IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

LAURENTINO BRAVO SALAZAR,

Respondent.

Case No. 87,010

****

ON CERTIORARI FROM THE FOURTH DISTRICT COURT OF APPEAL

****

INITIAL BRIEF OF THE STATE ON THE MERITS

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PRELIMINARY STATEMENT

The State of Florida, the prosecuting authority and partially unsuccessful appellee below in the appended Salazar v. State, 20 Fla.L.Weekly D2431 (Fla. 4th DCA November 1, 1995) and the petitioner here, will be referred to as "the State." Respondent, Laurentino Bravo Salazar, the criminal defendant and partially successful appellant below, will be referred to as "respondent."

References to that portion of the one-volume record on appeal containing documents will be designated "(R:)," and to that portion containing transcripts, "(T:)."

Any emphasis will be supplied by the State unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Palm Beach County Circuit Court Judge Virginia Gay Broome accepted respondent's pleas of guilty as charged by the State for committing multiple offenses during a single criminal episode on June 6, 1993 by crashing his automobile into another vehicle while travelling at least 85 miles per hour with a blood alcohol level of .31 (R 2-14, 59-64, 109, 111-112, 134-135; T 4, 47). Judge Richard Burk ultimately adjudicated respondent guilty of the following offenses pursuant to his pleas and imposed the following entirely concurrent sentences upon him on April 26, 1994:

> 1. DUI manslaughter of Juquin Martinez under §316.193(a-c)3, Fla. Stat., a second degree felony; 15 years of imprisonment;
>
> 2. DUI with serious bodily injury to Jesus Martinez under §316.193(3)(a-c)2, Fla. Stat., a third degree felony; 5 years of imprisonment;
>
> 3. DUI with injury to Juan Martinez under §316.193(3)(a-c)1, Fla. Stat., a first degree misdemeanor; 1 year of jail;
>
> 4. DUS under §322.34(1), Fla. Stat., a first degree misdemeanor; 1 year of jail;
>
> 5. DUI with injury to Urgarte Eustigoio under §316.193(3)(a-c)1, Fla. Stat., a first degree misdemeanor; 1 year of jail;
>
> 6. DUI with property damage to Al Packer Ford under §316.193(3)(a-c)1, Fla. Stat., a first degree misdemeanor; 1 year of jail; and
>
> 7. DUI with property damage to Pedro Salazar under §316.193(3)(a-c)1, Fla. Stat., a first degree misdemeanor; 1 year of jail.

(R 1-3, 111, 165-166; T 3-5).

On direct appeal (R 120-121), respondent contended in pertinent part that his adjudications and sentences for committing multiple counts of misdemeanor DUIs with personal injury or property

damage to different people (i.e., counts 3, 5, 6 and 7) in violation of §§316.193(a-c)1 were improper and that only a singular disposition under the statute was warranted under this Court's decision of Boutwell v. State, 631 So. 2d 1094 (Fla. 1994) (IB pp. 3-10; RB pp. 3-6). The State countered that all four of respondent's misdemeanor dispositions were appropriate under Blockburger v. United States, 284 U.S. 299 (1932) and this Court's decision in Houser v. State, 474 So.2d 1193 (Fla. 1985) because each of these offenses included the distinct element of his infliction of physical or material harm upon different victims (AB pp. 4-11). See also Palmer v. State, 438 So. 2d 1, 2-4 (Fla. 1983).

The Fourth District accepted respondent's interpretation of the law over the State's position on this particular point, and thus directed that this cause be remanded with directions that the trial judge vacate three of respondents' four aforecited misdemeanor dispositions. Salazar v. State, 20 Fla.L.Weekly D2431, 2432. However, the court certified that its decision directly conflicted with the decision of the Fifth District Court of Appeal in Melbourne v. State, 655 So. 2d 126 (Fla. 5th DCA 1995), review granted, Case No. 86,029 (Fla. October 16, 1995) and with that of the Second District in State v. Lamoureux, 660 So. 2d 1063 (Fla. 2nd DCA 1995), review pending, Case No. 86,670 (Fla. October 19, 1995) on the same question of law. Salazar v. State, 20 Fla.L.Weekly D2431, 2432 notes 2 and 3. Like Chief Judge Harris of the Fifth District before him in Melbourne v. State, 655 So. 2d 126, 129-132 (Harris, C.J., concurring in part; dissenting in part), Judge Polen issued a comprehensive dissenting opinion below supporting the State's view of the instant legal question, Salazar v. State, 20 Fla.L.Weekly D2432 (Polen, J., dissenting). On November 30, the State filed a timely notice in the Fourth District to invoke this Court's discretionary certiorari jurisdiction under Fla.R.App.P. 9.030(a)(2)(A)(vi) to resolve these certified direct conflicts. On December 5, the Fourth District stayed issuance of its mandate upon motion of the State to facilitate

such review. This Court issued an order on December 19 postponing its decision on jurisdiction but directing the parties to brief this cause on the merits. This brief follows.

SUMMARY OF ARGUMENT

It is clear under the law that a criminal defendant should be held accountable for committing multiple counts of misdemeanor DUI in every instance in which his conduct has inflicted personal injury or property damage upon a different victim, regardless of whether or not these sufferings were inflicted simultaneously.

This Court must therefore quash that portion of the Fourth District's decision which holds that multiple such dispositions are violative of the constitutional prohibitons against double jeopardy, and remand this cause with directions that the four individual such dispositions entered against respondent by the trial court judge below shall stand.

ARGUMENT

ISSUE

THE TRIAL JUDGE PROPERLY ENTERED FOUR DISTINCT DISPOSITIONS UPON RESPONDENT FOR INJURING THE PERSON OR DAMAGING THE PROPERTY OF FOUR DIFFERENT VICTIMS WHILE DRIVING UNDER THE INFLUENCE OF ALCOHOL

If this Court does not correct the Fourth District's split decision in Salazar v. State, 20 Fla.L.Weekly D2431 (Fla. 4th DCA November 1, 1995), respondent will go unpunished for having injured the person or damaged the property of three of the four different people he victimized by driving while under the influence of alcohol free of charge only because he victimized them simultaneously rather than separately. Does this constitute a correct interpretation of the law? The State agrees with Chief Judge Harris in Melbourne and with Judge Polen in below that it does not.

The State acknowledges that driving while under suspension under §322.34, Fla. Stat., has been judicially intepreted as a continuing offense which permits only single conviction per episode, even where a defendant's careless or negligent driving has caused injuries to multiple victims. See e.g. Boutwell v. State, 631 So.2d 1094, 1095 (Fla. 1994), Wright v. State, 592 So.2d 1123, 1126 (Fla. 3rd DCA 1991), quashed on other grounds, 600 So.2d 457 (Fla. 1992) and Hallman v. State, 492 So.2d 1136, 1138 (Fla. 2nd DCA 1986). The State further acknowledges that several courts have either held or implied that driving while under the influence of alcohol under §316.193, Fla. Stat. is also a continuing offense which likewise permits only a single conviction per episode, even though a drunk driving defendant has caused injuries to multiple victims. See Michie v. State, 632 So.2d 1106, 1108 (Fla. 2nd DCA 1994) and Jackson v. State, 634 So.2d 1103, 1104-1106 (Fla. 4th

DCA 1994). The State nevertheless submits that the Fourth District's decision in Salazar v. State validating respondent's game attempt to extend these cases to erase his judgments and sentences for committing all but one of his four misdemeanor "DUI" crimes was wholly unwarranted under a proper view of the law, for two reasons.

First, those forms of DUI which cause either death, injury, or property damage under §§316.193(3)(a-c)(1-3), Fla. Stat., unlike all forms of "DUS" under §316.193(1), Fla. Stat., are static rather than continuing offenses, occurring only upon impact. Compare Boutwell v. State, 631 So.2d 1094, 1095 with Pulaski v. State, 540 So.2d 193, 194 (Fla. 2nd DCA 1989), review denied, 547 So.2d 210 (Fla. 1989). Moreover, unlike those forms of DUS involving injuries to multiple victims, a defendant may receive distinct dispositions for committing any form of DUI which involves either injuries to multiple victims or damage to multiple pieces of property. Compare Boutwell v. State, 631 So.2d 1094, 1095, Houser v. State, 474 So.2d 1193 (Fla. 1985), State v. Chapman, 625 So.2d 838 (Fla. 1993) and State v. Cooper, 634 So.2d 1074 (Fla. 1994) with Wright v. State, 592 So.2d 1123, 1126 and Grappin v. State, 450 So.2d 480 (Fla. 1984).

In Grappin v. State, 450 So.2d 480, 481-483, this Court held that it was the clear intent of the Florida Legislature to permit a defendant who had stolen five firearms from one person at the same time and in the same place to be prosecuted for committing five separate crimes. Will respondent dare contend in his answer brief that the legislature views the thieving of multiple guns from one person more seriously than it views the drunken automative infliction of injuries upon multiple people or of damages to their property? In §960.02, Fla. Stat., our legislature explicitly declared its sympathy for the victims of crimes, not the perpetrators. Respondent's inevitable reliance upon the so-called "rule of lenity, codified as §775.021(1), Fla. Stat., in a technical effort

to distinguish Grappin v. State from his case while avoiding the much larger question just posited by the State, will therefore ring hollow. To hold as respondent wishes would be to impute an absurd intent to the legislature, which this Court cannot do. See e.g. State v. Ramsey, 475 So.2d 671, 673 (Fla. 1985) and Winter v. Playa del Sol, Inc., 353 So.2d 598, 599 (Fla. 4th DCA 1977). The rule of lenity "only serves as an aid for resolving an ambiguity; it is not to be used to beget one." Callanan v. United States, 364 U.S. 587, 596 (1961). The courts must vigilantly deny the constant invitations of the criminal defense bar to blindly invoke the rule of lenity to resolve challenging cases. §775.021(1) does not overrule §960.02, and was not designed to serve as a relief act for criminal defendants.

In his concurrence in Welsh v. Wisconsin, 466 U.S. 740, 755 (1984), former Justice Blackman commented upon the fact that not all forms of DUI were crimes in Wisconsin as follows:

> I yield to no one in my profound personal concern about the unwillingness of our national consciousness to- face up to and to do something about- the continuing slaughter upon our Nation's highways, a good percentage of which is due to drivers who are drunk or semi-incapacitated because of alcohol or drug ingestion....
>
> [I]t is amazing to me that one of our great States- one which, by its highway signs, proclaims to be diligent and emphatic in its prosecution of the drunken driver- still classifies driving while intoxicated as a civil[1] violation that allows only a monetary forfeiture of not more than $300 so long as it is a first offense....

The State must stress at this point that, unlike in Wisconsin, in Florida all forms of DUI are crimes,

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[1] Emphasis in original

subjecting the offender to both imprisonment and fines. See §316.193(2-3), Fla. Stat. This legislative designation augurs highly in favor of judicial deference towards broad prosecutorial enforcement of Florida's laws against drunken driving.

Secondly, should this Court find that the State has not successfully distinguished Boutwell v. State, respondent's double jeopardy claim would still be unmeritious. The protections against double jeopardy afforded to criminal defendants by our state and federal constitutions are coextensive. See e.g. State v. Cantrell, 417 So.2d 260 (Fla. 1982) and State v. Smith, 547 So.2d 613, 614 (Fla. 1989). Therefore, this Court must follow the double jeopardy decisions of the United States Supreme Court above its own should these two lines of decisions inadvertently conflict. Compare generally State v. Hume, 512 So.2d 185 (Fla. 1987) with Traylor v. State, 596 So.2d 957 (Fla. 1992) and Hoffman v. Jones, 280 So.2d 431 (Fla. 1973).

Double jeopardy claims concerning offenses which occur during the same criminal episode, regardless of whether they involve multiple punishments following successive prosecutions or multiple punishments following a single prosecution, must generally be evaluated under the test of Blockburger v. United States, 284 U.S. 299 (1932). See e.g. United States v. Dixon, 509 U.S. ____, 125 L.Ed.2d 556, 568 (1993). This is true even of cases which, like this case, involve multiple punishments for continuous versus static offenses. Compare e.g. Brown v. Ohio, 432 U.S. 161, 162-170 (1977) with United States v. Dixon,125 L.Ed.2d 556, 568. The simple test of Blockburger v. United States, 284 U.S. 299, 304, which is codified by §775.021(4), Fla. Stat., is as follows:

> Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offense or only one [for double jeopardy purposes] is whether each provision requires proof of an additional

fact which the other does not.

In other words, if it is statutorily possible for a defendant to commit "Offense A" without invariably simultaneously committing "Offense B" and vice versa, then it is constitutionally appropriate for the judiciary to impose and to uphold separate adjudications and sentences against defendants convicted for proximately committing both offenses.

The basic question thus presented for this Court's resolution would thus be whether a person may statutorily commit each of respondent's multiple criminal DUI offenses without invariably committing one or more of the others. While the State will not individually delineate every one of the myriad of possibilities here, suffice it to say that respondent could have committed the DUI with injury against Juan Martinez without necessarily having committed the DUI with injury against Urgante Eustigoio and vice versa; the DUI with property damage against Al Packer Ford without the DUI with property damage against Pedro Salazar; and so forth (R 1-3, 165-166). Since each of the instant offenses in question passes the Blockburger test in flying colors, this Court's substantive double jeopardy analysis may cease forthwith, for it must uphold the imposition of multiple sanctions upon respondent for his four misdemeanor DUI offenses with personal injury or property damage to different victims. The State parenthetically notes that the Fourth District's decision in Collins v. State, 578 So.2d 30, 31-31 (Fla. 4th DCA 1991), receded from on other grounds, Jackson v. State, 634 So.2d 1104, 1105-1106, to the effect that simple DUI is a necessarily lesser included offense of DUI manslaughter for double jeopardy purposes, would not support a contrary conclusion inasmuch as respondent's various dispositions were each for a diverse, aggravated form of DUI with a victim.

In any event, it would certainly be no discredit for this Court to conclude that its decision in

Boutwell v. State is doctrinally incorrect under the federal constitutional double jeopardy principles enunciated by the United States Supreme Court in Blockburger v. United States, Brown v. Ohio and United States v. Dixon. Indeed, in his majority opinion in Albernaz v. United States, 450 U.S. 333, 343 (1981), Justice Rehnquist admitted that in this very area, his court's "decisional law....is a veritable Sargasso Sea which could not fail to challenge the most intrepid judicial navigator." This Court may finally and definitively end those double jeopardy challenges which have constantly arisen concerning the alleged impropriety of imposing separate punishments upon defendants who have committed either static or continuous multiple criminal offenses during a single episode by openly confronting the fact that Boutwell v. State was incorrectly decided in light of the aforecited federal supreme court precedent. The State therefore respectfully requests this Honorable Court to overrule Boutwell v. State whether or not it agrees with the State that such a step should not be necessary to correctly resolve respondent's particular case.

For either of the foregoing reasons, the State submits that this Court must quash that portion of the Fourth District's decision in Salazar v. State which holds that respondent's trial court judge erred by entering four DUI misdemeanor dispositions against him rather than only one, and remand this cause with the appropriate directions.

CONCLUSION

WHEREFORE petitioner, the State of Florida, respectfully submits that this Honorable Court must QUASH that portion of the Fourth District's decision directing that three of respondent's misdemeanor DUI dispositions be vacated and REMAND this cause with directions that respondent's original dispositions by the trial judge shall STAND in their entirety.

Respectfully submitted,

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APPENDIX

Volume 20, Number 45
November 10, 1995

DISTRICT COURTS OF APPEAL

Criminal law—Driving under influence—Multiple convictions of DUI with property damage or injury and conviction of one count of DUI with serious bodily injury arising out of single episode in which defendant caused accident which resulted in one person's death, injury to three others, and damage to property of two separate entities—Where charges arise out of single driving episode, DUI with serious bodily injury and DUI with property damage or injury should each be considered single offense, regardless of the number of persons injured or items of property damaged—Conflict certified—Defendant may be convicted of both DUI with serious bodily injury and DUI with property damage as result of single driving episode

LAURENTINO BRAVO SALAZAR, Appellant, v. STATE OF FLORIDA, Appellee. 4th District. Case No. 94-0712. L.T. Case No. 93-6162CFA02. Opinion filed November 1, 1995. Appeal from the Circuit Court for Palm Beach County; Virginia Gay Broome, Judge. Counsel: Richard Jorandby, Public Defender, and Cherry Grant, Assistant Public Defender, West Palm Beach, for appellant. Robert Butterworth, Attorney General, Tallahassee, and John Tiedemann, Assistant Attorney General, West Palm Beach, for appellee.

(STEVENSON, J.) While driving under the influence of alcohol and with a suspended driver's license, appellant, Laurentino Bravo Salazar, caused a single traffic accident with another car. As a result, one person was killed, three others injured (one seriously) and damage was done to the property of two separate entities. Salazar was convicted of one count of DUI manslaughter, two counts of DUI with bodily injury, one count of DUI with serious bodily injury, two counts of DUI with property damage and one count of simple DUS (driving with a suspended license). Appellant challenges his multiple convictions arising out of the same drunk driving episode[1] and argues that separate convictions for the injuries to three separate persons and damage to two separate property owners is contrary to the intent of section 316.193, Florida Statutes (1993), violates double jeopardy and may not stand. Because we believe that this case is controlled by *Boutwell v. State*, 631 So. 2d 1094 (Fla. 1994), we reverse in part and affirm in part.

In *Boutwell*, the defendant, driving with a suspended license, caused an accident injuring four people. Boutwell was convicted of four counts of DUS with injury pursuant to section 322.34(3), Florida Statutes (1991). Construing DUS as a "continuing offense," the supreme court held "that regardless of the number of injured persons, there can be but one conviction under section 322.34(3) arising from a single accident." 631 So. 2d at 1095 (footnote omitted). The court stated that it was merely "fortuitous" that four persons were injured as a result of the defendant's negligence. *Id.*

In discussing the relationship between the offense of simple DUS in section 322.34(1) and DUS with injury in section 322.34(3), the court in *Boutwell* stated:

> It is evident that section 322.34(3) does no more than enhance the penalty for driving with a suspended license in cases where the driver through the careless or negligent operation of his vehicle causes death or serious bodily injury. If the violation of section 322.34(1) in a single driving episode can be only one offense, the violation of section 322.34(3) in a single driving episode should be considered as one offense.

631 So. 2d at 1095.

The statutory offenses of DUI and DUS are strikingly parallel. Both DUI and DUS are status offenses; that is, the offense is complete whenever a driver gets into a vehicle and drives either under the influence of alcohol or with a suspended license. Similar to the offense of DUS, DUI has been held to be a continuing offense; that is, the singular violation, once initiated, continues until the driving episode ends. *See Michie v. State*, 632 So. 2d 1106, 1108 (Fla. 2d DCA 1994) ("[T]raffic offenses such as driving under the influence or driving with a suspended license are 'continuing offenses' permitting a single conviction per episode."). The DUI statute is also comparable to the DUS provision in that the penalty for DUI is enhanced, or made more serious, if injury to person or property results during the forbidden driving episode.

We find no reason to distinguish DUI from DUS for determining whether separate convictions are permissible in instances where multiple injuries arise from the same traffic accident. We hold that, like DUS with injury proscribed under section 322.34(3), the commission of DUI with serious bodily injury under section 316.193(3)(c)2 or DUI with property damage or injury under section 316.193(3)1 which arises out of a single driving episode should each be considered single offenses regardless of the number of persons injured or items of property damaged. Salazar did not intend to commit separate crimes by his single act of driving under the influence, and it was, to use the terminology of *Boutwell*, "fortuitous" that the single traffic accident injured three persons and damaged two separate properties.

We find no inconsistency between our result and that in *Houser v. State*, 474 So. 2d 1193 (Fla. 1985), where the supreme court held that a defendant could receive multiple convictions for multiple deaths resulting from one incident of driving under the influence. *Houser* clearly was predicated on the court's determination that DUI manslaughter is not an enhancement of simple DUI, but rather a separate *homicide* offense. The court stated that "the additional element of the death of a victim raises DWI manslaughter beyond mere enhancement and places it squarely within the scope of this state's regulation of homicide." *Id.* at 1196.[2] Unlike DUI manslaughter, it is clear that section 316.193(3)(B)1 and 2 are enhancements to the basic offense. We can discern no legislative intent to make DUI resulting in bodily or serious injury or property damage discrete crimes against the individual, as is DUI manslaughter.

We believe that *Boutwell* has undercut and impliedly overruled the holding in *Pulaski v. State*, 540 So. 2d 193 (Fla. 2d DCA), *rev. denied*, 547 So. 2d 1210 (Fla. 1989). In *Pulaski*, the appellant was convicted of two counts of driving under the influence of alcohol with bodily injury where two separate persons suffered bodily injury as a result of one drunk driving episode. The second district court, relying on *Houser*, approved the separate convictions based on the rationale that DUI with injury is not an enhancement of DUI but is a discrete crime against the person. *Id.* at 194. The holding in *Boutwell* compels us to disagree with the rationale utilized in *Pulaski*.[3]

We further reject any contention that the supreme court's holding in *Boutwell* approved that part of the decision in *Wright v. State*, 592 So. 2d 1123 (Fla. 3d DCA 1991), *quashed on other grounds*, 600 So. 2d 457 (Fla. 1992) which sanctioned multiple convictions under the DUI Statute where a single accident results in injuries to multiple persons. In *Boutwell*, the supreme court asserted conflict jurisdiction over *Wright* and this court's decision in *State v. Boutwell*, 625 So. 2d 1215 (Fla. 4th DCA 1993), solely to decide the issue of whether or not a driver with a suspended license who negligently caused an accident resulting in various injuries to four persons could be convicted of more than one offense. 631 So. 2d at 1094-95. The question of multiple convictions under the DUI Statute was not considered by the supreme court in *Boutwell*. In fact, the supreme court noted that at the time it considered the conflict question, the decision in *Wright* had already been quashed in *State v. Wright*, 600 So. 2d 457 (Fla. 1992) based on the district court's handling of a peremptory challenge issue. *Id.* at 1095 n.3.

Lastly we reject Salazar's contention that he cannot be convicted of both DUI with serious bodily injury and DUI with property damage or injury as a result of his single driving episode. We find that the legislature listed separate categories of different DUI offenses in separate enumerated subsections in the DUI statute for a reason—it wanted to make each category of offense a separate crime. Thus, if several persons are seriously injured in a single traffic accident caused by a drunk driver and property damage also results, the defendant may be convicted under both the DUI with serious bodily injury subsection and the DUI with property damage subsection. We note that each injured person and damaged property item may be referenced in the information or indictment, but only one conviction for DUI with serious bodily injury under subsection (3)(c)2 and one conviction for DUI with property damage under subsection (3)(c)1 may obtain.

We have considered the other arguments raised by appellant and find them to be without merit. Accordingly, we reverse appellant's four misdemeanor counts of DUI with damage to property or person and vacate the judgments and sentences on those counts. We remand this case to the trial court to merge those four counts and enter judgment and sentence for but one conviction. In all other respects, we affirm.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED. (GLICKSTEIN, J., concurs. POLEN, J., dissents with opinion.)

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[1]Appellant does not challenge his conviction for DUI manslaughter or misdemeanor DUS.

[2]The Fifth District Court of Appeal has recently adhered to the rationale enunciated in *Houser* to hold that a defendant may receive separate convictions for two counts of DUI manslaughter in addition to a conviction for one count of DUI with serious bodily injury arising out of the same driving episode. *Melbourne v. State*, 655 So. 2d 126 (Fla. 5th DCA 1995) (Harris, C.J., dissenting). We certify conflict with *Melbourne*.

[3]We certify conflict with *State v. Lamoureux*, 20 Fla. L. Weekly D1587 (Fla. 2d DCA July 7, 1995), which, relying on the continued viability of *Pulaski*, reached a different result.

(POLEN, J., dissenting.) I respectfully dissent, as I believe that the supreme court implicitly upheld multiple convictions under section 316.193(3)(c)(2) in *Boutwell*. Support for this position is found in *Boutwell* itself, as well as in *Melbourne v. State*, 655 So. 2d 126 (Fla. 5th DCA 1995).

In *Boutwell*, the supreme court cited conflict between *Wright v. State*, 592 So. 2d 1123 (Fla. 3d DCA 1991), *quashed on other grounds*, 600 So. 2d 457 (1992), and this court's decision in *Boutwell*, 625 So. 2d 1215 (Fla. 4th DCA 1993). The supreme court's holding in *Boutwell* affirmed that part of the *Wright* decision which stated that regardless of the number of injured persons, there can be only one conviction under section 322.34(3) (driving with suspended license/serious bodily injury). However, the *Wright* court specifically allowed multiple convictions under 316.193(3)(c)(2), finding that a single accident resulting in four injured persons may allow four convictions for DUI causing serious injury. *Wright*, 592 So. 2d at 1126. *Boutwell* did not reverse the multiple convictions for DUI with injuries. When the court affirmed *Wright*, it therefore implicitly affirmed the trial court's disposition as to Mr. Salazar in this case.

Support for this position can be found in Justice Grimes' dissent in *Boutwell*. As support for this view on multiple DUI convictions, the dissent cites the majority's adoption of *Wright* as allowance of multiple convictions for DUI with serious bodily injury. *Boutwell*, at 1096. Justice Grimes then states:

> If multiple convictions are permitted for DUI manslaughter and *DUI with serious bodily injury* when multiple victims are involved, there is no reason why the same principle should not apply to driving with a suspended license and causing serious bodily injury to more than one person.

Id. (Emphasis added.) Clearly, the dissent interprets *Boutwell* to allow multiple convictions under 316.193(3)(c)(2).

The fifth district has reached a similar conclusion interpreting *Boutwell* in *Melbourne v. State*, stating that it is important to note that the case approved in *Boutwell* was *Wright v. State*, 655 So. 2d 126 (Fla. 5th DCA 1995). The *Melbourne* majority observed:

> The *Wright* court had expressly upheld four convictions for DUI causing serious bodily injury while reversing the four convictions for driving with suspended license causing serious bodily injury. The *Wright* court explained simply that driving with a suspended license was a single offense whereas the injuries to four persons warranted the multiple DUI with injuries convictions. Although this analysis isn't very instructive, the *Wright* court reached a common sense result.

655 So. 2d 126, 129 (Fla. 5th DCA 1995).

Based on this interpretation of *Boutwell*, and the position of the Fifth District in *Melbourne*, I conclude that multiple convictions are permitted under 316.193(3)(c)(2). As such, I would affirm. At the very least, we should certify the question to the supreme court as Judge Harris suggests in his dissent to *Melbourne*.

* * *

Liens—Landlord's statutory lien on a piece of equipment was superior to the unpaid seller's right to reclaim the equipment because seller did not perfect its security interest

BEASON-SIMONS, d/b/a BEASON-SIMONS, LTD., INC., Appellant, v. AVION TECHNOLOGIES, INC., SNET CREDIT, INC., and UNITRON INCORPORATED, Appellees. 4th District. Case No. 94-2712. L.T. Case No. 93-2775 (06). Opinion filed November 1, 1995. Appeal from the Circuit Court for Broward County; Geoffrey D. Cohen, Judge. Counsel: Robert L. Feldman, Coral Gables, for appellant. William W. Haury, Jr. of the Law Offices of William W. Haury, Jr., Ft. Lauderdale, for Appellee-Unitron Incorporated.

(KLEIN, J.) The trial court concluded that a landlord's statutory lien on a piece of equipment was inferior to the unpaid seller's right to reclaim the equipment. We reverse because the landlord's statutory lien is superior to this seller's unperfected security interest.

Appellee Unitron delivered and installed an electronic frequency converter on premises leased to Avion by landlord Beason-Simon. The sales contract for the equipment provided that title to the equipment would remain with the seller until the purchaser made full payment; however, the seller did not record the purchasing agreement or file a UCC financing statement.

The purchaser of the converter, who did not pay for it, abandoned the leased premises, and the landlord and the seller each claimed that they were entitled to the converter—the landlord by virtue of its statutory landlord's lien under section 83.08(2), Florida Statutes (1989), and the seller by virtue of a right of reclamation under section 672.507(2), Florida Statutes (1989).

Section 83.08 provides in part:

> Landlord's lien for rent.—Every person to whom rent may be due ... shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:
>
> ***
>
> (2) Upon all other property of the lessee or his sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

A landlord's statutory lien is not required to be filed or recorded in order to be perfected, and attaches at the commencement of tenancy or as soon as the property is brought onto the premises. *Lovett v. Lee*, 141 Fla. 395, 193 So. 538, 542 (Fla. 1940). *See also Fla. E. Coast Properties, Inc. v. Best Contract Furnishings, Inc.*, 593 So. 2d 560, 562, n.6 (Fla. 3d DCA 1992).

Section 672.507(2), Florida Statutes (1989), on which seller relies, provides:

> Effect of seller's tender; delivery on condition.—
>
> ***
>
> (2) Where payment is due and demanded on the delivery to the

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November 20, 1995

95-140214

Ms. Vicky M. Phillips
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Re: Salazar v. State
Case No. 94-0712
Opinion filed November 1, 1995

Dear Ms. Phillips:

In accordance with your letter of November 14, 1995, to Judge W. Matthew Stevenson, please make the following correction on page 9, lines 13 and 14 of the above captioned opinion:

Wright v. State, 592 So. 2d 1123 (Fla. 3d DCA 1991)

Thank you for your attention to this matter.

Sincerely,

Mary L. Pollard

Mary L. Pollard
Judicial Assistant

mp

cc: Cherry Grant, Esq.
Assistant Public Defender

John Tiedemann, Esq.
Assistant Attorney General

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

LAURENTINO BRAVO SALAZAR

Appellant(s),

vs.

STATE OF FLORIDA

Appellee(s).

CASE NO. 94-00712

L.T. CASE NO. 93-6162 CFA02
PALM BEACH

December 5, 1995

BY ORDER OF THE COURT:

ORDERED that appellee's November 14, 1995, Motion to Stay Mandate Pending Florida Supreme Court Review is hereby granted.

I hereby certify the foregoing is a true copy of the original court order.

MARILYN BEUTTENMULLER
CLERK

cc: Public Defender 15
Attorney General-W. Palm Beach
Dorothy H. Wilken, Clerk

/CH

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing has been furnished to Ms. Cherry Grant, Esq., Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL 33401, this 2nd day of January, 1996.

JOHN TIEDEMANN