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IN THE SUPREME COURT OF FLORIDA

PAUL RIDLEY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 80,293

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellee in the Fourth District Court of Appeal. Respondent was the prosecution and the appellant below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner Paul Ridley was charged with carrying a concealed firearm in violation of section 790.02(2), Fla. Stat. (1991) (R 9-10). He sought dismissal on the basis that he fell within the exception to section 790.25(5), Fla. Stat. (Supp. 1990), which permits possession of a firearm not accessible for immediate use, within a vehicle (R 11-12).

At the hearing on the motion to dismiss, Petitioner contended that because the unloaded firearm was under the driver's seat and separated from the ammunition which was under the passenger seat, he fell within the exception to section 790.25, Fla. Stat. (R 3-4, 11-12). During legal argument, Petitioner's counsel contended Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991) governed the instant case (R 3-4). Petitioner maintained that the present facts were even more compelling than those in Amaya, supra, where the firearm was under the passenger seat and the clips and bullets were on the seat and arguably more accessible for immediate use (R 4-5). See Amaya v. State, supra, 580 So.2d at 886. The trial judge granted Petitioner's motion to dismiss, finding that the unloaded gun was "not available for immediate use" under the statute (R 6, 13).

On direct appeal by Respondent, the Fourth District Court of Appeal reversed this disposition (Appendix 1), citing its prior decision in State v. Ashley, 17 F.L.W. D1455 (Fla. 4th DCA June 10, 1992) (Appendix 2-3) which noted a conflict with Amaya, supra (Appendix 4-5). The Fourth District in Ashley, supra, rejected the Amaya Court's interpretation of section 790.25, Fla. Stat.

(Appendix 1-3). Counsel in Ashley filed a notice of intent to invoke discretionary jurisdiction of this Court on July 10, 1992 and Ashley is currently pending before this Court (Case No. 80,174) (Appendix 6-7). The identical issue has been raised by Petitioner here and Petitioner thereupon noticed his intent to invoke this Court's discretionary jurisdiction to review this cause on July 30, 1992.

On October 13, 1992, this Court accepted jurisdiction and ordered briefing by the parties on the merits. This brief on the merits by Petitioner follows.

SUMMARY OF ARGUMENT

The trial court properly dismissed the carrying a concealed firearm charge against Petitioner. Section 790.01(2), Fla. Stat. (1991). The present facts fall within the statutory exception to Section 790.25(5), Fla. Stat. (Supp. 1990) (1989) that it is lawful "...to possess a concealed firearm...within the interior of a private conveyance, without a license, if the firearm...is not readily accessible for immediate use." Since the firearm, located under the seat in the vehicle driven by Mr. Ridley was unloaded, this case is governed by Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991), as well as by the statutory exception. In Amaya v. State, the Second District held that an unloaded firearm found under a car seat is "not readily accessible for immediate use." The Fourth District Court of Appeal held to the contrary and acknowledged conflict with Amaya, supra. Under the statutory scene and the reasoning of Amaya v. State,supra, the trial judge's dismissal of the charge against Petitioner was correct and must be affirmed.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN GRANTING APPELLEE'S MOTION TO DISMISS WHERE THE FIREARM IN QUESTION WAS "NOT READILY ACCESSIBLE FOR IMMEDIATE USE" PURSUANT TO SECTION 790.25(5), FLA. STAT. (SUPP. 1990).

The trial court granted Petitioner's motion to dismiss the charge of carrying a concealed firearm. Section 790.01(2), Fla. Stat. (1991). The undisputed facts establish that the firearm was unloaded and located under the driver's seat. Ammunition and a clip were each separate and located under the passenger seat (R 5). The trial judge properly dismissed the charge for a number of reasons. First, the firearm, unloaded and placed under the driver's seat, was "not readily accessible for immediate use" under the plain meaning of section 790.25(5), Fla. Stat., an exception to section 790.01(2), Fla. Stat. Petitioner therefore falls within this statutory exception. Second, section 790.25(5) commands liberal construction in favor of lawful use, ownership and possession. Third, in rejecting the reasoning of the Second District in Amaya v. State, 589 So.2d 885 (Fla. 2d DCA 1991), the Fourth District erroneously failed to follow the clear expression of legislative intent in its narrow interpretation of the statutory exception set forth in section 790.25(5). State v. Ashley, 17 F.L.W. D455 (Fla. 4th DCA Opinion filed June 10, 1992. These points will be addressed sequentially.

Section 790.25(5), Fla. Stat. (Supp. 1990) provides an exception to Section 790.01(2), Fla. Stat. (1989), the concealed firearm statute, by providing in relevant part:

> (i)t is unlawful and is not a violation of x. 790.01 to possess a concealed firearm or other

> weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use...

Section 790.00(15), Fla. Stat. (Supp. 1990) defines "readily accessible for immediate use" as follows:

> (15) "Readily accessible for immediate use" means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.

Furthermore, the last sentence of Section 790.25(5), Fla. Stat., states that:

> This subsection shall be liberally construed in favor of the lawful use, ownership and possession of firearms and other weapons...

(emphasis added).

Because the undisputed facts sub judice demonstrate that the unloaded firearm located under the passenger seat was not "readily accessible for immediate use" the present case falls within the ambit of the statutory exception, section 790.25(5), Fla. Stat.

The aim of section 790.25, Fla. Stat., is to promote firearm safety and prevent the use of firearms in crimes and provides:

> 790.25 Lawful ownership, possession, and use of firearms and other weapons.--
>
> (1) DECLARATION OF POLICY.--The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home and property and the use by the United States or state military organizations and as otherwise now authorized by law, including the right to use and own firearms for target practice and marksmanship on target practice ranges or

other lawful places and lawful hunting and other lawful purposes.

Moreover, the legislature unmistakably intended that the application of section 790.25, Fla. Stat., not diminish the constitutional right to bear arms. Art. I § 8, Florida Constitution; Amendment II, United States Constitution. To address this legislative intent, the statute provides:

> (4) CONSTRUCTION.--This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

It bears mention that the intent of a statute is the law and that this intent must be effectuated by the courts. Gay v. City of Coral Gables, 47 So.2d 529 (Fla. 1950). Where, as here, the legislative intent is clear from the words used, the courts "...are bound thereby and may not seek a meaning different from the ordinary or common usage of such words..." Id., 47 So.2d at 532.

In the present cause, the express language of the statute reflects the intent of the legislature for liberal construction of section 790.25(5), Fla. Stat., which provides an exception to section 790.01(2).

In the same vein, statutory language must not be deemed superfluous. "A statute must be constructed so as to give meaning to all words and phrases and phrases contained within that statute." Terrinoni v. Westward Ho!, 418 So.2d 1143, 1146 (Fla.

1st DCA 1982). Therefore, the provisions of a statute should be read in pari materia to achieve the statutory purpose.

In accordance with the above-mentioned principles of statutory construction, the legislative intent is readily apparent from the express language of 790.25(5) which excepts possession of a firearm "not readily accessible for immediate use" from 790.01(2). Moreover, the provisions regarding declaration of policy and construction, sections 790.25(1), and (4), respectively, further demonstrate the legislative intent which favors lawful use, ownership and possession of firearms.

Nonetheless, the Fourth District declined to follow the command of Section 790.25(5), Fla. Stat., for liberal construction in Petitioner's case, citing its previous decision in State v. Ashley, supra. (Appendix 1-3). Faced with the identical issue, the Second District properly followed the legislative directive in Amaya v. State, supra. In Amaya, supra, the trial court denied the defendant's motion to dismiss the charge of carrying a concealed weapon in violation of section 790.01(2), Fla. Stat. On appeal, the defendant, like Petitioner, contended that the conduct with which he was charged fell within the exception created by section 790.25(5) that, "it is lawful...to possess a concealed firearm...within the interior of a private conveyance, without a license, if the firearm...is...not readily accessible for immediate use." The accused argued that, while the firearm was concealed under the passenger seat, the firearm was not "readily accessible or immediate use..." because the firearm was unloaded and its clip and bullets were lying separately in open view upon the seat. The Second District agreed with the accused and reversed the trial

court's denial of Amaya's motion to dismiss. The Second District explained its rationale for reversing the lower tribunal:

> We cannot agree with the state's argument that the statutory exception was not applicable because a firearm need not be operable in order to be accessible for immediate use, e.g. for use in pointing it at someone in a threatening manner. In reaching this conclusion, we are persuaded by that Section's additional language that "(t)his subsection shall be liberally construed in favor of...lawful use...." We also cannot agree with the state's argument that the statutory exception was not applicable because the firearm could have been loaded and become operable. That exception requires that the firearm be "readily accessible for immediate use."

580 So.2d at 886 (emphasis added).

Petitioner maintains that Amaya was properly decided and that his case, like Amaya, falls within the statutory exception of 790.25(5). Both cases involve remarkably similar facts. An unloaded weapon was placed under a seat in each. Ammunition and a gun clip were separated from the weapon. In Amaya, the ammunition and clip were on the passenger seat. In Petitioner's case, these items were under the seat.

Petitioner contends an unloaded firearm carried in a private conveyance is consistent with the legislative purpose of section 790.25(1), Fla. Stat., which is to promote firearm safety and prevent the use of firearms in crimes. An unloaded firearm surely is far safer than a loaded firearm. There was no danger that the unloaded gun would discharge accidentally or otherwise. There is absolutely no evidence of or allegation that Petitioner intended or tried to commit any criminal offense in relation to the unloaded weapon. Petitioner submits that applying the statutory exception

of 790.25(5), Fla. Stat., to the present facts would do nothing to subtract from the goals of firearm safety and the prevention of crime.

As Judge Dell's dissent in Ashley, supra, aptly points out, the Ashley majority misplaced its reliance on cases involving mandatory minimum sentences for use of a firearm. Ashley, supra, 17 F.L.W. at D145 (Dell, J., dissenting). In so doing, "...the majority...ignore[s] the legislature's directive that `[t]his subsection [790.25(5)] shall be liberally construed in favor of the lawful use, ownership and possession of firearms...' §§ 790.25(5), Fla. Stat. (1989). Id.

Turning, then, to the majority decision in Ashley, supra, the Fourth District departed from Amaya, supra, finding that "...the Amaya court interpreted the statute too liberally." Ashley, supra, 17 F.L.W. at D1455. Such a construction flies in the face of the clear reasoning and effectuation of the legislative intent for liberal construction. As the dissent correctly notes, neither this Court's decision in Bentley v. State, 501 So.2d 600 (Fla. 1987) or the Fourth District's decision in Hardee v. State, 516 So.2d 110 (Fla. 4th DCA 1987), approved, 534 So.2d 706 (Fla. 1988) support the majority's interpretation.

Bentley, supra, involved the conviction of aggravated assault resulting from the defendant's display of an unloaded firearm, accompanied by threats of death to the victim. The issue presented involved application of the three year mandatory minimum sentence pursuant to section 775.087(2), Fla. Stat. (1983). Section 775.08(2) imposes the three year mandatory minimum sentence upon conviction of aggravated assault while in possession of a firearm.

Unlike Bentley, Petitioner did not display the firearm. Nor was the three year mandatory minimum involved. Bentley involved criminal behavior with the firearm; no such allegations are involved in Petitioner's case. Moreover, the legislative purpose of section 775.087(2), Fla. Stat., differs significantly from the legislative purpose of section 790.25(5). Section 775.087(2) is punitive: the goal is to punish an individual for using a firearm during the commission of a criminal offense. In contrast, the present facts lack even the suggestion that the weapon was brandished or otherwise used in an unlawful or negligent manner.

The facts set forth in Hardee v. State, supra, are similarly distinguishable from those in the present case. Hardee, supra, also involved use of a weapon during the commission of a criminal offense. There, Hardee's burglary conviction was enhanced from a second degree felony to a first degree felony because he armed himself during the commission of the crime. This Court approved the decision of the Fourth District, noting that the weapon need not be loaded in order to implicate the enhancement provision of the burglary statute. Section 810.02(2)(b), Fla. Stat. (1985). Hardee v. State, 534 So.2d 706 (Fla. 1988), approving Hardee v. State, 516 So.2d 110 (Fla. 4th DCA 1987). This Court reasoned that the purpose of the burglary enhancement statute would be thwarted if the state was required to prove that the weapon had to be loaded. Hardee, supra, 524 So.2d at 708. Like the analogous mandatory minimum statute referred to in Bentley, the purpose of the weapons enhancement statute involved in Hardee was to penalize the defendant for using a weapon during the commission of the offense. Since no such use occurred here. Hardee is inapposite.

To summarize, the Fourth District erred in rejecting the Second District's analysis in Amaya. Petitioner maintains that the Second District is correct in its interpretation of the legislative command that section 790.25(5), Fla. Stat., must be liberally construed in favor of lawful use. Accordingly, Petitioner urges this Court to reverse the decision of the Fourth District Court of Appeal.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court reverse the decision of the Fourth District Court of Appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Carol Cobourn Asbury, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 4th day of November, 1992.

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