IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 68,810

RICHARD CRUMLEY,

Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

PAULA S. SAUNDERS
ASSISTANT PUBLIC DEFENDER
PSOT OFFICE BOX 671
TALLAHASSEE, FLORIDA 32302
(904) 488-2458

ATTORNEY FOR RESPONDENT

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RESPONDENT'S JURISDICTIONAL BRIEF

I PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and the appellant in the First District Court of Appeal. Petitioner was the prosecution and the appellee respectively. The parties will be referred to as they appear before this Court.

Petitioner's brief on jurisdiction will be referred to as "PB" followed by the appropriate page number in parentheses. References to respondent's appendix will be by the symbol "A."

II STATEMENT OF THE CASE AND FACTS

Respondent was charged with and convicted of battery with a deadly weapon, battery on a law enforcement officer, and possession of a weapon in a state correctional institution. The evidence at trial showed that respondent, an inmate at a state correctional institution, left his cell, came up behind the victim, who was a correctional officer at the prison, and hit him in the head several times with a table leg. On appeal to the First District Court of Appeal, respondent argued that he could not be convicted of both aggravated battery and battery on a law enforcement officer where only one battery was committed on one victim.

In an opinion filed May 15, 1986, the District Court of Appeal agreed with respondent's argument, holding that although aggravated battery and battery on a law enforcement officer were separate and distinct offenses under the statutory elements test, the legislature did not intend to punish both offenses separately where the victim in both is the law enforcement officer and there is only one battery (A 2). The court stated that:

> [B]y enacting the enhancement statute, Section 784.07, the legislature merely provided for a felony punishment when the victim of a battery is a law enforcement officer. If aggravated battery of a law enforcement officer is involved, then the defendant, of course, can be convicted of the aggravated battery, which affords a greater punishment than battery of a law enforcement officer. We find no legislative intent, however, to punish both aggravated battery and battery of

> a law enforcement officer when the two offenses arose out of the same battery, and involved the same victim.

Id.

III SUMMARY OF ARGUMENT

The district court's opinion, relying on Houser v. State, 474 So.2d 1193 (Fla. 1985), correctly holds that the legislature did not intend to punish aggravated battery and battery of a law enforcement officer separately where the victim in both is the same law enforcement officer and there is only one battery. The rationale of Houser applies to the instant case, and as there is no conflict between Houser and State v. Carpenter, 417 So.2d 986 (Fla. 1982); State v. Baker, 452 So.2d 927 (Fla. 1984); Scott v. State, 453 So.2d 798 (Fla. 1984), and State v. Henriquez, 485 So.2d 414 (Fla. 1986), petitioner cannot demonstrate express and direct conflict between those decisions and the instant case.

IV ARGUMENT

ISSUE PRESENTED

WHETHER THE DISTRICT COURT'S OPINION IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE v. CARPENTER, 417 So.2d 986 (Fla. 1982); STATE v. BAKER, 452 So.2d 927 (Fla. 1984); SCOTT v. STATE, 453 So.2d 798 (Fla. 1984), AND STATE v. HENRIQUEZ, 485 So.2d 414 (Fla. 1986).

Petitioner relies on State v. Carpenter, 317 So.2d 986 (Fla. 1982); State v. Baker, 452 So.2d 927 (Fla. 1984); Scott v. State, 453 So.2d 798 (Fla. 1984), and State v. Henriquez, 485 So.2d 414 (Fla. 1986), to argue that the statutory elements test under Blockburger v. United States, 284 U.S. 299 (1932), and not the facts alleged or evidence presented, is the sole criterion for determining whether crimes are separate and distinct and thus subject to separate sentences. Petitioner's argument is not inaccurate in its analysis of the Blockburger line of cases, but it misses the point. The inquiry in determining whether offenses are separate, allowing for conviction and punishment for each, does not end with the strict Blockburger test; the final inquiry is and should always be a question of legislative intent.

In its opinion below, the First District Court of Appeal, relying on Houser v. State, 474 So.2d 1193 (1985), recognized that under the Blockburger test battery of a law enforcement officer and aggravated battery are separate offenses, but carried the inquiry one step further to determine that the legislature did not intend to punish both offenses separately

where both arose out of the same battery and involved the same victim. In Houser v. State, supra, this Court recognized that where there is a single death, there can only be one conviction and sentence. The court reasoned:

> [W]hile the First District is correct in its Blockburger analysis that the two crimes [DWI manslaughter and vehicular homicide] are separate, see, e.g., State v. Baker, 452 So.2d 927 (Fla. 1984), Blockburger and its statutory equivalent in Section 775.024(1), Fla. Stat. (1983), are only tools of statutory interpretation which cannot contravene the contrary intent of the legislature. Garrett v. United States, ___ U.S. ___, 105 S.Ct. 2407, 85 L.Ed.2d 764 (1985); Missouri v. Hunter, 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983); Rotenberry v. State, 468 So.2d 971 (Fla. 1985); State v. Gibson, 452 So.2d 553 (Fla. 1984). And '[t]he assumption underlying the Blockberger rule is that [the legislative body] ordinarily does not intend to punish the same offense under two different statutes' Ball v. United States, ___ U.S. ___, 105 S.Ct. 1668, 1672, 84 L.Ed.2d 740 (1985). This assumption should apply generally to statutory construction. While the legislature is free to punish the same crime under two or more statutes, it cannot be assumed that it ordinarily intends to do so.

474 So.2d at 1196. See also Reynolds v. State, 460 So.2d 447, 449 (Fla. 1st DCA 1984) (Nimmons, J., dissenting):

> In determining whether, under Blockburger, there are two offenses or only one, we need only look to the statutory elements of each crime. If each has an element not required to prove the other, there are two crimes even where the two crimes are proved by the same facts. State v. Baker, supra; Bell v. State, 437 So.2d 1057 (Fla. 1983); Gordon v. State, 457 So.2d 1095 (Fla. 5th DCA 1984). Applying such a test to this case, it appears we are dealing with two offenses....

> Our inquiry does not end there because, as indicated in the above quote from State v. Baker, supra, the Blockburger test is a rule of statutory construction which must yield when there is a clear indication of contrary legislative intent.

[Empahsis added]. The dissenting opinion in Reynolds v. State ultimately prevailed in this Court's opinion in Houser.

Petitioner astutely notes that just as Justice Erhlich wrote the majority opinions in both Houser v. State and State v. Henriquez, supra, wherein the court held that battery of a law enforcement officer and resisting arrest with violence were separate offenses based on their statutory elements, thus permitting separate convictions and punishments. Petitioner implies that these decisions are somehow in conflict. Respondent submits that there is no conflict between these cases or between Houser and State v. Carpenter, State v. Baker, or Scott v. State, when the correct analysis is applied. In alleging conflict, petitioner has merely applied a rule of statutory construction without any regard to the legislative intent.

The over simplification of petitioner's position is illustrated in its argument that if a defendant places a hand on a law enforcement officer's arm, he violates Section 784.07, Florida Statutes, see Larkins v. State, 476 So.2d 1383 (Fla. 1st DCA 1985), but if he beats a law enforcement officer with a table leg, the courts may look the other way and forget that the victim was a law enforcement officer

(PB 7). In reality, neither the fact that the victim was a law enforcement officer nor the fact that the victim was beaten with a table leg are disregarded; rather, the prosecution, in its discretion, may use either fact to enhance a simple battery under Section 784.07, Florida Statutes, to a second degree felony under Section 784.045(1)(b) or to a third degree felony under Section 784.07(2)(b). See Soverino v. State, 356 So.2d 269 (Fla. 1978). As both statutory sections are concerned with preventing or punishing one offense, i.e., battery, and only one offense was committed against one victim, case law and legislative intent demonstrate that only one conviction can lie.

In sum, the District Court of Appeal below correctly applied the rationale of Houser v. State, to the instant case. State v. Carpenter, State v. Baker, Scott v. State, and State v. Henriquez do not apply to the instant case and petitioner has failed to demonstrate express and direct conflict with those decisions.

V CONCLUSION

The decision of the District Court of Appeal, First District, is not in direct and express conflict with State v. Carpenter, State v. Baker, Scott v. State and State v. Henriquez, and therefore petitioner has failed to establish jurisdiction under Article V, Section 3(b)(3), Florida Constitution. Discretionary review should be denied.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

Paula S. Saunders
PAULA S. SAUNDERS
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Assistant Attorney General Gary L. Printy, The Capitol, Tallahassee, Florida, 32302, this 17th day of June, 1986.

Paula S. Saunders
PAULA S. SAUNDERS
Assistant Public Defender