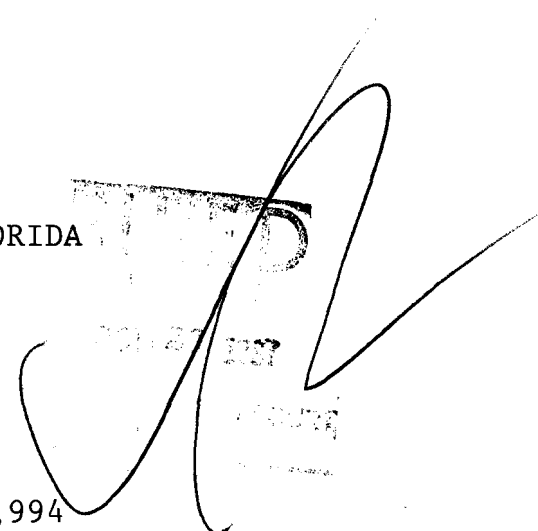


IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 JOHN McCLAIN,)
)
 Respondent.)
 _____)

CASE NO. 70,994

REPLY BRIEF OF PETITIONER ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Petitioner stands by its rendition of the facts as stated in its Initial Brief.

ISSUE INVOLVED

WHETHER EVIDENCE OF THE PRESENCE OF COCAINE IN A DEFENDANT'S BLOOD SAMPLE, IN AN UNQUANTIFIED AMOUNT, IS ADMISSIBLE IN A TRIAL OF THE DEFENDANT FOR A CHARGE OF MANSLAUGHTER BY OPERATION OF A MOTOR VEHICLE WHILE INTOXICATED WHEN THE DEGREE OF IMPAIRMENT CAUSED BY THE INGESTION OF THE DRUG, IF ANY, CANNOT BE DETERMINED WITHIN A REASONABLE DEGREE OF SCIENTIFIC PROBABILITY?

SUMMARY OF ARGUMENT

The Fourth District Court of Appeals has determined that evidence of a non-definitive amount of cocaine in a Defendant's bloodstream is inadmissible evidence to a charge of manslaughter by intoxicated operation of a motor vehicle. This determination is contrary to the First District Court of Appeal's decision in State v. Weitz, 500 So.2d 657 (Fla. 1st DCA 1986). Evidence of cocaine in Respondent's bloodstream is corroborative of his .14 blood alcohol level evidencing that Respondent was too impaired to drive. This evidence is not unduly prejudicial to Respondent. The decision of the Fourth District must therefore be reversed in favor of the holding in the First District in Weitz.

ARGUMENT

EVIDENCE OF THE PRESENCE OF COCAINE IN A DEFENDANT'S BLOOD SAMPLE, IN AN UNQUANTIFIED AMOUNT, IS ADMISSIBLE IN A TRIAL OF THE DEFENDANT FOR A CHARGE OF MANSLAUGHTER BY OPERATION OF A MOTOR VEHICLE WHILE INTOXICATED WHEN THE DEGREE OF IMPAIRMENT CAUSED BY THE INGESTION OF THE DRUG, IF ANY, CANNOT BE DETERMINED WITHIN A REASONABLE DEGREE OF SCIENTIFIC PROBABILITY.

The issue before this Honorable Court is whether evidence of the presence of cocaine in a defendant's blood sample, is admissible in a trial of the defendant for manslaughter by operation of a motor vehicle while intoxicated when the degree of impairment caused by the ingestion of the drug, if any, cannot be determined within a reasonable degree of scientific probability. The Fourth District Court of Appeal in State v. McClain, 508 So.2d 1259 (Fla. 4th DCA 1987), has answered this question in the negative whereas the First District Court of Appeals in State v. Weitz, 500 So.2d 657 (Fla. 1st DCA 1986), has answered this question affirmatively. The Fourth District acknowledged, in its written opinion, that its ruling in State v. McClain was in conflict with the ruling in State v. Weitz.

Respondent argues, initially, that no legal conflict between State v. Weitz and State v. McClain exists. Therefore, the only distinction between the two cases is the degree of probative value of the evidence as balanced against any prejudicial

effect it may have. This argument is flawed as its main premise, that no legal conflict in fact exists between the two cases, has already been judicially determined to be false. Both the Fourth District, in its written opinion, McClain, supra, and this Honorable Court, in ordering briefs on the merits in the case sub judice, has recognized that a conflict does exist between State v. Weitz and State v. McClain. Respondent overlooks this determination, that as a matter of law a legal conflict does exist, and instead, argues that the facts in State v. Weitz are dissimilar to State v. McClain and that this is the reason for the conflicting holdings of the two cases.

The facts in State v. Weitz and State v. McClain are very similar. It is the rules of law as stated by the courts which are dissimilar. The First District in State v. Weitz held that evidence of a non-definitive amount of drugs in a defendant's blood system is admissible without being linked quantitatively to impairment. Thus, the rule of law stated by the First District is that evidence of drugs in a defendant's system is not too prejudicial to raise a character assassination problem. Contrary to this holding in State v. Weitz the Fourth District in State v. McClain held that the prejudicial effect of exposing a jury to this information is bound to outweigh its probative value, as the principle effect is to show defendant's bad character. Clearly, the District Courts have stated two very different rules of law with regard to the same facts. It is not as Respondent states that the McClain Court merely applied the rule of State v. Weitz and

found the prejudicial effect of the evidence to outweigh its probative value. It is that in Weitz the Court held that this evidence is as a matter of law not too prejudicial to outweigh its probative value, whereas in McClain the Court held that this evidence is always too prejudicial and always outweighs its probative value.

The better rule of law is the one stated by the First District in State v. Weitz. Evidence of a trace of drugs in a defendant's blood system should be admissible as corroborative evidence. Even where the evidence of drugs is in an unquantified or unquantifiable amount it is nonetheless corroborative of direct evidence of impairment. In the case sub judice evidence of cocaine in defendant's blood system tends to prove defendant's impairment. Impairment is a material element of the charge of manslaughter by operation of a motor vehicle while intoxicated, Florida Statutes 316. 1931(2), and the State must present evidence on this element.

This Honorable Court in State v. Wadsworth, 210 So.2d 6 (Fla. 1968) held that certain evidence will be admissible for purposes of corroborating, but not as direct evidence of the crime charged. Specifically, in Wadsworth, evidence of a defendant's alcoholism was held admissible to corroborate direct evidence of the defendant's intoxication. This Court pointed out that evidence that defendant was an alcoholic merely supplemented and strengthened the evidence already established to prove the material element. The evidence was admissible as corroborative evidence, not as direct evidence. Similar to State v. Wadsworth, Petitioner seeks to introduce

corroborating evidence to "supplement and strengthen" direct evidence already established.

The Wadsworth Court determined that evidence of a defendant's alcoholism was both relevant and corroborating evidence. The Court then determined that evidence of alcoholism was not too prejudicial to be deemed inadmissible evidence. The Court applied Williams v. State, 110 So.2d 654 (Fla. 1959) cert. denied, 361 U.S. 847 (1959) and Straight v. State, 397 So.2d 903 (Fla. 1981) to the facts and held that evidence of alcoholism would not raise a character assassination problem nor would it be unduly prejudicial to defendant. Similarly, in State v. McClain evidence of defendant's drug use would not be unduly prejudicial to the defendant.

In a final effort Respondent argues that the Court in State v. Weitz was using the voir dire process to exclude nonrelevant evidence. The respondent overemphasizes the Weitz Court's reliance on the voir dire process.

The First District in State v. Weitz relied on voir dire to filter out any preconceived prejudice of the jurors with regard to drug use and the elements of the DUI charge. The Court pointed out that ingestion of illegal drugs might prejudice some jurors but not all jurors such that evidence of drug use is not unequivocally prejudicial to all defendant's in all DUI cases. It is through voir dire that defendant could exclude jurors with preconceived biases toward drug use. Where a particular juror has a preconceived bias the voir dire process serves as a safeguard to protect a defendant's constitutional rights to a fair trial. Thus evidence of drugs

in a defendant's system is relevant evidence which is probative, outweighing any prejudicial effect it may have and should be admissible evidence. Voir dire serves to eliminate any preconceived bias of a juror with regard to drug use. Respondent's argument, that voir dire is being used as a tool to exclude evidence, is thus unfounded.

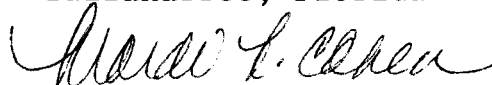
In summary, Petitioner again maintains that evidence of the presence of a chemical or controlled substance, in an unquantified amount, should be admissible in a trial of manslaughter by intoxicated operation of a motor vehicle when the degree of impairment caused by the ingestion of the drug, if any, cannot be determined within a reasonable degree of scientific probability. This Court should adopt the rule of law announced in State v. Weitz as the law of this State and remand this cause for trial with directions that disputed evidence that respondent had a trace of cocaine in his bloodstream shortly after his arrest be admitted.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited herein, Petitioner respectfully requests that the trial court order of suppression/motion in limine be reversed and this cause remanded for trial with directions that the disputed evidence be admitted.

Respectfully submitted,

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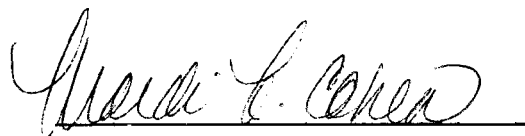


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Petitioner on the Merits has been furnished, by United States Mail, to MICHAEL DODDO, P.A., 113 South University Drive, Suite 209, Plantation, Florida 33324 this 21st day of October, 1987.



Of Counsel.