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Chief Deputy Clerk

IN THE DISTRICT
COURT OF APPEAL,
SECOND DISTRICT
Case No. 95-02984

Supreme Court
Case No. 86,670

GREGORY R. LAMOUREUX

Defendant/Petitioner

v.

STATE OF FLORIDA

Plaintiff/Respondent

PETITIONER'S AMENDED JURISDICTIONAL BRIEF

✓

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STATEMENT OF THE CASE

Defendant/Petitioner was involved in an accident in which two (2) people were seriously injured. As a result, Defendant/Petitioner was arrested and charged with DUI/Serious Bodily Injury in violation of Florida Statute 316.193 as a result of the one accident.

Defendant/Petitioner moved to dismiss one count of DUI/Serious Bodily Injury. The trial court granted said motion.

The State filed an Appeal to the Second District Court of Appeal. The District Court reversed the trial court ruling.

Defendant/Petitioner filed a Motion for Rehearing, Motion for Rehearing en Banc and Motion for Certification which were all denied. Defendant/Petitioner then filed this timely Appeal.

SUMMARY OF ARGUMENT

This Court has jurisdiction to hear this case due to the conflict between the Second District Court of Appeal's ruling and the holding of Boutwell v. State, 631 So. 2d 1094 (Fla. 1991) as expanded by Michie v. State, 632 So. 2d 1106 (Fla. 2d DCA 1994). The Court taking jurisdiction over this case would resolve important issues and insure uniform decisions throughout the State of Florida.

Additionally, this Court may take jurisdiction over this case to interpret the double jeopardy issues which evolve from this District Court's ruling.

ISSUE I

I WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW INVOKING THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT.

This Court has jurisdiction to review this case pursuant to the Florida Constitution, Article V Section 3(b)(4), and Florida Rules Appellate Procedure 9.030 (a)(2)(A)(iv).

The Second District Court's opinion here directly and expressly conflicts and misapplies the principles and rationale set out in Boutwell v. State 631 So. 2d 1094 (Fla. 1994). Florida Statutes 322.34(3) and 316.193(3)2, Driving while License Suspended/Serious Bodily Injury and DUI/Serious Bodily Injury, respectively, are written in the same manner, merely enhancing a traffic offense on the happening of certain events. Boutwell, holds that a person may be convicted of only one (1) count of Driving While License Suspended/Serious Bodily Injury as a result of one (1) accident or driving episode despite the number of people seriously injured.

Michie v. State, 632 So. 2d 1106 (Fla. 2d DCA 1994) expands Boutwell, and applies the rationale to DUI cases. Michie holds that a person may be convinced of only on (1) DUI per accident or

driving episode.

The trial court followed this reasoning when dismissing court one in the instant case. To hold otherwise is not consistent with prior rulings.

There should be no distinction between DUI Serious Bodily Injury and Driving While License Suspended/Serious Bodily Injury. The legislature has written both statutes in a similar manner. Both start out as traffic offenses, then upon the happening of a certain event, a serious body injury, the charge is enhanced to felony status, despite the lack of prior offenses.

The Second District Court's ruling creates a distinct conflict in rationale which will lead to nonuniform charging and/or convictions around the State.

ISSUE II

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THIS CASE EXPRESSLY CONSTRUES A PROVISION OF THE STATE OR FEDERAL CONSTITUTION INVOKING THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT.

This Court has jurisdiction to review this case pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(ii) in that the Second District's opinion subjects Petitioner to double jeopardy.

The Florida Constitution Article I Section 9, prohibits subjecting individuals to answering to the same offense twice. The Second District Court's ruling subjects Defendant/Petitioner to two crimes of DUI as a result of one episode.

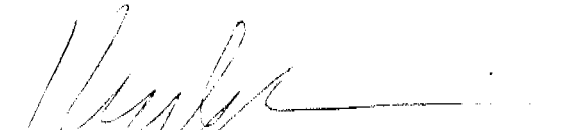
CONCLUSION

The Florida Supreme Court does have discretionary jurisdiction over this case. There is a conflict between the Second District Court's ruling here and the Supreme Court's ruling in Boutwell. Additionally the Second District Court's ruling subjects Mr. Lamoureux to double jeopardy.

To insure consistency throughout the State of Florida, this court should review the instant case. The current rationale in distinguishing DUI/Serious Bodily Injury from Driving While License Suspended/Serious Bodily Injury serves no practical purpose.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Robert Butterworth, Attorney General, Tallahassee, Florida and Patricia E. Davenport, Assistant Attorney General, Westwood Center, Suite 700, 2002 N. Lois Avenue, Tampa, Florida 33607-2366, by U. S. Mail on this 31st day of Oct., 1995.


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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

SECOND DISTRICT

STATE OF FLORIDA,)

Appellant,)

v.)

GREGORY R. LAMOUREUX,)

Appellee.)

CASE NO. 94-02984

Opinion filed July 7, 1995.

Appeal from the Circuit
Court for Charlotte County;
Donald E. Pellecchia, Judge.

Robert A. Butterworth, Attorney
General, Tallahassee, and Patricia
E. Davenport, Assistant Attorney
General, Tampa, for Appellant.

Karen S. Beavin of Sparkman &
Quinn, Naples, for Appellee.

WHATLEY, Judge.

The state challenges a trial court order dismissing one
of two counts of driving under the influence (DUI) with serious
bodily injury filed against the appellee, Gregory R. Lamoureux.
The trial court found that convictions for more than one such
offense would be impermissible for injuries arising out of the

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same driving episode. The state contends the trial court was in error. We agree and reverse.

In April 1994, Lamoureux, who was driving while intoxicated, became involved in a head-on automobile collision, which seriously injured both occupants of the other vehicle. As a result, Lamoureux was charged with: two counts of DUI with serious bodily injury in violation of section 316.193, Florida Statutes (1993); and one count of driving with a suspended license in violation of section 322.34(3), which was later dismissed.

Prior to trial, Lamoureux moved to dismiss one count of DUI with serious bodily injury, relying on Boutwell v. State, 631 So. 2d 1094 (Fla. 1994). After a hearing on Lamoureux's motion, the trial court agreed that Boutwell and Michie v. State, 632 So. 2d 1106 (Fla. 2d DCA 1994), prohibited convictions for more than one count of DUI with serious bodily injury arising from a single driving episode. The state filed a timely notice of appeal.

Boutwell and Michie do not prohibit more than one conviction for DUI with serious bodily injury based upon a single driving episode. In Boutwell, the Florida Supreme Court held that only one conviction for driving with a suspended license with serious injury could lie for injuries arising from a single automobile accident--regardless of the number of victims injured in that accident. In so holding, the Boutwell court approved Wright v. State, 592 So. 2d 1123 (Fla. 3d DCA 1991), quashed on

other grounds, 600 So. 2d 457 (Fla. 1992), to the extent that Wright effected the same holding. Boutwell, however, failed to mention that Wright also involved multiple convictions for DUI with serious bodily injury with respect to four victims injured during the single driving episode at issue in that case. Those convictions were permitted to stand. Furthermore, Justice Grimes, in his dissent in Boutwell, specifically acknowledged that separate convictions can lie for DUI with serious bodily injury, pursuant to this court's holding in Pulaski v. State, 540 So. 2d 193 (Fla. 2d DCA), review denied, 547 So. 2d 1210 (Fla. 1989), and the Third District's holding in Wright.

In Michie, Michie was originally charged with two counts of DUI with serious bodily injury and two counts of driving with a suspended license with serious bodily injury. He was only convicted, however, of the lesser-included offenses of simple DUI and driving with a suspended license. On Michie's appeal from those convictions, this court agreed with Michie's assignments of error and held "that traffic offenses such as driving under the influence or driving with a suspended license are 'continuing offenses' permitting a single conviction per episode." Michie, 632 So. 2d at 1108. In support of that holding, this court cited Boutwell and noted in parentheses that "regardless of the number of injured persons, there can only be one conviction arising from a single accident." Michie, 632 So. 2d at 1108.

In the instant case, Lamoureux urges that Michie extended the holding in Boutwell to DUI with serious bodily injury. In support of that contention, Lamoureux relies on the reference to injury contained in the aforementioned parenthetical, which followed Michie's citation to Boutwell. Any reference to injury in Michie, however, was unnecessary and was not a part of our holding therein, as Michie exclusively addressed multiple convictions for simple DUI arising from a single driving episode. Furthermore, there are numerous cases, including precedent from our own jurisdiction, which hold that multiple convictions for DUI with serious bodily injury are indeed permissible for injuries to more than one victim arising out of a single driving episode. See Pulaski; Onesky v. State, 544 So. 2d 1048 (Fla. 2d DCA 1989); Wick v. State, 651 So. 2d 765 (Fla. 3d DCA 1995); Wright; Melbourne v. State, 20 Fla. L. Weekly 975 (Fla. 5th DCA Apr. 21, 1995). In fact, in Wick, the Third District followed its previous holding in Wright and distinguished Boutwell on the basis that it involved the offense of driving with a suspended license and did not involve the DUI statute.

Based on the foregoing, we reiterate our previous holding in Pulaski and conclude that multiple convictions for DUI with serious bodily injury are permissible for injuries to multiple victims arising from a single driving episode. We, therefore, reverse the trial court's order dismissing count two

of the subject information and remand the instant cause for
reinstatement of that charge.

Reversed and remanded.

SCHOONOVER, A.C.J., and PARKER, J., Concur.