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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 RALPH CHAPMAN,)
)
 Respondent.)
 _____)

CASE NO. 80,691

APPEAL FROM THE CIRCUIT COURT
IN AND FOR ORANGE COUNTY
FLORIDA

RESPONDENT'S MERIT BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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ATTORNEY FOR RESPONDENT

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STATE OF FLORIDA,)
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CASE NO. 80,691

RESPONDENT'S MERIT BRIEF

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts set out in the merit brief of Petitioner.

SUMMARY OF THE ARGUMENT

Respondent argues herein that the District Court was correct in holding that double jeopardy considerations prohibit convictions for both DUI manslaughter and vehicular homicide arising out of one death. Homicide is a "degree crime" thus dual convictions are still prohibited despite the recent amendment to Section 775.021(4). The holding of this Court in Houser v. State, 474 So.2d 1193 (Fla. 1985) remains good law as evidenced by this Court's recent unanimous opinion in State v. Thompson, 607 So.2d 422 (Fla. 1992).

Section 775.021(4) was amended in response to this Court's opinion in Carawan v. State. There has been no reaction from the legislature to twenty years of consistent Florida appellate decisions prohibiting more than one homicide conviction for a single death.

ARGUMENT

THE DISTRICT COURT CORRECTION RULED
THAT RESPONDENT COULD NOT BE CONVICTED
AND SENTENCED FOR BOTH VEHICULAR
HOMICIDE AND DUI MANSLAUGHTER ARISING
FROM A SINGLE DEATH.

The issue to be decided in this case is whether a defendant can be convicted and sentenced for a DUI manslaughter and vehicular homicide based on the death of a single person in a single accident.¹ The District Court of Appeals ruled the dual convictions improper citing Houser v. State, 474 So.2d 1193 (Fla. 1985). The State questions the continued validity of Houser citing the recently amended Section 775.021(4), Florida Statutes (1991).

(4)(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

(b) The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one

¹ This issue is also pending review before this Court in Goodwin v. State, Florida Supreme Court case number 81,274.

criminal episode or transaction and not to allow the principle of lenity as set for the in subsection (2) to determine legislative intent. Exceptions to this rule of construction are:

1. Offenses 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.

As the State points out in its brief, Section 775.021(4), Florida Statutes was amended in 1988 due to the legislature's disagreement with this Court's decision in Carawan v. State, 515 So.2d 151 (Fla. 1987). Relying on language in the statute taken from Blockburger v. United States, 284 U.S. 299 (1932), the State argues the two offenses in question here "are separate if each requires proof of an element that the other does not ...". This argument overlooks the second exception listed in Section 775.021(4); offenses which are degrees of the same offense.

This court gave two reasons for its holding in Houser. While the second reason may have been "overruled" by Section 775.021(4), the first remains entirely valid. That is that DUI manslaughter is "squarely within the scope of this State's regulation of homicide." Houser, 474 So.2d at 1196. And homicide is a "degree offense" for which dual convictions have

been traditionally prohibited. Because homicide is a degree offense, dual convictions stemming from one death are prohibited specifically by Section 775.021(4)(b)2:

Offenses which are degrees of the same offense as provided by statute.

As the Fifth District Court of Appeal stated in Vela v. State 450 So.2d 305 (Fla. 5th DCA 1984), a decision approved in Houser, dual convictions for DUI manslaughter and vehicular homicide are prohibited because "we're dealing here with a degree crime, homicide, and it is 'logically impossible to commit more than one degree crime as to one death.'" Baker v. State, 425 So.2d 36, 60 (Fla. 5th DCA 1982) (Coward, J. dissenting)."

The reasoning of Houser, not only wasn't overruled by Section 775.021(4), it was actually codified by the new statute.

DUI manslaughter and vehicular homicide are "degree crimes" because they are both more specific descriptions of the general statutory offense of homicide. This concept is not new; it was used to prohibit dual convictions for fraudulent sale of a counterfeit controlled substance and felony petit theft in Thompson v. State, 585 So.2d 492 (Fla. 5th DCA 1991). There the court held that the specific statutory offenses of theft, such as those contained in Chapter 817 (Fraudulent Sale) are different degrees, or more specific descriptions, of the general statutory offense of theft defined in Chapter 812. "Accordingly an act of criminal fraud should be prosecuted either under Florida's Antitheft Act or under a more specific statute contained in

Chapter 817, if applicable, but the legislature did not intend for the same act of criminal fraud to be prosecuted under both statutes as separate offenses. Thompson v. State, 585 So.2d at 494.

Most assuredly the District Court's rationale in Thompson v. State, applied to the facts in the instant case. In fact, this Court approved "in full" the District Court's decision in Thompson, finding that it was "consistent with our decision in Houser v. State" State v. Thompson, 607 So.2d 422 (Fla. 1992). It is clear therefore that the Houser rationale survives the "anti-Carawan" Statute.


It is important to remember that the legislature amended Section 775.021(4) in response to Carawan, but did not react to Houser or any of the many other cases which have repeatedly recognized that the legislature did not intend to punish a single homicide under two different statutes. Vela v. State, supra; Goss v. State, 398 So.2d 998 (Fla. 5th DCA 1981); Muszynski v. State, 392 So.2d 63 (Fla. 5th DCA 1981); Thomas v. State, 380 So.2d 1299 (Fla. 4th DCA) review denied, 389 So.2d 1116 (Fla. 1980); Miller v. State, 339 So.2d 1129 (Fla. 2d DCA 1976); Carr v. State, 338 So.2d 267 (Fla. 1st DCA 1976); Stricklen v. State, 332 So.2d 119 (Fla. 1st DCA 1976); Phillips v. State, 289 So.2d 769 (Fla. 2d DCA 1974). Dual convictions for the specific offenses involved in the instant case were disallowed as long ago as Ubelis v. State, 384 So.2d 1294 (Fla. 2d DCA 1980) and Brown v. State, 371 So.2d 161 (Fla. 2d DCA

CONCLUSION

Based on the foregoing cases, argument and authorities, Respondent respectfully requests this Honorable Court affirm the decision of the District Court of Appeal, Fifth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Ralph Chapman, No. 332791, P. O. Box 1807, Bushnell, FL 33513 on this 10th day of May, 1993.



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