

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

GREGORY R. LAMOUREUX,

Petitioner,

v.

FSC. NO. 86,670

STATE OF FLORIDA,

Respondent.

FILED

SID J. WHITE

FEB 29 1996

CLERK, SUPREME COURT
By [Signature]
Chief Deputy Clerk

**DISCRETIONARY REVIEW OF A DECISION OF
THE DISTRICT COURT OF APPEAL, SECOND DISTRICT**

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement Of The Case And Facts.

SUMMARY OF THE ARGUMENT

The opinion rendered by the Second District Court of Appeal does not subject Petitioner to double jeopardy in violation of Article 1, Section 9, Florida Constitution. DUI with serious bodily injury is a discrete crime against a person for which separate convictions are appropriate when there are multiple victims, thus, there is no double jeopardy violation. Accordingly, the decision of the Second District Court of Appeal should be affirmed.

ARGUMENT

THE APPELLATE COURT CORRECTLY HELD THAT PETITIONER COULD BE CONVICTED OF MULTIPLE COUNTS OF DUI WITH SERIOUS BODILY INJURY BASED UPON A SINGLE DRIVING EPISODE AND THE COURT'S RULING DOES NOT VIOLATE DOUBLE JEOPARDY PRINCIPLES. (Restated).

The Second District Court of Appeal correctly interpreted *Boutwell v. State*, 631 So. 2d 1094 (Fla. 1994), and *Michie v. State*, 632 So. 2d 1106 (Fla. 2d DCA 1994), as not prohibiting more than one conviction for DUI with serious bodily injury based upon a single driving episode. Contrary to assertions of Petitioner, these two decisions are not in conflict with the appellate court's decision in the instant case.

The courts in Florida have consistently applied the continuing offense concept to traffic offenses while distinguishing driving under the influence of alcohol where someone is killed or injured. The latter offenses are "instant offenses" occurring at one time and one place, and will sustain separate convictions for each death or injury. *Hallman v. State*, 492 So. 2d 1136 (Fla. 2d DCA 1986); *Pulaski v. State*, 540 So. 2d 193 (Fla. 2d DCA 1989); *Onesky v. State*, 544 So. 2d 1048 (Fla. 2d DCA 1989).

In *Boutwell, supra*, the court reversed defendant's four separate convictions for driving while license suspended with serious injuries, holding that regardless of the number of injuries there can only be one conviction for driving with a suspended license arising from the single accident. In so holding, the court relied on *Wright v. State*, 592 So. 2d 1123 (Fla. 3d DCA 1991), quashed on other grounds, 600 So. 2d 457 (Fla. 1992). What is not mentioned in the majority opinion is that in *Wright, supra*, the district court approved defendant's four separate convictions of DUI involving serious injuries to four victims. Additionally as noted by the appellate court in its opinion in the instant case, the dissent in *Boutwell, supra*, acknowledged that separate convictions can lie for DUI with serious bodily injury. Clearly, there remains the distinction between a "continuing offense" and an "instant offense" which results in injury or death. In *Michie, supra*, the defendant was found guilty of two counts of simple DUI and two counts of driving with a suspended license. The Second District, relying on *Boutwell, supra*, vacated one conviction and sentence for each offense, finding that traffic offenses are "continuing offenses" permitting a single conviction per episode. As the appellate court pointed out in its opinion, its decision in *Michie* addressed only multiple convictions for simple DUI arising from a single driving episode, and does not extend *Boutwell* to DUI with serious bodily injury. Florida Courts have continued to hold that multiple

convictions for DUI with serious bodily injury are permissible for injuries to more than one victim arising out of a single driving episode. *Melbourne v. State*, 655 So. 2d 126 (Fla. 5th DCA 1995); *Wick v. State*, 651 So. 2d 765 (Fla. 3d DCA 1995).

Unlike *Boutwell, supra*, and *Michie, supra*, Petitioner was charged with two counts of DUI with serious injuries. That offense is not merely a traffic offense, and the courts have not tampered with the theory that DUI with a serious injury is a discrete crime against the person for which separate convictions are appropriate

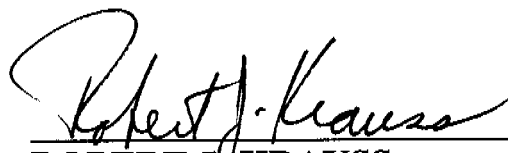
Accordingly, the determination by the Second District Court of Appeal that multiple convictions for DUI with serious bodily injury are permissible for injuries to multiple victims arising from a single driving episode should be affirmed by this Court.

CONCLUSION

Based upon the foregoing facts, arguments and authorities, the decision of the Second District Court of Appeal should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Karen S. Beavin, Esquire, P. O. Box 7128, Naples, Florida 33941 on this 27th day of February, 1996.

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