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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CLINTON R. WOODS,

Respondent.

CASE NO. 93,439

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, Clinton R. Woods, 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 two volumes. This brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

Respondent was charged by information with three counts of battery on a law enforcement officer and three counts of resisting an officer with violence. (I, 10-11). At trial, Officers Reagor, Kenny, and Gwynes testified that they attempted to arrest Respondent pursuant to a warrant on January 3, 1997. (II, 26-27, 43, 62). Respondent resisted arrest and fought the officers, striking Reagor in the chest several times (II, 30), striking Gwynes several times (II, 50), and kicking Kenny several

times. (II, 66). The officers continually told Respondent to cease resisting. (II, 29-30, 67). Respondent was eventually subdued and handcuffed. (II, 31, 52-53, 84). Respondent tried to escape, resisted the officers further, and was eventually restrained and arrested. (II, 34-36, 55-56, 84-85). Respondent was convicted on all counts and sentenced to ten years as an habitual felony offender with all sentences to run concurrent. (I, 80-87).

The First District reversed two of Respondent's three convictions for resisting an officer with violence in Woods v. State, 710 So. 2d 1379 (Fla. 1st DCA 1998), rev. granted, Case No. 93,439 (Fla. October 19, 1998), relying on its decisions in Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996), and Wells v. State, 22 Fla. L. Weekly D2010 (Fla. 1st DCA August 18, 1997, rev. granted, 705 So. 2d 10 (Fla. 1997). The court acknowledged conflict with Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990), and Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA), rev. granted, 699 So. 2d 1377 (Fla. 1997). This Court accepted jurisdiction by order dated October 19, 1998.

SUMMARY OF ARGUMENT

The First District erred by holding only one conviction of resisting an officer with violence is permitted in connection with a single episode or incident and reversing two of three Respondent's convictions. Respondent resisted three police officers as they attempted to make a lawful arrest. He should be convicted of three crimes. Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. granted, 699 So. 2d 1377 (Fla. 1997), and Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990), correctly read the statute to allow a conviction for each officer a defendant resists. Contrary to the First District's holding, 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 First District'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 opinions in Wallace and Coleman. The order of the trial court should be affirmed.

ARGUMENT

ISSUE

WHETHER A DEFENDANT CAN BE CONVICTED OF ONLY ONE COUNT OF RESISTING AN OFFICER WITH VIOLENCE NO MATTER HOW MANY OFFICERS ARE RESISTED.

The First District erred by holding only one conviction of resisting an officer with violence is permitted in connection with a single episode or incident and reversing two of Respondent's three convictions in Woods v. State, 710 So. 2d 1379 (Fla. 1st DCA 1998), rev. granted, Case No. 93,439 (Fla. October 19, 1998). The First District's holding is in direct conflict with Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. granted, 699 So. 2d 1377 (Fla. 1997), and Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990). Wallace and Coleman correctly read the statute to allow a conviction for each officer a defendant resists. The "a/any" test applied by the First District is inapplicable here since the statute is not ambiguous as to the unit of prosecution. Further, the holdings in Wallace and Coleman follow the clear intent of the Legislature that criminal defendants be punished for each crime they commit. Here, Respondent committed three crimes by doing violence to the person of three officers. Three convictions are appropriate. Therefore, this Court should disapprove Woods and approve Wallace and Coleman. The order of the trial court should be affirmed.

While Officers Reagor, Gwynes, and Kenny were attempting to arrest Respondent, he fought and resisted each of them. (II, 29-36, 46-56, 64-71, 82-88). He was charged and convicted of three

counts of resisting an officer with violence pursuant to section 843.01, Florida Statutes (1995), one conviction for each officer he resisted. Section 843.01, Florida Statutes (1995), 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 Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996), the First District 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. The Watts court followed the 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. In Wells v. State, 22 Fla. L. Weekly D2010

(Fla. 1st DCA August 19, 1997), review granted, 705 So. 2d 10 (Fla. 1997), the First District followed its decision in Pierce and reversed one of Wells' convictions for resisting an officer with violence. Similarly, in Jones v. State, 711 So. 2d 633 (Fla. 1st DCA 1998), and Morris v. State, 23 Fla. L. Weekly D1495 (Fla. 1st DCA June 15, 1998), the First District reversed convictions for resisting an officer with violence when the defendant resisted more than one officer during his arrest.

The "a/any" test of Watts and Grappin applies when the statute at issue is ambiguous as to the unit of prosecution. 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 includes police officers, members of the Parole Commission or its employees, parole and probation supervisors, county probation officers, or representatives of the Department of Law Enforcement. 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"** in the listed class 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 Woods, Wells, Pierce, Jones, and Morris treat 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 First District in this case, a criminal defendant has no incentive to surrender to multiple officers once he or she has resisted the first one. Since the defendant has already committed the crime of resisting arrest with violence, that 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.

The fact that defendants might be charged with other crimes, such as assault or battery, when they resist multiple polices officers

should not be used to limit the number of charges for resisting an officer with violence. Injury to police officers is exactly the kind of harm the statute should prevent. The holdings of Woods, Wells, Jones, Morris, and Pierce increase the likelihood of that harm and should be disapproved.

The Second District reached a similar conclusion in Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990). In Coleman, the defendant was convicted of three counts of resisting an officer with violence when he resisted three officer who attempted to arrest him. The court rejected Coleman's argument that only one conviction is permitted, stating,

> Thus, the question becomes whether Coleman in violently resisting three separate officers from effectuating one arrest engaged in a single criminal act or a transaction comprising three distinct acts. Because the statute at issue proscribes the act of resisting any officer by doing violence to the person of such officer and not the act of resisting arrest, we find that Coleman committed three separate acts of resisting an officer with violence, although involving the same transaction, which are punishable separately consistent with Carawan. Coleman, 569 So. 2d at 872. (emphasis in original).

Likewise, here, Respondent did not simply resist arrest. He did violence to the person of three police officers. He should be subject to three convictions.

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. 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 three offenses occurred. Respondent resisted Officers Reagor, Gwynes, and Kenny by doing violence to each of them. He struck Reagor and Gwynes and kicked Kenny. If this Court adopts the First District's position, it would be a crime to violently resist Officer Reagor but legal to violently resist Officers Gwynes and Kenny. Each officer was attempting to perform a lawful duty and arrest Respondent. Respondent violently resisted each officer. The fact that this resistance occurred during the course of one criminal episode does not change the fact that three crimes were committed. The "a/any test" used in Grappin and Watts was used because this Court found "any" was ambiguous in the statutes at issue in those cases as to 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 in section 944.47. There is no ambiguity in the statute here. 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. The act of resisting by "doing violence to the person of such officer" is a separate act for each officer resisted. Respondent's actions would be three separate crimes if committed at separate times. See Coleman, 569 So. 2d at 872. The actions should be separate crimes here.

This Court should hold that section 843.01 permits a conviction for resisting an officer with violence for each officer resisted. Since the statute is clear, this Court need not apply the "a/any" test discussed in Grappin and Watts. The decision of the First District reversing two of Woods' convictions should be reversed and the trial court should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the First District Court of Appeal should be disapproved, and the convictions entered in the trial court should be affirmed.

Respectfully submitted,

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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 Mark E. Walker, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 12th day of November, 1998.

L. Michael Billmeier
Attorney for the State of Florida

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