

Supreme Court of Florida

No. 82,034

ORIGINAL

STATE OF FLORIDA, Petitioner,

v.

HAROLD COOPER, Respondent.

[April 7, 1994]

McDONALD, J.

We review Cooper v. State, 621 So. 2d 729, 732 (Fla. 5th DCA 1993), because the district court certified the following question to be of great public importance:

WHETHER A DEFENDANT CAN BE CONVICTED AND
SENTENCED FOR BOTH THE OFFENSE OF DUI
MANSLAUGHTER AND THE OFFENSE OF DRIVING WHILE
LICENSE SUSPENDED AND CARELESSLY OR NEGLIGENTLY
CAUSING THE DEATH OF ANOTHER HUMAN BEING WHERE
THERE IS ONLY A SINGLE DEATH.

We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

The district court properly ruled that there can be but one penalty imposed for causing the death of a single victim.

State v. Chapman, 625 So. 2d 838 (Fla. 1993); Houser v. State, 474 So. 2d 1193 (Fla. 1985). It is entirely appropriate to convict a person of both DUI manslaughter and driving while license is suspended, but it is inappropriate to enhance the degree of both crimes by using a single homicide. Cooper was convicted of violating subsection 316.193(3)(c)(3), Florida Statutes (1991), a second-degree felony. He may also be convicted of violating subsection 322.34(1) or (2), Florida Statutes (1991), but not subsection 322.34(3) because he has already been punished for the death by the DUI manslaughter conviction.

We adopt the rationale and approve the decision of the district court of appeal.

It is so ordered.

BARCKETT, C.J., and OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

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

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance
Fifth District - Case No. 92-1175

(Brevard County)

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