IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
DEC 5 1997
CLERK, SUPREME COURT
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STATE OF FLORIDA,

Petitioner,

v.

REGINALD WELLS,

Respondent.

CASE NO. 91,279

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Reginald Wells, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of four volumes. This brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. Citations to the Volume marked "Supplemental Volume I" will be "Supp. I." A citation to a volume will be followed by any appropriate page number within the volume.

STATEMENT OF THE CASE AND FACTS

Officer Willingham of the Jacksonville Sheriff's Office saw Respondent driving on 13th Street at approximately 2:00 AM on December 9, 1995. (III, 211, 214). Respondent's car matched the description of a recently stolen car. (III, 212-13). Willingham started to follow Respondent's car so he could determine if it was stolen. (III, 213). Respondent sped away from Willingham at approximately 60 miles per hour. (III, 215). When Willingham attempted to stop Respondent, Respondent attempted to elude the officer. (III, 215-216). After speeding through a neighborhood

and running a stop sign, Respondent stopped his car at a house and attempted to enter the house. (III, 215-225). When Willingham attempted to arrest Respondent, Respondent struck Willingham multiple times. (III, 225-229). Officer Miller also attempted to arrest Respondent. Respondent hit Miller in the face several times. (III, 317-20). After struggling with the officers for some time, Respondent was eventually subdued. (III, 323).

After trial, the jury found Respondent guilty of two counts of resisting arrest with violence, two counts of battery on a law enforcement officer, reckless driving, and driving while license suspended. (Supp. I, 526). Respondent was sentenced to serve concurrent sentences of one year in jail followed by one year on probation on each count of resisting arrest with violence, concurrent sentences of 132 days in the county jail for each count of battery on a law enforcement officer, a concurrent sentence of 90 days in jail for reckless driving, and a concurrent sentence of 60 days in jail for driving while license suspended. (Supp. I, 546-47).

The First District Court of Appeal reversed one of Respondent's convictions for resisting an officer with violence, holding that only one conviction is permitted in connection with a single criminal episode. Wells v. State, 22 Fla. L. Weekly D2010 (Fla. 1st DCA August 19, 1997). By order dated November 13, 1997, this Court accepted jurisdiction.

SUMMARY OF ARGUMENT

The District Court erred by holding only one conviction of resisting an officer with violence is permitted in connection with a single episode or incident and reversing one of Respondent's convictions. Respondent resisted two police officers as they attempted to make a lawful arrest. He should be convicted of two crimes. Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. pending, Case No. 90,287, correctly reads the statute to allow a conviction for each officer a defendant resists. Contrary to the District Court's opinion, the statute is not ambiguous and allows convictions for each crime that a defendant commits. To hold otherwise would encourage criminals who have already committed a crime by resisting one officer to resist all others who attempt to make the arrest. Further, the Legislature has clearly stated that criminal defendants should be punished for each crime they commit. Therefore, this Court should disapprove the portion of the District Court's opinion that holds a defendant can only be convicted of one count of resisting an officer with violence during a single criminal episode and approve the opinion in Wallace. The order of the trial court should be affirmed.

ARGUMENT

ISSUE

WHETHER THE DISTRICT COURT ERRED BY REVERSING ONE OF RESPONDENT'S CONVICTIONS FOR RESISTING ARREST WITH VIOLENCE.

The District Court erred by holding only one conviction of resisting an officer with violence is permitted in connection with a single episode or incident and reversing one of Respondent's convictions. The District Court's holding is in direct conflict with Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. pending, Case No. 90,287. Wallace correctly reads the statute to allow a conviction for each officer a defendant resists. Further, the holding in Wallace follows the clear intent of the Legislature that criminal defendants be punished for each crime they commit. Therefore, this Court should disapprove the portion of Wells that holds a defendant can only be convicted of one count of resisting an officer with violence during a single criminal episode and approve Wallace. The order of the trial court should be affirmed.

Respondent was convicted of two counts of resisting an officer with violence, prohibited by Section 843.01, Florida Statutes (1995). The statute states:

> Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing

> violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. § 843.01, Fla. Stat. (1995).

In holding that only one conviction for resisting arrest with violence is permitted in connection with a single criminal episode, the District Court relied on its holding in Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996). Pierce said that because the statute refers to "any" officer, only one conviction for resisting arrest with violence is permitted in connection with a single criminal episode. Pierce, 681 So. 2d at 874. For that proposition, the court relied on State v. Watts, 462 So. 2d 813 (Fla. 1985). In Watts, the defendant was convicted of two counts of possession of contraband by an inmate. This Court followed its decision in Grappin v. State, 450 So. 2d 480 (Fla. 1984), and held that the statute's statement that it was unlawful for an inmate to possess "any article or thing" proscribed by the statute was ambiguous and did not adequately define the unit of prosecution. Watts, 462 So. 2d at 814. See, Grappin, 450 So. 2d at 480 (phrase "any firearm" is ambiguous with respect to the unit of prosecution). Accordingly, it approved the reversal of one of Watts' convictions.

Unlike the statute at issue in Watts, Section 843.01, Florida Statutes (1995), is clear. The word "any" modifies who may be classified as an officer under the statute. It does not limit the number of charges that can be brought from a single incident or define the unit of prosecution. The statute says that a person who resists **"any officer"** by "offering or doing violence

to the person of such officer" is guilty of resisting arrest with violence. § 843.01, Fla. Stat. (1995) (emphasis added). The phase "to the person of such officer" refers to one officer and not to a group of officers. If the Legislature had intended that a defendant be convicted of only one count, it would have not have used the singular construction "to the person of such officer." See, Wallace, 689 So. 2d at 1161 ("The legislature's omission of the plural, "officers" [with an s] in the statutory phrase... eliminates any theoretical doubt or ambiguity in the use of the article any"). A court must give effect to all statutory provisions. T.R. v. State, 677 So. 2d 270 (Fla. 1996). The holdings in this case and in Pierce treats all the police officers as a group and makes the phrase "doing violence to the person of such officer" meaningless. The proper reading of this statute allows a separate conviction for each officer that a defendant resists. Under the rule announced by the District Court in this case and in Pierce, a criminal defendant has no incentive to surrender to multiple officers once he has resisted the first one. Since he has already committed the crime of resisting arrest with violence, a defendant could reasonably decide it is worth the effort to continue fighting and perhaps avoid arrest. Such a result is ridiculous and will increase the likelihood that police officers will be injured. As the Wallace court stated:

> Just as each person battered constitutes a separate crime, so too each officer resisted in the performance of his duties with violence is a separate act. Indeed to hold otherwise simply because the two separate acts

> of violence occurred during a spree of violent resistance of peace officers is to give violent persons no incentive to refrain from battering additional officers after they have committed an act of violence on the first officer. After Butch and Sundance have shot the first member of the posse chasing them, they would have no reason not to shoot them all. That hardly seems a result the legislature intended, let alone a result suggested in the text they chose for section 843.01. Wallace, 689 So. 2d at 1161-62.

Injury to police officers is exactly the kind of harm the statute should prevent. The District Court's ruling in this case would increase the likelihood of that harm. Its ruling should be reversed and the trial court's order should be affirmed.

As the Wallace court discussed, this interpretation of the statute is supported by an examination of the Legislative intent. Wallace, 689 So. 2d at 1162. The District Court's holding only allows conviction of one crime and ignores the intent of the Legislature. Section 775.021(4), Florida Statutes (1995), provides in pertinent part:

> (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 criminal episode or transaction** and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. (emphasis added).

The intent of the Legislature is to punish a defendant for each offense that occurs during a criminal episode. Here, the State

proved that two offenses occurred. Respondent resisted Officer Willingham and Respondent resisted Officer Miller. The District Court's holding makes it a crime to resist Officer Willingham but legal to resist Officer Miller. Each deputy was attempting to perform a lawful duty and arrest Respondent. Respondent resisted each officer. The fact that this resistance occurred during the course of one criminal episode does not change the fact that two crimes were committed. The "a/any test" used in Grappin and Watts was used because this Court found "any" was ambiguous as the unit of prosecution. Watts, 462 So. 2d at 814. There is no ambiguity in section 843.01, especially when considered in light of section 775.021. Even if this Court finds some ambiguity in section 843.01, that ambiguity is resolved the clear statement in section 775.021 that a defendant should be punished for each crime.

Wallace also questioned the viability of Watts and Grappin in light of the subsequent amendments to section 775.021. In 1988, after Watts and Grappin were decided, the Legislature amended section 775.021 as shown:

> (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 criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) 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. Ch. 88-131, Laws of Florida (underlining used to indicate amendments to the statute).

Watts found the article "any" made the unit of prosecution in the statute ambiguous. The amendments to section 775.021, subsequent to Watts, clearly show the intent of the Legislature to convict and sentence for each act that constitutes a separate criminal offense. Respondent's actions would be two separate crimes if committed during different criminal episodes. The actions should be separate crimes here.

The District Court erred by holding that one of Respondent's convictions for resisting an officer with violence must be reversed. The statutes are clear that criminal defendants are to be convicted and punished for each crime they commit. The District Court's holding, by only allowing one conviction for multiple crimes, encourages the behavior the statute is designed to discourage. This Court should approve the Fourth District's decision in Wallace. The portion of the District Court's opinion

reversing one of Respondent's convictions should be reversed and the trial court's order should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully submits the portion of the decision of the First District Court of Appeal reversing one of Respondent's convictions for resisting an officer with violence should be disapproved, the Fourth District Court of Appeals decision in Wallace should be approved, and the trial court should be affirmed.

Respectfully submitted,

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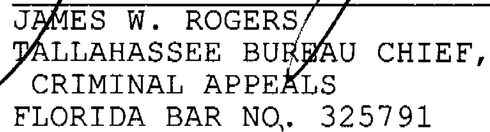

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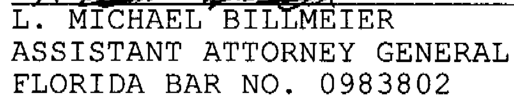

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to David P. Gauldin, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 5TH day of December, 1997.

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