IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,554
Third District No. 99-61

JEAN HARRT CAZEAU,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The respondent, the State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. The petitioner, Jean Harrt Cazeau, was the defendant and the appellant, respectively. In this brief, the parties will be referred to as the petitioner and the state. Citations to the record are abbreviated as follows:

(T)-Transcript of Proceedings

(R)-Clerk's Record on Appeal

STATEMENT OF FACTS

In addition to the statement of the facts provided at pages 2-3 of the petitioner's brief on the merits, the state has provided additional facts for the Court's consideration in the argument section of its answer brief.

ISSUES ON APPEAL

I. Whether the extemporaneous instructions on reasonable doubt given to the jury venire prior to the commencement of voir dire minimized the reasonable doubt standard below the protections of the due process clause.

II. Whether the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995", violates the single subject rule of the Florida Constitution.

SUMMARY OF THE ARGUMENT

I

Under the circumstances presented in this case the extemporaneous instruction on reasonable doubt given by the trial judge was not prejudicial and did not violate the petitioner's right to due process under the state and federal constitutions because when considered in light of all other instructions given the law was accurately, fully, and fairly presented to the jury.

II

The petitioner's sentence should be affirmed on the basis of Higgs v. State, 695 So.2d 872 (Fla. 3rd DCA 1997) because the amendments to section 775.084, Florida Statutes (1995) contained in Chapter 95-182, Laws of Florida are not unconstitutional in violation of the single subject requirement of the Florida Constitution.

ARGUMENT

I

THE EXTEMPORANEOUS INSTRUCTION ON REASONABLE DOUBT GIVEN BY THE TRIAL JUDGE WAS NOT PREJUDICIAL AND DID NOT VIOLATE THE Petitioner'S RIGHT TO DUE PROCESS UNDER THE STATE AND FEDERAL CONSTITUTIONS BECAUSE WHEN CONSIDERED IN LIGHT OF ALL OTHER INSTRUCTIONS GIVEN ON THE SAME SUBJECT THE LAW WAS COMPLETELY, ACCURATELY AND FAIRLY PRESENTED TO THE JURY.

The petitioner contends that extemporaneous instructions on reasonable doubt given to the jury venire by the trial judge prior to the commencement of voir dire minimized the reasonable doubt standard and constituted an abuse of discretion by the trial court. The state submits that the trial court's extemporaneous instruction did not deprive the petitioner of the defense of reliance on the reasonable doubt standard. Therefore the trial court's comments did not constitute reversible error or violate the petitioner's right to due process.

The general rule is that "a single instruction cannot be considered alone but must be considered in light of all other instructions bearing upon the same subject, and if, when so considered, the law appears to have been fairly presented to the jury, the assignment on the instruction must fail." Higginbotham v. State, 19 So.2d 829 (Fla. 1944). (Citations omitted)

Before voir dire began the trial judge said:

What I'm going to do now is, I am going to read you a couple of things. I'm going to read you a couple of the laws that apply in this case, because you cannot hear this enough, because, you know, it's fundamental in our system of justice and it's important that everybody understands this and can follow it later on.

So let me read you -- these are one of the instructions that I will be giving those of you selected as jurors at the close of the case. The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the information through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt. ...

Whenever the words "reasonable doubt" are used, you must consider the following: A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt.

On the other hand, if after carefully considering, comparing and weighing all the evidence there is not an abiding conviction of guilt, or, if having a conviction, it is one which is not stable, but one which waivers and vacillates, then the charge is not proved beyond every reasonable doubt, and you must find the defendant not guilty because the doubt is reasonable.

It is the evidence introduced upon this trial and to it alone, that you are to look to for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or lack of evidence.

If you have a reasonable doubt, you

should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

Let me give you an example that I like to give as far as reasonable doubt. Supposed you came this morning you finally found a parking space somewhere across the street, and when you got out of your car, the parking lot was dry. The pathway walking over here was dry. The roadway was dry. The expressway was dry.

You come into the building and sit in here with your beautiful view of downtown nowhere. You then leave the building. You walk outside. The roadway is wet. The stairs are wet. The parking lot where your car is parked is wet. Your car is wet. What do you think happened? It rained; right?

Now, is it possible that a fire truck came along with fire hose and just wet everywhere that you happened to be walking? That's possible. Would that be a forced doubt, or would it be a speculative doubt? I mean, it's a possibility, but it really is a reach to think that happened.

So that's analogy that I like to give for reasonable doubt.

Can everybody follow the law as I just explained it to you? Is there anybody that would hold the state to a higher burden and say that, "Gee, State, you must prove your case beyond and to the exclusion of all doubt or beyond a shadow of a doubt"? ...

The State is required to prove their case beyond and to the exclusion of every reasonable doubt.

At the close of the case you will be asked to apply the law, as I read it to you, to the facts of the case and make your decision. If you thought for some reason that the law is different than what I just read to you, you have to put that out of your mind and

follow the law as I instruct you in the jury instruction part of the trial.

Can everybody do that ? Okay.

Suppose that for some reason I were to say, “Well let’s -- you know, how about right now suppose I went a little crazy and I said, “Let’s take the first seven people. Go into the jury room right this very second. I want you to vote as to whether or not the defendant is guilty or not guilty.”

Mr. Holmes, if I sent you in the jury room right now and were to lose my mind temporarily, how would you vote at this very second.

MR. HOLMES: I wouldn’t be able to vote.

THE COURT: Yes, you could if the burden is on the State and they must prove their case beyond and to the exclusion of every reasonable doubt, and there is a presumption of innocence that goes along with the defendant, which means that he is, like the instruction says, he is presumed innocent until such time as the State is able to, if they are able to, prove his guilt beyond and to the exclusion of every reasonable doubt.

You haven’t heard any testimony so far, have you?

MR. HOLMES: No.

THE COURT: So that presumption of innocence is with the defendant. Would you agree with me that far?

MR. HOLMES: Yes.

THE COURT: So if I were to say, “Six of you go in there and make a decision,” you would have to vote?

MR. HOLMES: Not guilty.

> THE COURT: Exactly.
>
> Does everybody understand that, that the presumption of innocence cloaks the defendant and he is presumed innocent until such time as the State is able, if they are able, to prove that he is guilty and the standard is beyond a reasonable doubt? ...

(Vol. I, T. 15-21).

Later during voir dire when defense counsel objected to the prosecutor's attempt to distinguish "shadow of a doubt" from "reasonable doubt" the judge stated:

> Ladies and gentlemen, the bottom line is I give you the instruction on what reasonable doubt is, what constitutes reasonable doubt.
>
> Can everybody follow the law as I read it to you? Because that will be the same instruction that you will get at the close of the case. Can everybody follow that law ...?

(Vol. I, T. 86).

The record shows that the trial judge gave the standard jury instruction on reasonable doubt verbatim two times and emphasized that jury should follow the law as it was read to them from the instructions. The petitioner concedes that this case does not rise to the level of fundamental error. The state would submit that the petitioner's claim also fails to meet the "reasonableness" test to determine whether the trial judge abused his discretion. If reasonable people could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding by the appellate court of an abuse of

discretion. Paranzino v. Barnett Bank, 690 So.2d 725,729 (Fla. 4th DCA 1997).

Under the circumstances presented in this case the extemporaneous instruction given by the trial judge was not prejudicial and did not violate the petitioner's right to due process under the state and federal constitutions because when considered in light of all other instructions given the law was accurately, fully, and fairly presented to the jury. Lewis v. State, 693 So.2d 1055,1059 (Fla. 4th DCA 1997).

II

THE "OFFICER EVELYN GORT AND ALL FALLEN OFFICERS CAREER CRIMINAL ACT OF 1995", DOES NOT VIOLATE THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION.

The petitioner contends that his sentence as a violent career criminal pursuant to § 775.084(1)(c), Florida Statutes (1995), the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995", should be reversed because the Act violates the single subject rule of the Florida Constitution embodied in Article III, section 6. The state submits that there is a reasonable and rational relationship between each of the sections of the Act.

The single subject requirement of article III, section 6 of the Florida Constitution simply requires that there be "'a logical or natural connection'" between the various portions of the legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla.

1993) (approving the lower court's pronouncement in Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991)). The single subject requirement is satisfied if a "reasonable explanation exists as to why the legislature chose to join the two subjects within the same legislative act. . . ." Id. at 4. Similarly, the Supreme Court has spoken of the need for a "cogent relationship" between the various sections of the enactment. Bunnell v. State, 453 So. 2d 808, 809 (Fla. 1984). Furthermore, ". . . wide latitude must be accorded the legislature in the enactment of laws" and a court should "strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject. . . ." State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). "The act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection." Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

A careful reading of the provisions of Chapter 95-182, Laws of Florida, compels the conclusion that the requisite natural or logical connection between the various sections exists. Sections 1 through 7 of Chapter 95-182 deal with violent career criminal legislation, with sections 2 through 7 specifically being designated the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995". The heart of this legislation is contained

in section 775.084(1)(c), Florida Statutes, which is set forth in section 2 of Chapter 95-182. Section 775.084(1)(c) defines the phrase "violent career criminal."

The interrelated nature of the different provisions of 95-182 presents a situation which is highly analogous to that which was addressed by the Supreme Court in Burch v. State, 558 So. 2d 1 (Fla. 1990). Chapter 87-243, Laws of Florida, dealt with many disparate areas of criminal law, which fell into three broad areas: 1) comprehensive criminal regulations and procedures; 2) money laundering; and 3) safe neighborhoods. 558 So. 2d at 3. Those provisions were deemed to all bear a "logical relationship to the single subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods." Id. The Court noted that "[t]here was nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation." Id. If anything, the connection between the provisions of the act in the instant case is considerably clearer, without having to resort to such broad links as the regulation of crime.

Yet another case providing a strong analogy is Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987), where numerous, disparate, legislative provisions regarding tort reform and insurance law were deemed not to violate the single subject requirement of the Constitution. The Court applied a common sense test, rejecting claims that laws dealing with both tort and contractual causes of action could not be addressed in the same legislation.

By contrast, in one of the cases in which the single subject requirement was held to have been violated, Johnson, supra, there was no plausibly cogent connection between career criminal sentencing and the licensing laws for private investigators who repossess motor vehicles. 616 So. 2d at 4. Likewise, in Bunnell, supra, there was no connection between the creation of a new substantive offense - obstruction of law enforcement by false information - and the creation of the Florida Council on Criminal Justice. 453 So. 2d at 809.

The instant case must be governed by those cases in which a reasonable connection has been found, with deference given to the legislature. The common sense test applied by the Supreme Court in other cases is clearly satisfied in this case.

The respondent has reviewed the arguments made by the state in Thompson v. State, 708 So. 2d 315 (Fla. 2nd DCA 1998)and has determined they are fully applicable to this case. In the interest of judicial economy, the state therefore fully adopts the arguments made in the Thompson in its brief filed in this Court for the answer in this case.

CONCLUSION

Based on the foregoing arguments and authorities, the state requests that this Court affirm the holding of the Third District Court of Appeal affirming the respondent's judgment of conviction and sentence.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing answer brief of appellee was provided by U.S. Mail to David M. Tarlow, Esq., Spencer and Klein, P.A. 801 Brickell Avenue, Suite 1901, Miami, Florida 33131, attorneys for the petitioner, 1455 N.W. this 12th day of November 1999.

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