IN THE SUPREME COURT OF FLORIDA

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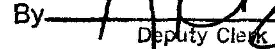

STEVE ANTON DAVIS,

Petitioner,

v. CASE NO. 76, 043

STATE OF FLORIDA,

Respondent.

MERITS BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

Point One: Subsection 775.021(4)(b) expressly provides the legislative intent that all criminal offenses containing unique statutory elements shall be separately punished.

Point Two: The defendant's convictions and sentences for both crimes does not violate the Florida Constitution because each crime contains an element that the other does not.[1]

Point Three: The judge's remarks were not prejudicial to the defendant. The first was made to offer an unbiased explanation to a potential juror during *voir dire*. Any prejudice was negated through the giving of the curative instruction.

Point Four: The defense waived any claim of prosecutorial misconduct by failing to voice a contemporaneous objection. The defense is mistaken in claiming that the error was fundamental. Had the remarks been as inflammatory as the defense now suggests, the defense below certainly would have objected.

Point Five: The cumulative error argument is barred because it was not presented to the trial court. In any event it is without merit. The statements of the judge were not prejudicial at all and those of the prosecutor were not fundamentally improper.

Point Six: The proper double jeopardy test under the federal constitution is well established by United States Supreme Court

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The parties are referred to as the defendant and the state. References to the record are indicated "(R and page)".

precedent. The defense argues that this court should overrule the decision of the Court on its own holdings on the issue.

ARGUMENT

Point One

THE LEGISLATURE INTENDS THAT SEPARATE PUNISHMENTS SHALL BE IMPOSED FOR THE CRIMES OF SIMPLE POSSESSION OF COCAINE AND DELIVERY OF THE SAME QUANTITY OF COCAINE.

At issue in this case is whether convictions and sentences for both simple possession of cocaine and delivery of cocaine are improper. The legislative intent to punish both is apparent. "Subsection 775.021(4)(b) is the specific, clear, and precise statement of legislative intent referred to in *Carawan*[2] as the controlling polestar." *State v. Smith*, 547 So.2d 613, 616 (Fla. 1989). "The best evidence of the intent of the legislature is generally the plain meaning of the statute." *In re Order On Prosecution of Criminal Appeals By the Tenth Judicial Circuit Public Defender*, 561 So.2d 1130, 1137 (Fla. 1990) (citation omitted). The statute provides in relevant part:

> The intent of the legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:
>
> 1. Offense which require identical elements of proof.
> 2. Offenses which are degrees of the same offense as provided by statute.
> 3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

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2 *Carawan v. State*, 515 So.2d 161 (Fla. 1987).

§775.021(4)(b), Fla. Stat. (Supp. 1988).

This court also held in *Smith* that:

> Absent a statutory degree crime or a contrary clear and specific statement of legislative intent in the criminal offense statutes, *all* criminal offenses containing unique statutory elements *shall* be separately punished.

Id (emphases in opinion).

The statutory provisions under which the defendant was convicted provide in material part:

> **893.13 Prohibited acts; penalties.-**
> (1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, purchase, manufacture, or deliver ... a controlled substance....
>
> . . .
>
> (f) It is unlawful for any person to be in actual or constructive possession of a controlled substance ...

§893.13(1)(a) and (f), Fla. Stat. (Supp. 1988).

The subsections have different elements: (1)(a) forbids the delivery of cocaine, while subsection (1)(f) proscribes possession of cocaine. The defense contends that possession is a "subsumed element" of delivery. However, as the court below pointed out, although possession is present in most sales of cocaine, it is not an essential element. *Davis v. State*, 560 So.2d 1231, 1233 (Fla. 5th DCA 1990). To illustrate its point the district court used as an example one who is a principal to the sale of cocaine.

In addition to the dissenting opinion below the defense relies on cases from the First and Second District Courts of

Appeal. The reliance on the case of *Gibson v. State*, 565 So.2d 402 (Fla. 1st DCA 1990), is particularly misplaced. That case is not on point because Gibson had been convicted and sentenced for both possession *with intent to sell* and sale of cocaine. Assuming, *arguendo*, that the case was on point, this court has ruled:

> We held, in *State v. Smith*, 547 So.2d 613 (Fla. 1989), which applied chapter 88-131, section 7, Laws of Florida, that the legislature intended the following to be separate offenses subject to separate convictions and separate punishments: the sale or delivery of a controlled substance; and possession of that substance with intent to sell.

State v. Burton, 555 So.2d 1210, 1211 (Fla. 1990).

Furthermore, in *Gibson* the First District relied primarily upon its earlier decision in *Wheeler v. State*, 549 So.2d 687 (Fla. 1st DCA 1989) (en banc). The *Wheeler* court not only rejected the rationale employed by the Second District Court of Appeal in its seminal case on this issue, but the opinion also contrasted possession with intent to sell with mere possession. The court held that the legislature intended to punish under subsection (1)(a) either sale or possession with intent to sell, but not both. The court based its holding on the fact that these two offenses are contained within the same subsection. Significantly, the court reasoned: "It is logical to assume that if a contrary result had been intended, the legislature would have proscribed each offense in separate subsections of the statute *as it did with simple possession* of a controlled substance in section 893.13(e) [now subsection (f)]." *Id.*, 690. *See also St.*

Fabre v. State, 548 So.2d 797 (Fla. 1st DCA 1989). As already pointed out, the defendant was convicted of simple possession and delivery.

All of the Second District cases cited by the defense stem from that court's holding in *Gordon v. State*, 528 So.2d 910 (Fla. 2d DCA 1988).[3] The problem with continued reliance by the Second District upon its holding in *Gordon* is that the decision was based upon the holding of this court in *Carawan v. State*, 515 So.2d 161 (Fla. 1987). Indeed, the court emphasized its reliance:

> We stress that, in accord with *Carawan*, 515 So.2d at 170, footnote 8, we are dealing with a *single act* which gave rise to two charges and subsequent convictions and sentences, and not with a criminal "transaction" or "episode".

Gordon, 910 (emphasis in opinion).

In overriding *Carawan*, this court pointed out in *Smith*, *supra*, that "[t]he legislature rejects the distinction we drew between act or acts. Multiple punishment shall be imposed for separate offenses even if only one act is involved." *Id.*, 616.

Because *Carawan* has been overridden on that basis, the continued reliance upon *Gordon* by the Second District and the defense is misplaced. The Second District in *State v. McCloud*, 559 So.2d 1305, 1306 (Fla. 2d DCA 1990), referred to "dicta in *State v. Burton*, 555 So.2d 1210 (Fla. 1989)". The *Burton* passage quoted above, if appropriately designated dicta, is nonetheless a clear

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[3] *Crisel v. State*, 561 So.2d 453 (Fla. 2d DCA 1990) was expressly founded upon *V.A.A. v. State*, 561 So.2d 314 (Fla. 2d DCA 1990). The decisions in *V.A.A.* and *State v. McCloud*, 559 So.2d 1305 (Fla. 2d DCA 1990), were explicitly dependent upon the *Gordon* analysis.

statement by this court of its view that a defendant can properly be convicted and sentenced for both possession and sale of the same quantity of cocaine. In most of its cases involving this issue the Second District relies on "*Gordon v. State*, 528 So.2d 910 (Fla. 2d DCA 1988), *decision approved sub nom., State v. Smith*, 547 So.2d 613 (Fla. 1989)." *See e.g., Goins v. State*, 559 So.2d 462 (Fla. 2d DCA 1990). While it is true that this court upheld the *Gordon* decision in *Smith*, the qualified holding follows:

> In summary, we hold that *Carawan* has been overridden for offenses that occur after the effective date of chapter 88-131, section 7, but the override will not be retroactively applied. *As qualified*, we answer the certified question in the affirmative and *approve* the decisions below.

Smith, *supra*, 617 (emphases added).

In short, by amending §775.021(4) the legislature has made clear its intent to convict and punish for both offenses those who commit the crimes of simple possession of cocaine and sale of the same cocaine. This court so held in *Smith* and *Burton*, and should so hold again here.

Point Two

THE PETITIONER'S CONVICTIONS FOR BOTH POSSESSION AND SALE OF THE SAME QUANTITY OF COCAINE DOES NOT VIOLATE THE DOUBLE JEOPARDY PROVISION OF THE FLORIDA CONSTITUTION.

This court has instructed that "[s]tatutes are presumed to be constitutional until the contrary is shown; and it is only when they manifestly infringe some provision of the Constitution that they can be declared void for that reason." *Carroll v. State*, 361 So.2d 144, 145 (Fla. 1978) (citation omitted). Further, courts should "always endeavor to preserve statutes and to avoid constitutional issues." *State, ex rel. City of Casselberry v. Mager*, 356 So.2d 267, 269, n. 6 (Fla. 1978) (citation omitted); *State v. Tsavaris*, 394 So.2d 418, 421 (Fla. 1981) (citations omitted). "Even if the statute is susceptible to more than one interpretation, courts must adopt the constitutional construction." *State v. Deese*, 495 So.2d 286, 287 (Fla. 2d DCA 1986) (citations omitted).

As the court below correctly observed, this court has expressly held that the double jeopardy provision under the state constitution is to be construed in the same manner as its counterpart in the federal constitution. *Davis*, 1232. The defense spuriously argues that the construction given Article I, Section 9, of the Florida Constitution by this court in *State v. Cantrell*, 417 So.2d 260 (Fla. 1982) should not apply here. It bases its contention on the analyses and holdings in *Carawan, supra,* and *Wilkins v. State*, 543 So.2d 161 (Fla. 5th DCA 1989), both of which discussed the holding in *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 173, 21 L.Ed.2d 872 (1873).

There are two fundamental problems with the defense argument. First of all, it relies upon a 117 year old United States Supreme Court opinion interpreting the federal constitution for its assertion that the petitioner's convictions and sentences violate provisions of the state constitution. Secondly, the modern Florida cases upon which the defense founds its argument predate the holdings of this court in *Smith* and *Burton*. As already noted, *Carawan* was expressly overruled in *Smith*. That undermines the defense reliance on *Wilkins* because the Fifth District was merely speculating how this court might respond to essentially the same argument the defense is now advancing in light of *Carawan*.

The defense goes on at some length in explaining why it thinks this court should construe article I, section 9, differently than the fifth amendment. It does not, however, provide any case which so holds. In fact, even *Carawan* and *Gordon, supra*, were founded upon determinations of legislative intent.

One of the grounds upon which the defense asserts that this court should reject legislative intent as the polestar of a double jeopardy analysis is the "balkanization" resulting from the decisions of the United States Supreme Court which effectively designate to the assorted state legislatures the responsibility for defining crimes. While such an argument might have some relevancy in that Court because its rulings resulted in the "balkanization", it is of little moment here. What the legislatures do in the other 49 states is of little significance in determining whether the Florida Constitution is violated. It simply would not make sense for this court to disregard well-

established state constitutional principles because of some perceived flaw in the analysis of the United States Supreme Court regarding the fifth amendment.

The defense views the holdings of the Supreme Court as an abdication of the judicial responsibility to interpret the constitutions to the legislatures. That simply is not so. The constitutional double jeopardy provisions at issue here have been and continue to be construed by the courts. The fact that reliance is placed upon legislative intent means neither that the courts no longer construe constitutional provisions (*e.g.*, this proceeding) nor that the legislature is free to implement unconstitutional laws. However, "[i]t is well settled that the legislature has the power to define crimes and to set punishments." *Rusaw v. State*, 451 So.2d 469, 470 (Fla. 1984). That is what is constitutionally required.

The defense also suggests that the use of the double jeopardy analysis developed in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180 (1932), fails to protect citizens of Florida. This claim is based upon the contention that under this standard illogical results are obtained because an individual can be convicted of innumerable offenses stemming from one act. Such an argument overlooks the limiting nature of §775.021(4)(b)1-3, Fla. Stat. (Supp. 1988). A defendant may only be convicted of those offenses committed during one criminal act that have different elements.

In short, this court has repeatedly held that double jeopardy analyses are appropriately conducted with the primary focus upon legislative intent. It should so hold again in this case.

Point Three

THE TRIAL COURT CORRECTLY DENIED THE DEFENSE MOTION TO STRIKE THE JURY PANEL.

"There is hardly any area of the law in which the trial judge is given more discretion than in ruling on challenges of jurors for cause." *Cook v. State*, 542 So.2d 964, 969 (Fla. 1989).

The defense argument focuses upon one sentence spoken by the trial judge during *voir dire*. In response to a question by one of the veniremen he said:

> The state, if the state knew beyond a reasonable doubt that the defendant was innocent, they would not bring those charges. But the state's job is to evaluate the evidence that they have available. Based upon that, present that evidence that they believe or that they think will indicate or will convince the jury that the defendant is guilty.

(R 58; underlined portion quoted in petitioner's merits brief, p. 31).

The defense quotes only the first sentence. "If the statement is taken out of context, isolated and pondered without regard for what prompted it [and what followed it], the appellant's point would appear well taken." *Raulerson v. State*, 102 So.2d 281, 284 (Fla. 1958). The balance of the paragraph illustrates that the comments of the judge simply did not imply that he believed that the state would not prosecute an innocent man because the prosecutors sought justice.

The comments of the judge had been prompted by the question below which was asked by a potential juror during *voir dire*:

> You or Mr. Townes asked this question, if you knew that the party was guilty or not guilty, the same as they knew he was guilty or not guilty, do you do it because of your job to do it?

(R 57).

The question is equivocal in that it is not clear to whom the potential juror was referring. However, the judge interpreted "they" to mean the attorneys (R 57-59). He contrasted the roles of prosecutors and defense attorneys. Immediately after the challenged statement he explained:

> Whether or not the attorneys, or the defense attorney believes his client is guilty or not guilty is, really does not affect his job. He cannot, for our system to work, it cannot.

(R 58).

He also pointed out "that the jury, not the attorneys, has to make the decision whether or not a defendant is guilty." *Id.* All of these remarks preceded the defense objection (R 59).

The judge was merely trying to make the jurors recognize the competing roles and obligations of the attorneys for the parties. To ensure an unbiased explanation he chose to answer the question himself (R 57). This court addressed a similar issue in *Pope v. Wainwright*, 496 So.2d 798 (Fla. 1986). Pope contended that the statement by the judge that "no one has a right to violate the rules we all share" evidenced favoritism toward the state. The argument was rejected because:

> [T]he trial judge was simply attempting to clarify questions during voir dire examination. This is clearly not the type or extent of interjection which has been found objectionable.

Id., 802 (citations omitted).

Most of the cases cited by the defense are not on point. Two involved a lack of impartiality by the jury because of information extrinsically obtained. The majority of others involved comments made by the judge on evidence produced at trial or on witness credibility. The only case cited by the defense which dealt with a judge's comments during *voir dire* is *Lester v. State*, 458 So.2d 1194 (Fla. 1st DCA 1984). It is readily distinguishable from the instant case because the trial judge had defined kidnapping by presenting a hypothetical with facts identical to those in the case that was about to be tried. The judge below, on the other hand, never alluded to the facts of the case during *voir dire*.

Accepting, *arguendo*, that the comment was objectionable, it was precipitated by the manner in which defense counsel examined the venire. Among other questions, he asked if anyone thought that the defendant had to have done something wrong or he would not be at trial (R 38), discussed the information, *id.*, and pointed out that the finding of reasonable doubt was their "job" (R 40). "A party may not invite error and then be heard to complain of that error on appeal." *Pope v. State*, 441 So.2d 1073 (Fla. 1983) (citations omitted).

Even if the court's comment was improper, it was cured by the subsequent instruction to the jury, which included the following:

> You have someone [*i.e.*, "some state attorney back in the charge division"] who just looked at the charges, he doesn't know the evidence, he's only examining the evidence. He was not there,

> doesn't, does not know what the evidence is, or what the true evidence is [,] is why it's presented to the jury. You have to decide what the evidence is in this particular case, what the factual situation is.

(R 61-62).

The curative instruction was not a clumsy effort at back peddling. To the contrary, not only did it serve to defuse any potential bolstering of the prosecutor, it was consistent with standard jury instructions. *See e.g.*, Fla. Std. Jury Instr. (Crim.) §2.05. Furthermore, during preliminary instructions the judge again advised the jury that it was to rely upon the evidence (R 76, 78, 83), that the information was not evidence and was not to be considered as proof of guilt (R 76), and the presumption of innocence was explained (R 79, 82). Similar instructions were again given at the conclusion of the case (R 256-264).

Contrary to the assertion of the defense, the state did not have a tenuous case of identification. The identification of the defendant by the deputy who had purchased the cocaine was quite certain. She had seen the arrest team headed toward the defendant (R 104). The officers were within an arm's length of him before she lost visual contact (R 137). She came back to the scene within one minute and confirmed that the right suspect had been arrested (R 104-105). At trial she noted that the defendant's appearance had changed, but still identified him as the same individual (R 102). The weight of the evidence is a matter for the jury. *Tibbs v. State*, 397 So.2d 1120, 1123 (Fla.

1981). The case of *Whitfield v. State*, 452 So.2d 548 (Fla. 1984) does not support the defense argument. The trial judge had instructed the jury that guilt could be inferred because the defendant had refused to be fingerprinted. That judge expressly provided the jury with a permissive presumption *after* the evidence had been introduced. The remark below was made prior to the introduction of evidence and condoned no inference by the jury.

Although the defense perceives the case to be essentially a swearing contest, the cases it relies upon did not reverse upon that basis alone. For example, *Renney v. State*, 543 So.2d 420 (Fla. 5th DCA 1989), also involved repeated prosecutorial misconduct throughout the trial.

The defense also argues that the prosecutor during closing argument exploited the remark made by the judge during *voir dire*. This particular claim is procedurally barred. "In order to preserve an issue for appellate review, the specific legal argument or ground upon which it is based must be presented to the trial court." *Bertolotti v. State*, 514 So.2d 1095, 1096 (Fla. 1987) (citation omitted). This conjunctive contention was never presented to the trial court and should not be considered here. Furthermore, such a claim is without merit. As the defense concedes in the next point, no objection was voiced to the prosecutor's remarks during closing argument. Nor was this ground raised in the motion for new trial (R 306). For the reasons already discussed, the comment was neutralized if it had been objectionable and the jury's attention certainly would not have been upon an innocuous comment made during the preliminary proceedings while it was deliberating.

In sum, the judge's comments neither implied guilt nor bolstered the integrity of the prosecutor. Any potential prejudice was negated by the curative instruction.

Point Four

THE GROUND NOW ADVANCED WAS WAIVED BELOW. FURTHER, THE REMARKS WERE INVITED AND NOT FUNDAMENTALLY PREJUDICIAL.

"[T]o preserve a claim based on improper comment, counsel has the obligation to object and request a mistrial. If counsel fails to object or if, after having objected, fails to move for a mistrial, his silence will be considered an implied waiver." *Nixon v. State*, 15 F.L.W. D630 (Fla. November 29, 1990). Because there was no contemporaneous objection voiced when the prosecutor made his remarks the issue should not be considered.

The defense below invited the remarks of the prosecutor on the deputy's credibility. *Cf. DuFour v. State*, 495 So.2d 154, 160 (Fla. 1986). After questioning her regarding the suspect's identity, the following exchange took place:

> Q. How full was the beard of the person you remember talking to out --?
>
> A. I can't say like that thick. He's trimmed it or --
>
> Q. *Or it's not him*? But we're getting to that....

(R 144, emphasis added).

In addition to this implication of perjury, the defense further made witness veracity a primary issue in the questioning of its own witnesses. Not only was the defendant asked if he knew why the deputies had arrested him (R 176), but further:

> Q. You know what it is to tell a lie?
>
> A. Yeah.

> Q. And you know what it is to tell the truth?
>
> A. Yes.
>
> Q. You realize that you're under oath.
>
> A. Yeah, I know that.
>
> Q. What does it mean to you to be under oath? What do you have to do?
>
> A. I'm swearing to almighty God.
>
> Q. So you realize that you could face penalties if you lie?

(R 178).

Counsel later asked the defendant's friend if he would lie in court for the defendant (R 191-192).

The prosecutor's remarks regarding the professional manner of the deputy and those comments offered in explanation of why another individual had been released by the police had also been invited. The defense questions regarding the other man at best implied ineptitude, at worst gross police misconduct (R 174-175; 201). In *Blackburn v. State*, 447 So.2d 425 (Fla. 5th DCA 1984), despite some 17 instances of improper comments, including vouching for the veracity of an officer, the court affirmed because the remarks were not "so overwhelmingly prejudicial that neither rebuke nor retraction would cure the error." *Id.*, 426.

The defense concedes that no objection was voiced to the remarks of the prosecutor, yet argues that they were so prejudicial that fundamental fairness requires reversal. The comments that had not been invited, *i.e.*, those related to "civic duty", did not constitute fundamental error. The *Blackburn* court

did not find fundamentally flawed remarks appealing to the jury's sympathy. *Cf. Jackson v. State*, 522 So.2d 802 (Fla. 1988), where this court found improper but not reversible the prosecutor's argument during the capital sentencing that "the victims could no longer read books, visit their families, or see the sun rise in the morning as Jackson would be able to do if sentenced to life in prison". *Id.*, 809.

The defense contends that error sufficient to overcome its failure to voice a contemporaneous objection exists in part because of the alleged tenuous case against Davis. As already pointed out, the deputy had observed the defendant until seconds before the arrest and she was quite certain in her identification of him.

In short, even if the defense had preserved this issue, the prosecutors "statements were not so unduly inflammatory or prejudicial as to warrant a mistrial." *Burr v. State*, 466 So.2d 1051, 1054 (Fla. 1985). The fact that trial defense counsel failed to object even once to the prosecutor's remarks significantly undermines the defense argument. Trial counsel was able to perceive if the comments had any undue affect on the jurors. Those of us who must consider the issue on appeal, on the other hand, have only the cold record to rely on. As no prejudice was perceived below, mere conjecture on appeal should not lead to a reversal.

Point Five

THIS CUMULATIVE ERROR CLAIM IS BARRED. EVEN WHEN THE ISSUES ARE CONSIDERED JOINTLY THEY DO NOT CONSTITUTE REVERSIBLE ERROR.

"In order to preserve an issue for appellate review, the specific legal argument or ground upon which it is based must be presented to the trial court." *Bertolotti v. State*, 514 So.2d 1095, 1096 (Fla. 1987) (citation omitted). The conjunctive claim now advanced by the defense was never raised in the trial court during the trial or in the motion for new trial (R 306). It, therefore, should not be considered now.

Procedural bar aside, the claim is without merit. As already discussed, the judge's remarks simply were not prejudicial. If they were, any prejudice was neutralized by the curative instruction. Nor were the prosecutor's comments fundamentally prejudicial. Therefore, no new trial is warranted when the two issues are considered jointly.

Point Six

THERE WAS NO DOUBLE JEOPARDY VIOLATION UNDER THE FEDERAL CONSTITUTION.

In *Missouri v. Hunter*, 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983), the Court held in relevant part:

> Where, as here, a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether these two statutes proscribe the "same" conduct under *Blockburger*, a court's task is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such a statute in a single trial.

Id., U.S., 368-369, S.Ct., 673; *see also* *Smith, supra*, 614.

The defense seeks a holding from this court that exclusive reliance upon the *Blockburger* test is inappropriate for purposes of determining whether multiple convictions and punishments at a single trial are proper. This "good faith extension" of the holding in *Grady v. Corbin*, ___ U.S. ___, 110 S.Ct. 2084 (1990), is sought despite the earlier acknowledgment by the defense under point two that this court is not free to overrule the United States Supreme Court on this issue. *Cf.* *Rodriguez de Quijas v. Shearson/American Express, Inc.*, ___ U.S. ___, 109 S.Ct. 1917, 1921-1922, 104 L.Ed.2d 526 (1989). Furthermore, the Supreme Court in *Corbin* did not merely discuss successive prosecutions. It specifically contrasted at length the use of the *Blockburger* test for purposes of evaluating multiple convictions and punishments at a single trial as well as in successive prosecutions. *Id.*, S.Ct. 2090-2092. This court should decline the invitation by the

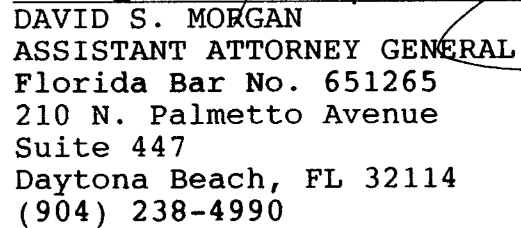
defense to break new ground in federal constitutional law and leave to the United States Supreme "Court the prerogative of overruling its own decisions." *Rodriguez de Quijas*, *supra.*

CONCLUSION

The decision of the Fifth District Court of Appeal affirming the petitioner's judgment and sentences should be approved.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michael J. Snure, Esq., P.O. Box 2728, Winter Park, FL 32790, by mail delivery on this 21st day of December, 1990.

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