

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
v.
PEDRO PEREZ,
Respondent.

Case No. 70,971

CLERK OF THE SUPREME COURT
By _____ Deputy Clerk

DISCRETIONARY REVIEW OF THE DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT

REPLY BRIEF OF PETITIONER

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WHERE A DRIVER OF A MOTOR VEHICLE IS INVOLVED IN A MOTOR VEHICLE ACCIDENT AND IS THE ONLY PERSON TO SUSTAIN BODILY INJURY, MAY A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT THE DRIVER IS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES REQUIRE THE DRIVER TO SUBMIT TO A BLOOD TEST UNDER SECTION 316.1933(1) EVEN THOUGH THE DRIVER OBJECTS THERETO?	
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SUMMARY OF ARGUMENT

Petitioner reiterates its argument as espoused in the initial brief, but disagrees with Respondent's assertion that the sole purpose of §316.1933(1), Fla. Stat. (1985), is to allow the state to prosecute a deceased driver; rather, the provision which reads "...a person under the influence ... has caused the death or serious bodily injury of a human being ..." would allow the state the ability to prosecute a driver who is seriously injured but survives the accident.

ARGUMENT

ISSUE

WHERE A DRIVER OF A MOTOR VEHICLE IS INVOLVED IN A MOTOR VEHICLE ACCIDENT AND IS THE ONLY PERSON TO SUSTAIN BODILY INJURY, MAY A LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT THE DRIVER IS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES REQUIRE THE DRIVER TO SUBMIT TO A BLOOD TEST UNDER SECTION 316.1933(1) EVEN THOUGH THE DRIVER OBJECTS THERETO?

Petitioner stands on its argument as presented in its initial brief, but disagrees with respondent's assertion that the sole purpose of §316.1933(1), Fla. Stat. (1985), is to allow the state the ability to prosecute a deceased driver. The "serious bodily injury" provision of this statute, however, would allow the state the ability to prosecute a seriously injured driver who survives the accident.

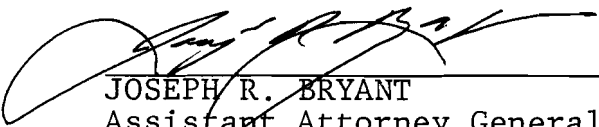
Further, it should be noted that it is the respondent who "takes a perfectly clear statute and begins creating ambiguities" by contending that the word "another" should be read into the statute. Note also that the county court judge, who certified the instant question to the Second District, found the statute to be clear on its face, and that it should be applied against respondent. This is the correct interpretation. The Second District's decision must therefore be reversed.

CONCLUSION

Based on the foregoing, petitioner would ask that this Honorable Court reverse the order of the lower court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

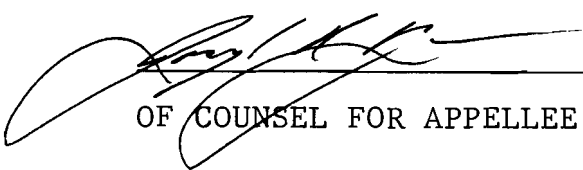


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to BRAD PERMAR, Assistant Public Defender, Criminal Court Building, 5100 - 144th Avenue North, Clearwater, Florida 33520, on this the 25th day of September, 1987.



OF COUNSEL FOR APPELLEE