Supreme Court of Florida

ORIGINAL

No. 80,293

PAUL RIDLEY, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[July 1, 1993]

OVERTON, J.

We have for review State v. Ridley, 602 So. 2d 616 (Fla. 4th DCA 1992), based on conflict with Amaya v. State, 580 So. 2d 885 (Fla. 2d DCA 1991), disapproved by Ashley v. State, No. 80,174 (Fla. June 3, 1993). We have jurisdiction pursuant to article V, section 3(b)(3), of the Florida Constitution.

The facts reflect that Ridley, after being lawfully stopped by police officers, was charged with carrying a concealed weapon in violation of section 790.01(2), Florida Statutes (1991). The concealed weapon, a gun, was found under the driver's seat, and ammunition for the gun and a fully loaded clip were found under the passenger's seat. The trial court found that the unloaded firearm was not "readily accessible for immediate use" for purposes of securing a conviction under section 790.01(2) and dismissed the charge against Ridley. On appeal, the Fourth District Court reversed the trial court's decision, relying on State v. Ashley, 601 So. 2d 1230 (Fla. 4th DCA 1992), quashed, No. 80,174 (Fla. June 3, 1993). Given our decision in Ashley, we disapprove the district court's opinion in this case to the extent it relied on the Fourth District's decision in Ashley. Nevertheless, we approve the result of the district court's decision in this case because we find the facts in this case to be closer to those in Amaya, which we disapproved in our Ashley decision.

In Amaya, the firearm was concealed under the passenger's seat and its clips and bullets were lying separately in open view on the passenger's seat. In reviewing the Amaya decision in Ashley, we determined that the location and accessibility of the firearm and ammunition in Amaya made the firearm "readily accessible for immediate use." Like the facts in Amaya, the location and accessibility of the firearm and ammunition in the instant case made the firearm "readily accessible for immediate

use" for purposes of securing a conviction under section 790.01(2).

Accordingly, we disapprove the opinion of the district court in Ridley to the extent it relied on Ashley, but, for the reasons expressed, we approve the result of the decision in Ridley.

It is so ordered.

BARKETT, C.J., and McDONALD, SHAW, GRIMES and HARDING, JJ., concur.
KOGAN, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

KOGAN, J., dissenting.

The statute plainly says that a person does not violate the law by carrying a weapon in a vehicle if "the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use." § 790.25(5), Fla. Stat. (1991). Moreover, the statute is to be construed in favor of the "lawful use, ownership, and possession of firearms and other weapons." Id. I see little relevant difference between a gun that is "securely encased" and one that has been fully emptied of ammunition. Indeed, an encased weapon in most circumstances will be more readily accessible than one that still must be loaded: Weapons cases typically can be opened in a single motion, whereas the loading of ammunition can take considerably longer. In light of the statutory language about "encased" weapons, I cannot say that the legislature intended the result reached by the majority here.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Fourth District - Case No. 91-3615

(Broward County)

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for Petitioner

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