the truck and made a traffic stop. They were no problems with the stop. (V-361) The defendant agreed to appear at the sheriff's office the next day. The defendant told him he could search the truck, and he did not appear to know why they had stopped him. (V-363) The defendant pulled over immediately and did not try to avoid the officer. (V-364) Officer Ard, who had not participated in the stop because he knew the defendant and was related to him, testified that the defendant did not appear to have any idea what was going on when he was stopped. (V-371)

The instant appeal followed the conviction, and the First District Court of Appeal affirmed but certified a question of great public importance ("Gaulden II"). The DCA certified the following question of great public importance:

> 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?

III. SUMMARY OF THE ARGUMENT

The certified question should be answered in the negative. Taking into consideration the rule of lenity, as the Court must, and the legislative history surrounding the change of statutory language from "accident" to "crash," it is apparent that Judge Davis's analysis in Gaulden I represents the correct reading of the statute.

Further, an interpretation of a statute which leads to an unreasonable or ridiculous conclusion or a result obviously not designed by the Legislature must not be adopted.

In addition, to hold petitioner accountable on the theory expressed in the First District Court majority view under the factual circumstances of this case constitutes a due process violation, in that there is no reasonable notice that the situation here is what is meant by the term "crash."

IV. ARGUMENT

ISSUE:
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?

The statute involved in this case provides:

> 316.027. Crash involving death or personal injuries
> (1)(b) 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 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. . . . (e.s.)

Standard of Review

Questions of pure statutory interpretation are reviewed de novo. See, e.g., Tillman v. State, 934 So.2d 1263, 1269 (Fla. 2006).

Argument

The certified question should be answered in the negative. In Gaulden II, the issue with regard to the meaning of the term "crash" was again raised at the trial level and on appeal. While certification of a question may have been premature before trial, in Gaulden II, Judge Benton specifically noted that certification was appropriate once the trial was concluded.

The majority in Gaulden I ruled that the collision of the passenger, who jumped from the vehicle, with the road constituted

a "crash" within the meaning of Section 316.027, Florida Statutes:

> The dispute in this case centers on the meaning of the phrase "involved in a crash."
>
> 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.

We disagree that either the legislative history of chapter 316 or the rule of lenity justifies the trial court's dismissal, as the dissent suggests. Courts should apply canons of statutory construction and explore legislative history only when the statutory language is unclear. Koile v. State, 934 So.2d 1226, 1231 (Fla.2006). 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.

In dissent, Judge Davis pointed out that:

> Interestingly, the majority fails to mention that, prior to 1999, section 316.027(1)(b), Florida Statutes, spoke in terms of any vehicle involved in an "accident." In 1999, the Legislature amended section 316.027(1)(b), along with other similar statutes, by substituting the word "crash" for the word "accident." Ch. 99-248, § 82, Laws of Fla. Although the situation in this case might constitute an accident or an "unexpected and undesirable event" involving a vehicle, see, e.g., Armstrong v. State, 848 N.E.2d 1088, 1090 (Ind.2006), I, like the trial court, interpret the phrase "any vehicle involved in a crash" to mean that a vehicle must collide with another vehicle, person, or object before the driver may be held criminally liable for failing to remain at the scene.
>
> I find support for this interpretation in a legislative staff analysis that addressed the change from "accident" to "crash" by setting forth, "Amends s. 316.027, F.S., to change the term 'accident' to 'crash' in order to update and conform terminology and to more accurately describe[ ] a collision involving a motor vehicle." Fla. H.R. Comm. on Law Enf. & Crime Prevention for HB 593 (1999) Staff Analysis 6 (Feb. 23, 1999). As the trial court found, there was no evidence that Appellee's vehicle collided with anyone or anything or that Appellee, who was also charged with manslaughter in this case, caused another vehicle to crash. While the majority relies upon our opinion in State, Department of Highway Safety and Motor Vehicles v. Williams, 937 So.2d 815 (Fla. 1st DCA 2006), and the Second District's opinion in State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007), in support of its interpretation, neither of those cases addressed the question of whether a person can crash for purposes of section 316.027. As such, the majority's reliance upon the dictionary definitions of "involved" and "crash," as set forth in both opinions, is misplaced. Both cases actually involved a vehicle crash, which is what, according to my reading of the statute, is necessary for criminal liability to arise.
> My interpretation is also guided by the rule of lenity,

> which requires that any ambiguity or situation in which statutory language is susceptible to differing constructions must be resolved in favor of the person charged with an offense. See Kasischke v. State, 991 So.2d 803, 814 (Fla.2008) (citing section 775.021(1), Florida Statutes, which provides that criminal offenses shall be strictly construed and that when the language is susceptible of differing constructions, it shall be construed most favorably to the accused). Because the plain language of section 316.027(1)(b) does not answer the question presented in this case, the majority's conclusion that the statute is clear and that the rule of lenity is not applicable is misguided. Had the Legislature wished to include in the statute a scenario where a passenger is separated from the vehicle and collides with the ground, it could have easily stated such. Instead, it substituted "crash" for "accident" in order to more accurately describe a collision involving a motor vehicle. Because there was no collision involving a motor vehicle in this case and because this Court must construe the ambiguous language most favorably to Appellee [Gaulden], I would affirm.

Petitioner contends that Judge Davis's view is the legally correct view.

In the majority opinion in Gaulden I, (II-285), the District Court declined to consider the legislative history discussed by Judge Davis in dissent, or the rule of lenity, reasoning that the statutory language was unambiguous and therefore it was not appropriate to resort to rules of statutory construction, however, Petitioner contends the language is not unambiguous. Obviously, reasonable minds can disagree concerning the meaning of the term crash in the pertinent statute, as evidenced by the trial court and the dissenting judge's interpretations.

Further, while the majority specifically stated that "it is unnecessary to apply the rule of lenity or any other canon of

statutory construction," the rule of lenity is not solely a canon of statutory construction but is a statutory directive. Section 775.021(1), Florida Statutes, provides:

> The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused. (E.s.)

Applying this statute to the instant case requires the court to rule that no crash occurred.

In addition, the following was not considered by the majority: "In construing statutes, [this Court] first consider[s] the plain meaning of the language used. When the language is unambiguous and conveys a clear and definite meaning, that meaning controls **unless it leads to a result that is either unreasonable or clearly contrary to legislative intent**." Tillman. In this case, even if the language were unambiguous, which it is not, the majority interpretation leads to a result that is contrary to the expressed legislative intent, that the change in the language was designed to "conform terminology and to more accurately describe[] a collision involving a motor vehicle." The majority's conclusion that the statute "does not require that the collision be between two vehicles or even that a vehicle be one of the colliding objects" is clearly contrary to legislative intent.

Although the majority discussed DHSMV v. Williams, 937 So. 2d 815 (Fla. 1st DCA 2006), petitioner contends the majority misinterpreted the requirement in Williams of "forceful contact

with another object," particularly in light of the express legislative intent, noted above, that the change of statutory language from accident to crash requires that a motor vehicle be involved in the forceful contact with another object, which did not occur in the present case. Petitioner further contends that the majority's reliance on State v. Elder, 975 So. 2d 481 (Fla. 2d DCA 2007), is misplaced because there was a crash of vehicles in that case; the issue was one of causation, not of the meaning of the term crash.

See also G.G. v. FDLE, 97 So. 3d 268 (Fla. 1st DCA 2012)("[I]t is ... an axiom of statutory construction that an interpretation of a statute which relates to an **unreasonable or ridiculous** conclusion or a result obviously not designed by the Legislature will not be adopted."); State v. Hackley, 95 So. 3d 92 (Fla. 2012) ("In certain circumstances, the absurdity doctrine may be used to justify departures from the general rule that courts will apply a statute's plain language. . . . We thus have recognized that "a sterile literal interpretation should not be adhered to when it would lead to absurd results.") Petitioner contends that the application of the statute to find that a crash occurred in the present case is an absurd and unreasonable result.

Petitioner contends that to hold him accountable on the theory expressed by the majority in Gaulden I under the factual circumstances of this case constitutes a due process violation, in

that there is no reasonable notice that the situation here is what is meant by the term "crash." "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." See, e.g., Enoch v. State, 95 So. 3d 344 (Fla. 1st DCA 2012).

With regard to the use of common dictionary definitions in interpreting the statute in question, as well as other considerations, appellant would direct this court to a recent journal article discussing the ruling in State v. Gaulden (Gaulden I): "When is a Vehicle Involved in a Crash?" Florida Defender Vol. 25, no. 1, Spring 2013. (A copy of the article is appended to this brief for the court's convenience.)

> The ultimate question here isn't how the dictionary defines crash; it is what the legislature meant when it used that word in the phrase driver of a vehicle involved in a crash in section 316.027(1)(a). And this question must be answered in light of one of the basic purposes of criminal statutes, to give reasonable people notice of what conduct is prohibited so they can conform their actions to the law.

Id.

V. CONCLUSION

This Court should answer the certified question in the negative.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Giselle Lylen Assistant Attorney General, Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at Crimapptlh@myfloridalegal.com as agreed by the parties, and by U.S. mail to appellant, Jacob Gaulden, #P22639, Holmes C.I., 3142 Thomas Dr., Bonifay, FL 32425, on this 10th day of April, 2014.

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA

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APPENDIX TO

PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

APPENDIX A

132 So.3d 916, 39 Fla. L. Weekly D379
(Cite as: 132 So.3d 916)

H

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] Automobiles 48A ⚿336

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] Automobiles 48A ⚿336

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

Automobiles 48A ⚿359.1

48A Automobiles
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] Criminal Law 110 ⚿1038.2

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] Criminal Law 110 ⇐1038.2

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] Criminal Law 110 ⇐1038.1(2)

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

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APPENDIX B

WHEN THINGS GO BOOM... A CRASH?

When Is a Vehicle "Involved in a Crash"?

by Richard Sanders

Section 316.027(1)(a) provides in pertinent part:

> 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 [and] remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062 [emphasis added].

Section 316.027(1)(b) uses the same "involved in a crash" language and it applies to crashes resulting in death. Sections 316.061(1) and 316.063(1) impose similar stop-and-remain requirements on a driver whose vehicle is "involved in a crash" that "result[s] in damage to a vehicle or other property," regardless of whether the other vehicle or property is attended or unattended.

The question addressed here is what is meant by the phrase "involved in a crash." Clearly, the phrase includes cases where the defendant's vehicle crashes into something or someone else. Not quite so clear, but not too controversial, are cases where the defendant's vehicle did not itself crash into anything but another vehicle did, and the defendant was "involved" in that other vehicle's crash (e.g., defendant causes another car to swerve off the road and into a tree); in such cases, most would agree the defendant's vehicle was "involved" in the crash.

Much less clear is the scenario addressed in this article: someone, or something, falls from, or out or off of, the defendant's vehicle (or possibly even within the vehicle) and "crashes" into something other than a vehicle, e.g., a motorcycle passenger falls off the back and (arguably) "crashes" into the pavement but doesn't hit, and is not hit by, any other vehicles. In such cases, was the driver of the vehicle "involved in a crash," even though no vehicles crashed into anything or anyone?

The Florida Supreme Court has not addressed this question. The only reported district court case on point is *State v. Gaulden*, 2012 WL 1216263 (Fla. 1st DCA April 12, 2012), a 2-1 decision which reversed the granting of a defense motion to dismiss and concluded such facts do constitute a "crash."[1]

Gaulden failed to stop after "a passenger in [his] vehicle...became separated from the vehicle, struck the road, and suffered fatal injuries." *Id.* at *1. "Because there was no evidence that the [passenger's] body came into contact with [Gaulden's] vehicle, the trial court concluded that [his] separation from the vehicle and collision with the road did not constitute a 'crash' [under] section 316.027(1)(b) ...." *Id.* The district court reversed:

> The goal of statutory interpretation is to give effect to the Legislature's intent, which should be gleaned primarily from the language of the statute.... In construing the plain language of a statute, courts are to give undefined terms their ordinary meanings, consulting a dictionary when necessary....
>
> ...The dispute in this case centers on the meaning of the phrase "involved in a crash."

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, Department of Highway Safety and 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 partici-

pant," to "implicate," "to relate closely," to "connect," "to have an effect on," to "concern directly," and to "affect." 975 So.2d at 483 (quoting [dictionary]). In *State, Department of Highway Safety and 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 [dictionary]). 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 [dictionary]). 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.

We disagree that either the legislative history of chapter 316 or the rule of lenity justifies the trial court's dismissal.... Courts should apply canons of statutory construction and explore legislative history only when the statutory language is unclear.... The rule of lenity...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.... 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.... [O]ur 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.... 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....

Id. at *1-2 (emphasis added)(citations omitted).

Dissenting, Judge Davis asserted:

> [T]he majority fails to mention that, prior to 1999, section 316.027(1)(b)...spoke in terms of any vehicle involved in an "accident." In 1999, the Legislature amended section 316.027(1)(b), along with other similar statutes, by substituting the word "crash" for the word "accident." Ch. 99–248, §82, Laws of Fla. Although the situation in this case might constitute an accident or an "unexpected and undesirable event" involving a vehicle, [I] interpret the phrase "any vehicle involved in a crash" to mean that a vehicle must collide with another vehicle, person, or object before the driver may be held criminally liable for failing to remain at the scene.
>
> I find support for this interpretation in a legislative staff analysis that addressed the change from "accident" to "crash" by setting forth, "Amends s. 316.027, F.S., to change the term 'accident' to 'crash' in order to update and conform terminology and to more accurately describe[] a collision involving a motor vehicle." Fla. H.R. Comm. on Law Enforcement and Crime Prevention for HB 593 (1999) Staff Analysis 6 (Feb. 23, 1999).... [T]here was no evidence that Appellee's vehicle collided with anyone or anything or that Appellee ... caused another vehicle to crash. While the majority relies upon... *State, Department of Highway Safety and Motor Vehicles v. Williams* [and] *State v. Elder*, ... neither of those cases addressed the question of whether a person can crash for purposes of section 316.027. As such, the majority's reliance upon the dictionary definitions of "involved" and "crash," as set forth in both opinions, is

misplaced. Both cases actually involved a vehicle crash, which is what, according to my reading of the statute, is necessary for criminal liability to arise.

...[T]he rule of lenity... provides that criminal offenses shall be strictly construed¬. Because the plain language of section 316.027(1)(b) does not answer the question presented in this case, the majority's conclusion that the statute is clear and that the rule of lenity is not applicable is misguided. Had the Legislature wished to include in the statute a scenario where a passenger is separated from the vehicle and collides with the ground, it could have easily stated such. Instead, it substituted "crash" for "accident" in order to more accurately describe a collision involving a motor vehicle. Because there was no collision involving a motor vehicle in this case and because this Court must construe the ambiguous language most favorably to Appellee, I would affirm.

Id. at *3 (Davis, J., dissenting)(citations omitted).

The dissent has the better of the argument here.

The two cases the majority relied upon — *Elder* and *Williams* — should first be noted.

Elder is no doubt correct in holding that "involved in a crash" does not mean that the defendant-driver's vehicle had to crash into something or someone else; it is sufficient if his vehicle caused another vehicle to crash in that sense. But in this scenario, there clearly was a "vehicle" that was "involved in a crash."

The issue in *Williams* was the meaning of the phrase "traffic crash" as used in section 316.645.[2] "Williams drove her vehicle through a stop sign [and into] a nearby drainage ditch," which damaged only her own car. 937 So. 2d at 815, 817. Quashing the circuit court's decision, the district court held this constituted a traffic crash:

[T]he [circuit] court properly took into consideration the commonly accepted definitions of the terms "crash," variously defined as "a breaking to pieces by or as if by collision" or "an instance of crashing,"...and "collide," which in turn means "to come together with solid or direct impact," [quoting dictionary]. Despite its consideration of such terms and the established fact that *Williams' vehicle had direct impact with another object resulting in damage to her vehicle*, the court ignored the definitions' plainly stated terms in deciding that no traffic crash had taken place. It appears to have decided that there was no forceful contact with another object because only nominal damage in the amount of $100 to Williams' property resulted. Nothing in the statutory term expressly provides or reasonably implies such a construction.

...[I]f the language used in a statute is clear and unambiguous, the legislature's intent shall be derived from the words so employed without involving rules of construction or speculating as to what the legislature intended.... 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. at 817 (emphasis added)(citations omitted).

Here again, a "vehicle" was clearly "involved in a crash," as that term is commonly understood: "Williams' vehicle had direct impact with another object resulting in damage to her vehicle."

But these two cases do not support the *Gaulden* majority's conclusion. That conclusion is supportable only if we take selected dictionary definitions in isolation, without regard to the context of both the sentence in which they appear and the legislative history of section 316.027(1).

As the dissent in *Gaulden* noted, the crucial relevant language in section 316.027(1) — "involved in a crash" — was added to the statute in a 1999 amendment. Before that time the relevant language had been "involved in an accident." In chapter 99-248, secs. 82-88, Laws of Florida, the legislature substituted the term "a crash" for "an accident," not only in section 316.027(1), but also in sections 316.061-.066, which lay out the reporting requirements imposed on drivers who are "involved in a crash."

This change is significant. Before 1999, section 316.027(1) was essentially identical to hit-and-run statutes in many other states. It appears this similarity is not mere coincidence; these statutes seem to be based on a model traffic control act. See *Behrens v. State*, 1 N.W.2d 289, 291 (Neb. 1941).

There are several cases from other states that interpret their own hit-and-run statutes in cases in which a passenger falls, jumps, or is pushed from a moving vehicle. All these statutes are essentially identical to the pre-1999 version of section 316.027(1); all use the "involved in an accident" language. Thus, if the present case had arisen before 1999, the overwhelming weight of authority — all but one case — would support the *Gaulden* majority's conclusion.

The one contrary case, which is the first case in this series, is the *Behrens* case cited above. In *Behrens*, the victim jumped from the defendant's moving car, "without in any manner coming in contact with defendant's automobile." 1 N.W.2d at 293. The court concluded "[t]his accident...was not...one in which the automobile...the defendant was...driv[ing] was 'involved' as that term is employed in [the statute]"; rather, "[t]here must be a striking of the person or an actual collision with a vehicle with ensuing results to accomplish the

involvement in the accident which the law penalizes...." *Id.* at 292-93.

The other cases on point all conclude that "involved in an accident" includes situations where the victim falls, jumps, or is pushed from a moving vehicle. These cases actually address two distinct issues: 1) Does "accident" include intentional conduct, i.e., the defendant pushes the victim, or the victim jumps, from the vehicle; and 2) does "involved in an accident" include cases in which the defendant's vehicle does not collide with anyone or anything else (or cause another vehicle to so collide).

The first case in this series is *People v. Green*, 215 P.2d 127 (Cal. Ct. App. 1950). There, the victim either jumped or was pushed from the defendant's moving car. The court concluded the statute applied to these facts:

> The purpose of the 'hit and run' statute is to prevent the driver of an automobile from leaving the scene of an accident in which he participates or is involved without proper identification and to compel necessary assistance to those who have been injured....
>
> ...[T]he language ['involved in an accident'] does not limit the performance of such acts to drivers of automobiles which strike and injure a pedestrian, or which are involved in a collision with other vehicles.... [I]t includes all machines which are involved in accidents of any nature whatever in which another individual is injured or killed.
>
> As defined in Webster's Dictionary, an accident is an event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event....
>
> We conclude that, insofar as the defendants are concerned, an 'accident' occurred within the meaning of [the statute].

Id. at 130.

The later cases follow the logic of Green, regardless of how the victim got separated from the moving vehicle. These cases focus on 1) the dictionary definitions of "accident" and "involved" and 2) the underlying purpose of hit-and-run statutes.[3]

I can find no cases considering whether "involved in a crash" is synonymous with "involved in an accident." The logic of the "involved in an accident" cases indicates the two phrases are not synonymous. The dictionary definition of "crash" is quite different from the definition of "accident": While all crashes might be considered accidents, all accidents are not crashes; "accidents" is a much broader term. Further, the very fact of the 1999 amendment indicates the Florida legislature did not view the two phrases as being synonymous; why bother to amend several statutes merely to substitute a word that means the same thing as the one being replaced?

The *Gaulden* majority relied on a dictionary definition of "crash" to reach its conclusion:

> In *State, Department of Highway Safety and 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." ...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." ...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.

2012 WL1216263 at *2 (citations omitted)(emphasis added).

From this the majority concluded "a passenger of Appellee's moving vehicle collided with the road as he became separated from the vehicle...." *Id.*

The problem here is shown by the emphasized words quoted above. To define the noun "crash," the court refers to the definition for the verb "crash," then uses a synonym for that verb to conclude the section 316.027(1) applies to cases in which a passenger falls from a moving vehicle because the passenger "collided with the road." This is a circuitous route to determine the "plain and ordinary meaning" of the phrase "involved in a crash."

The problems with using dictionaries in this context are well recognized:

> While dictionaries are beneficial in determining the meaning of individual words, we should not "make a fortress out of the dictionary." ...Words often take on a different meaning from their individual definitions when viewed in context with the other words in the text. As Judge Learned Hand once observed, "The meaning of a sentence may be more than that of the separate words, as a melody is more than the notes." ...Moreover, the context in which a term is used may be referred to in ascertaining the meaning of that term.

Miele v. Prudential-Bache Securities, Inc., 656 So. 2d 470, 472 (Fla. 1995) (citations omitted).

> Further,
>
> Although a dictionary might be a reliable resource to determine the meaning of a word used in a statute, just like any other tool of statutory construction, its definition is by no means conclusive. [Citing *Miele*]. Dictionaries represent the opinion of the author(s) of the meaning of a word without regard to the particular context in which the word is used. Context is as important as the definitions of the individual words in determining what is meant by a statute.... Some dictionaries have the objective to record and report the way words are actually used in our society; others

tend to prescribe proper usage, thereby perpetuating traditional definitions, even in the face of wide-spread changes in use. As a general proposition, dictionaries are hardly fixated on the pulse of our rapidly evolving language in our multi-cultural society. These are some of the reasons why scholars caution against overreliance on dictionaries in statutory interpretation.

> The language used in a statute is an important key to what the legislature intended because we presume that the legislature knew what the word meant and intended to employ that meaning. When a particular word is susceptible to more than one meaning, however, we must look at context and other indicia of legislative intent, such as the history of the statutory scheme and our own experiences, logic and common sense.... Our ultimate responsibility in construing any statute is to effectuate the intent of the legislature.... It is not our function to write a better statute, only to give a common sense construction to the one we are asked to construe.

Palumbo v. State, 52 So. 3d 834, 835 (Fla. 5th 2011)(Torpy, J., concurring)(footnotes omitted); see also *MCI Telecommunications Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 240 (1994) (Stevens, J., dissenting) (Dictionaries can be useful aids in statutory interpretation, but they are no substitute for close analysis of what words mean as used in a particular statutory context.).

Dictionary definitions of "crash" are quite lengthy, since the word can be used in several contexts and it can be a noun, a verb, etc. As a noun, the following are the common definitions:

> **1** loud and sudden smashing noise.
> **2 a** violent collision, esp. of a vehicle. **b** violent fall and landing of an aircraft
> **3** ruin, esp. financial[4]

> **1 a** loud sound (as of things smashing) <a crash of thunder>
> **2 a** a breaking to pieces by or as if by collision **b** an instance of crashing <a plane crash> <a system crash>[5]

> **17** a sudden loud noise, as of something being violently smashed or struck: the crash of thunder.
> **18** a breaking or falling to pieces with loud noise: the sudden crash of dishes.
> **19** a collision or crashing, as of automobiles, trains, etc.
> **20** the shock of collision and breaking.
> **21** a sudden and violent falling to ruin[6]

> **1** A sudden loud noise, as of an object breaking.
> **2 a** A smashing to pieces.
> b. A collision, as between two automobiles. See Synonyms at collision.
> **3** A sudden severe downturn: a market crash; a population crash.[7]

As these definitions show, there is no single plain and ordinary definition for the word crash; there are several. To determine the meaning of crash in a given context, we must focus, precisely, on the full context—sentence structure, surrounding wordage—in which the word was used.

Courts' growing faith in dictionaries to answer questions of statutory interpretation is tied to a broader methodological shift toward textualism in statutory interpretation:

> As its name implies, textualism gives particular attention to the statutory language. Professor Pierce has defined textualism succinctly as the judicial interpretation of statutes that seeks the meaning of statutory language by using a set of tools, including dictionary definitions, rules of grammar, and canons of construction, in an effort to derive the putatively objective meaning of the statutory word or phrase. While textualists do not ignore context in interpreting statutory language, they prefer to limit context to internal context, that is, how a term is used within the text. Textualism avoids external sources and glosses, such as legislative history, that are often used by those judges who interpret statutes by searching for legislative intent or purpose.

Ellen P. Aprill, "The Law of the Word: Dictionary Shopping in the Supreme Court," 30 *Arizona State Law Journal* 275, 278 (1998) (footnotes omitted).

But dictionaries are themselves external sources and, as the *Gaulden* majority's opinion illustrates, trying to find the plain and ordinary meaning of a single crucial word in a statute by using a dictionary often involves choosing from a list of several plain meanings ; not exactly an objective undertaking. Further, definitions can vary from dictionary to dictionary and, unless we are going to consult legislative history (which the use of dictionaries is supposed to avoid), we do not know whether the legislature intended to use a dictionary definition and, if so, which one in which dictionary. In sum,

> lexicographic considerations argue against judges using dictionary definitions to dictate statutory meaning, whether they come from general or legal dictionaries. Dictionaries list some of the common meanings of words. They do not decree the single ordinary meaning. That is, dictionary definitions can be a beginning point for determining the meaning of a word in a statute, but should not be an end point. As lexicography teaches, relevant context should be brought to bear to interpretation. The language of the dictionary definition should not dictate statutory meaning. Dictionary definitions are not appropriate for resolving definitively a question of a word's

> meaning in statutory interpretation. To so use them is to misuse them. It gives a false sense of authority, precision, neutrality, objectivity and certainty.

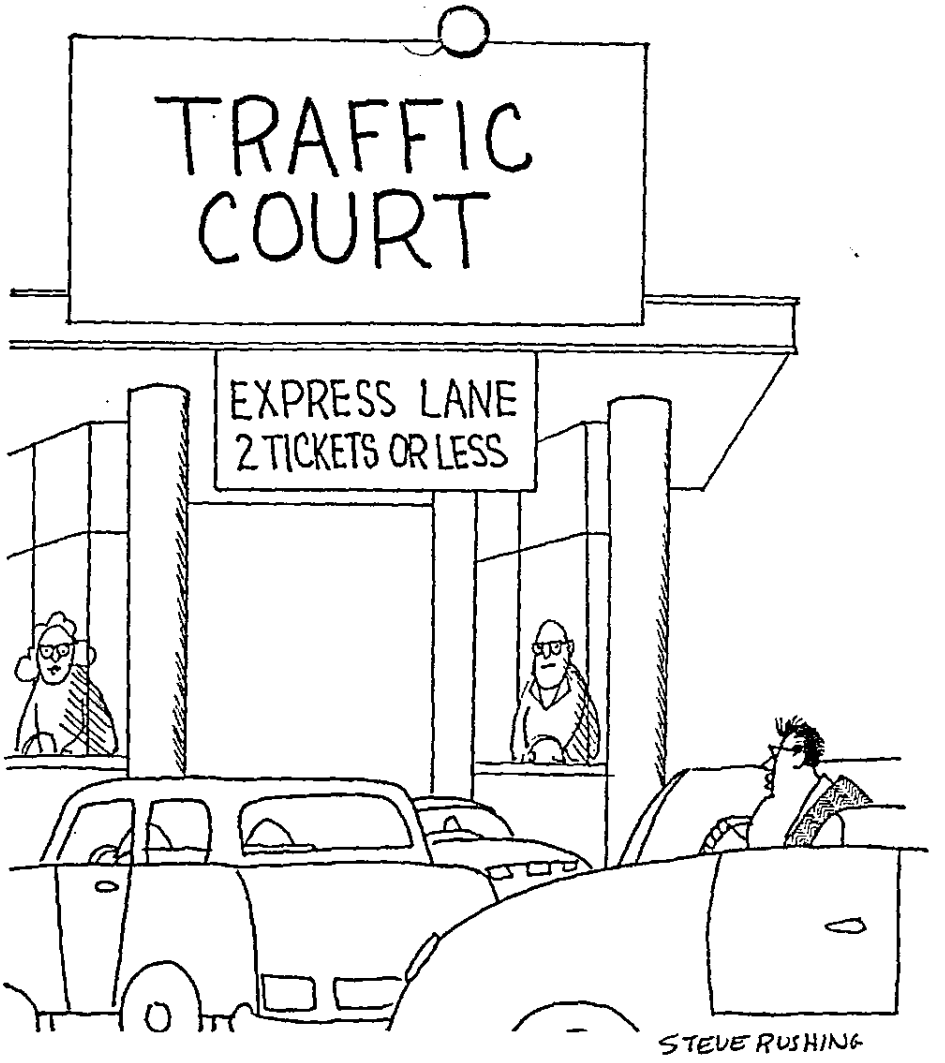
Id. at 313.

The ultimate question here isn't how the dictionary defines crash; it is what the legislature meant when it used that word in the phrase driver of a vehicle involved in a crash in section 316.027(1)(a). And this question must be answered in light of one of the basic purpose of criminal statutes, to give reasonable people notice of what conduct is prohibited so they can conform their actions to the law.

A reasonable person reading section 316.027(1) and the section it directly references (section 316.062), as well as the sections surrounding section 316.062 (sections 316.061-.066), would conclude these provisions were intended to apply when a vehicle crashes into something else. This is the plain and ordinary meaning of the phrase driver of a vehicle involved in a crash. To the extent there is any ambiguity here, it must be resolved in a defendant's favor. Sec. 775.021(1), Fla. Stat. (2011).

The contrary interpretation of the phrase—the one the *Gaulden* majority adopted—would lead to absurd results.

First, vehicle involved in a crash does not necessarily require that the defendant's vehicle was moving at the time. This is not surprising or absurd. If the defendant stops his car in the middle of the road and another car hits it from behind, clearly a crash has occurred that would trigger the requirements of section 316.027(1) and the related statutory provisions. But if the defendant's vehicle need not be moving when the crash occurs, and a passenger falling from the vehicle is a crash under these statutes, then section 316.027(1) would be triggered any time someone falls from a stationary vehicle, e.g., a passenger slips while mounting the rear of a motorcycle and skins her knee when she falls to the pavement; a passenger slips while climbing the bumper to get in the bed of a pickup, etc.



Similarly, the driver of a car in which a passenger is shot by someone outside the car while the car is moving would have to stop, etc., because he was involved in a crash when the bullet crashed through the car window or body, or into the victim's body, or the victim crashed to the floorboard after being shot. If the passenger has a heart attack or other sudden emergency and crashes to the floorboard, the driver would have to stop, etc. If one passenger punches, shoots, or stabs another, this would be a crash of fist to face, or of bullet or blade to body, or perhaps a crash of victim's head or body to some part of the car in reaction to the assault. This would not only be absurd, it would be counterproductive, if the goal is to get the victim medical help as soon as possible; indeed, in the shooting-from-outside-the-car example it could even been quite dangerous, if further shooting might result from the stop.

Further, sections 316.061 and 316.063 contain the same vehicle involved in a crash language and apply to crashes in which there is only damage to [an]other vehicle or property. If crash is interpreted as including people falling from a vehicle— or falling within the vehicle—then the same logic would apply to things that fall off, or within, the vehicle as well. The absurd possibilities here are too numerous to mention, but would include things like losing a hubcap (which crashed into and damaged the pavement, or damaged the hubcap itself, when it hit the ground); things falling from the bed of a pickup, etc.

These absurdities multiply when we recognized that 1) the stop-and-comply requirements apply to all vehicles, not just motor vehicles; 2) vehicle is defined

in section 316.003(75) as Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks, which includes things like bikes, rollerblades, skateboards, baby carriages, wheelchairs, etc.; and 3) section 316.027(1) applies to crashes that occur on public or private property (not clear whether the same is true for sections 316.061 and .063). If involved in a crash includes people or things falling off or, or even within, a vehicle, the potential scope of the hit-and-run statutes is quite expansive indeed.

To avoid such absurdities, vehicle involved in a crash should be given the plain and ordinary meaning that reasonable people would give it, given the statutory context in which the phrase appears: A vehicle crashed into something or someone else. The *Gaulden* majority was wrong to conclude otherwise. 🏛

[1]There is a case currently pending in the Second District that raises the same issue. *Carros v. State*, 2D11-6498.

[2]Section 316.645 provides: A police officer who makes an investigation at the scene of a *traffic crash* may arrest any driver of a vehicle involved in the crash when ... the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash [emphasis added].

[3]*Wylie v. State*, 797 P.2d 651 (Alaska Ct. App. 1990); *Rogers v. State*, 909 P.2d 445 (Ariz. Ct. App. 1995); *Armstrong v. State*, 848 N.E.2d 1088 (Ind. 2006); *State v. Carpenter*, 334 N.W.2d 137 (Neb. 1983); *People v. Slocum*, 112 A.D.2d 641, 492 N.Y.S.2d 159 (N.Y. Ct. App. 1985); *McGee v. State*, 815 P.2d 196 (Okla. Crim. App. 1991); *Sheldon v. State*, 100 S.W.3d 497 (Tex. Ct. App. 2003); *Smith v. Commonwealth*, 379 S.E.2d 374 (Va. Ct. App. 1989); *State v. Silva*, 24 P.3d 477 (Wash. Ct. App. 2001).

[4]The Oxford Desk Dictionary and Thesaurus, p. 169 (1997 ed.) (emphasis added).

[5]www.merriam-webster.com/dictionary/crash (emphasis added).

[6]http://dictionary.reference.com/browse/crash (emphasis added).

[7]www.thefreedictionary.com/crash (emphasis added).

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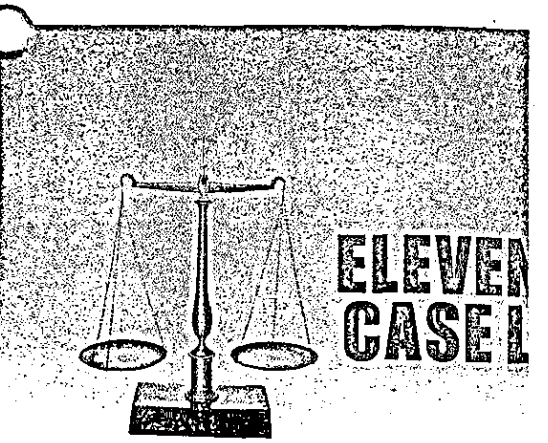

by Ken Swartz

The big news in the closing weeks of 2012 is the reversal in *U.S. v. Bellaizac-Hurtado*, which found the Maritime Drug Law Enforcement Act unconstitutional as applied. But don't get excited yet. It only applies to cases involving boats seized in the territorial waters of another state. In this case, the boat was found in the waters of Panama.

In *U.S. v. Franklin*, a warrantless search of a house was upheld where the officers reasonably believed the evidence would be destroyed or removed if they did not conduct the search immediately following the defendant's arrest. A challenge to a search warrant was defeated in *U.S. v. Laist* where a 25-day delay by an F.B.I. agent in applying for a search warrant for a computer seized by the agent was reasonable under the totality of the circumstances. And in *U.S. v Griffin*, the Court held that a Terry stop can extend to questioning about matters unrelated to the Terry stop as long as it does not turn into a seizure of the person.

U.S. v. Franklin,
694 F.3d 1 (11th Cir. 2012)

▸Warrantless search of house for guns upheld after the Defendant arrested.

The Eleventh Circuit upheld a warrantless search and seizure of firearms