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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 68,810

RICHARD CRUMLEY,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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	:	

RESPONDENT'S BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

Respondent, RICHARD CRUMLEY, 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.

The record on appeal consists of two volumes, consecutively numbered, and will be referred to as "R" followed by the appropriate page number in parenthesis. Petitioner's brief will be referred to as "PB."

II STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts with the following additions and clarifications.

Respondent was charged by information with aggravated battery upon Kenneth Phillips and battery on a law enforcement officer, Kenneth Phillips (R.1-3).

The evidence at trial established that on the morning of September 14, 1984, Correctional Officer Kenneth Phillips was making a routine inspection in Building 65 at Union Correctional Institution. As he proceeded up the stairs to the second tier of cells, Phillips was struck on the back of his head. He fell back and respondent beat him over the head with a stick. The stick broke and two inmates pulled respondent away from the officer (R.48-53). The jury found respondent guilty as charged (R.23-24, 152).

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 there was only one battery and one victim. In an opinion filed May 15, 1986, the District Court of Appeal reversed the separate judgments and sentences for the two offenses and held that legislative intent precluded punishment for 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." Crumley v. State, 489 So.2d 112, 114 (Fla. 1st DCA 1986).

IV ARGUMENT

ISSUE PRESENTED

RESPONDENT COULD NOT BE CONVICTED OF BOTH AGGRAVATED BATTERY AND BATTERY OF A LAW ENFORCEMENT OFFICER WHERE THERE WAS ONLY ONE VICTIM AND ONLY ONE BATTERY WAS COMMITTED.

Petitioner, at the outset of its brief on the merits, has misstated both respondent's position and the ruling of the court below. Petitioner states:

> The District Court below accepted the Respondent's argument that the battery of a law enforcement officer is a lesser included offense to aggravated battery . . .

(PB.5). Respondent has never maintained the position that battery of a law enforcement officer is a lesser included offense of aggravated battery, and the court below has never so held. In fact, the District Court below expressly found that:

> battery of a law enforcement officer and aggravated battery each have an element not required to prove the other and therefore they constitute separate and distinct crimes.

Crumley v. State, 489 So.2d 112, 113 (Fla. 1st DCA 1986).

Respondent agrees with petitioner that the two offenses in question here do not meet the Blockburger[1] test of lesser included offenses, but disagrees with petitioner that the issue is solely one of statutory construction. The Blockburger analysis of statutory elements is merely a tool of statutory interpretation which cannot override a contrary intent of the legislature. Houser v. State, 474 So.2d 1193 (Fla.1985). Petitioner's argument fails to acknowledge the ultimate consideration of legislative intent.

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[1] Blockburger v. United State, 284 U.S. 299 (1932).

In Houser v. State, supra, this Court affirmed the proposition that legislative intent controls over statutory construction.

> . . . 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 Blockburger 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 (1984). 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.

Houser v. State, 474 So.2d at 1196. The Houser Court concluded that the legislature did not intend to punish a single homicide under two different statutes, even though the two statutes in question, Sections 316.1931(2) and 782.071, Florida Statutes, were separate crimes, each requiring proof of an element which the other does not.

More recently, in State v. Boivin, 487 So.2d 1037 (Fla.1986), this Court held that legislative intent precludes conviction of both aggravated battery and attempted first-degree murder, even though neither crime is a necessarily lesser included offense of the other, where there is only one victim. The Court stated:

> Aggravated battery and possession of a firearm are not necessarily lesser included offenses of attempted first-degree murder. We find, however, no legislative intent or recognition that society needs multiple punishments or both aggravated battery and attempted first-degree murder where both the attempted murder and the aggravated battery caused no additional injury to another person or property. Mills v. State, 476 So.2d 172 (Fla.1985).

Id. at 1038.

The rationale of Houser and Boivin applies to the instant case, where only one battery was committed against only one victim. Clearly, either an aggra-

vated battery or a battery upon a correctional officer can be committed without necessarily committing the other, and the crimes are, therefore, not necessarily lesser included offenses. State v. Baker, 456 So.2d 419 (Fla.1984). However, it should be obvious that both crimes are directed toward preventing or punishing one offense, i.e., battery. The punishment for a battery is merely enhanced where the crime is committed with a deadly weapon or against a law enforcement officer. Battery is a necessarily lesser included offense of both aggravated battery and battery of a law enforcement officer. As the First District Court of Appeal perceived:

> [U]nder Section 775.021(4), one cannot be convicted of battery and aggravated battery based upon the same set of facts nor can one be convicted of battery and battery of a law enforcement officer under the same set of facts.

Crumley v. State, supra at 114. It follows that one cannot be convicted of aggravated battery and battery of a law enforcement officer under the same set of facts.

A long line of cases in Florida, culminating with Houser v. State, has recognized that the legislature did not intend to punish a single homicide under two different statutes. There is no logical basis to ascribe a different legislative intent to a single battery. See, e.g., Llanos v. State, 401 So.2d 848 (Fla. 5th DCA 1981), where the court held that one cannot be convicted of multiple counts of aggravated battery under both Sections 784.045(1)(a) and (b), Florida Statutes, where only one battery is committed. Just as separate homicide convictions for a single death are contrary to legislative intent, so, too, are separate convictions for aggravated battery and battery of a law enforcement officer.

Indisputably, only one battery occurred here. While the offense violated both Sections 784.045(1)(b) and 784.07, and each requires proof of an element

which the other does not, separate convictions under both statutes would be contrary to legislative intent. Respondent, therefore, urges this Court to adopt the reasoning of the majority opinion below and approve the reversal of respondent's convictions and sentences for aggravated battery and battery of a law enforcement officer.

V CONCLUSION

Based upon the foregoing argument, reasoning and citation of authority, respondent respectfully requests this Court approve the decision of the First District Court of Appeal and remand the cause to the trial court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Assistant Attorney General Gary L. Printy, The Capitol, Tallahassee, FL, 32301, this 10th day of November, 1986.

Paula S. Saunders
Assistant Public Defender