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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 REPLY BRIEF

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PETITIONER'S REPLY BRIEF

PRELIMINARY STATEMENT

As in the Initial Brief, Jacob 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. The Initial Brief will be referred to as IB, and the Answer Brief as AB.

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 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.

"When is a Vehicle Involved in a Crash?" Florida Defender Vol. 25, No. 1, Spring 2013.

The essential question that this Court must answer is whether the meaning of the term "crash" as used in Section 316.027(1)(b), Florida Statutes, is clear and unambiguous, and as such includes a person colliding with the ground after jumping from a vehicle. Petitioner submits that the language is not clear and unambiguous, or if it is it certainly does not include this situation.

Respondent asserts that when the legislature changed the wording of the statute from accident to crash, it broadened the scope of the statute (AB-13, 16), but that is logically contrary to what occurred. The term crash is much narrower than the term accident. In altering the language, the legislature intended to "conform terminology and to more accurately describe a collision

involving a motor vehicle." State v. Gaulden, 37 Fla. L. Weekly D867 (April 12, 2012) (Gaulden I). The statement of policy behind the statute is all well and good (AB-15, 16), but one cannot start from that policy and proceed to give a tortured reading to the actual language used in the state, which is what has occurred here.

Neither State v. Williams, 937 So. 2d 815 (Fla. 1st DCA 2006), nor State v. Elder, 975 So. 2d 481 (Fla. 2d DCA 2007), are controlling authority or even instructive for the resolution of this case. As pointed out in Judge Davis's dissent in Gaulden I, "neither of those cases addresses whether a person can crash for purposes of Section 316.027. . . . Both cases actually involved a vehicle crash, which is what, according to my reading of the statute, is necessary for criminal liability to arise." Gaulden I. The facts of the case at hand are in no way similar to those of either case, and the unusual and tortured application of the statute to the facts of this case cannot be based on those cases. And contrary to respondent's argument (AB-13), petitioner does not contend that two vehicles must collide for the statute to apply, but as Judge Davis noted, a vehicle crash of some variety is required.

State v. Dumas, 700 So. 2d 1223 (Fla. 1997), is a pre-amendment case and therefore does not necessarily shed light on the present case. Again, while the policy goals are laudable, one cannot simply start there and work backwards to determine the plain

meaning, if it is plain, of the statute. In addition, Dumas was a jury instruction case and did not involve reading the statute to determine whether an "accident" had occurred, much less a "crash."

Petitioner contends that no reasonable person would read this statute and consider what occurred in this case a "crash." The language of the statute does not inform a reasonable person that facts like those in the present case would give rise to criminal liability.

The reading given the statute by the majority in the First DCA leads to an unreasonable and perhaps even absurd result and is contrary to legislative intent, so that even if the language is somehow clear and unambiguous, this reading cannot stand. See Tillman v. State, 934 So. 2d 1263 (Fla. 2006).

For the remainder of the argument, petitioner relies on the initial Brief.

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 15th day of May, 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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