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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

FSC CASE NO. SC19-1947
DCA CASE NO. 5D18-942

JOSE MAISONET-MALDONADO,

Respondent.
_____/

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ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Double jeopardy is based on notions of fundamental equities. Among other counts, Maisonet-Maldonado was convicted of two Counts of fleeing or eluding with serious injury or death ("aggravated fleeing or eluding") and two Counts of vehicular homicide. On Counts 2 and 5, he was convicted of vehicular homicide and of aggravated fleeing or eluding naming Amanda Taylor as the victim of both offenses. On Counts 3 and 6, he was convicted of vehicular homicide and aggravated fleeing or eluding for the death of Francesca Jeffrey. Maisonet-Maldonado's convictions for fleeing and eluding were enhanced to first degree felonies because the statute provides for enhancement when the defendant "causes the death of or serious bodily injury to another." § 316.1935(3)(b), Fla. Stat. (2010). The enhancement of Maisonet-Maldonado's charges for fleeing and eluding was improperly cumulative and fundamentally unfair. Dual convictions as to each victim based on a single homicide violate the constitutional prohibition against double jeopardy because they unfairly prosecute the defendant twice for the same death cause by the same act.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL WAS CORRECT IN APPLYING THE PRINCIPLES OF DOUBLE JEOPARDY EMBODIED IN THE "SINGLE HOMICIDE RULE" TO CONVICTIONS OF VEHICULAR MANSLAUGHTER AND FLEEING AND ELUDING CAUSING DEATH IN ORDER TO ELIMINATE THE FUNDAMENTAL UNFAIRNESS AND THE INEQUITY THAT INHERES IN MULTIPLE PROSECUTIONS FOR A SINGLE DEATH.

A double jeopardy claim based upon undisputed facts presents a pure question of law and is reviewed de novo. Pizzo v. State, 945 So. 2d 1203, 1206 (Fla. 2006). The double jeopardy clause of the Fifth Amendment provides "[n]o person shall ... be subject for the same offense to be twice put in jeopardy of life or limb." Amend. V, U.S. Const. Similarly, the Constitution of the State of Florida specifies "[n]o person shall ... be twice put in jeopardy for the same offense." Art. I, § 9, Fla. Const.

"In principle, double jeopardy extends protection to the accused from the 'vast power of the sovereign,' by restraining the power of 'courts and prosecutors.' We are mindful that '[i]t is not a second jeopardy for the same act, but a second jeopardy for the same offense' that is explicitly prohibited by our Constitution. 'To be put in jeopardy' does not remotely mean 'to be punished,' so by its terms this provision prohibits, not multiple punishments, but only multiple prosecutions ... the Due Process Clause keeps punishment within the bounds established by the

legislature ... Multiple punishment is ... restricted only by the Double Jeopardy Clause's requirement that there be no successive criminal prosecution, and by the Due Process Clause's requirement that the cumulative punishments be in accord with the law of the land, i.e., authorized by the legislature. Nevertheless, under binding precedent, the prohibition on double jeopardy proscribes not only a second trial for the same offense, but also unendorsed 'multiple punishments for the same offense.'" Velazco v. State, 45 Fla. L. Weekly D394 (Fla. 3d DCA Feb. 19, 2020) (citations omitted).

Thus, "[i]n the context of multiple punishments, the purpose of double jeopardy is simply to 'ensure that the total punishment does not exceed that authorized by the legislature.' "The Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." "The legislature remains free under the Double Jeopardy Clause to define crimes and fix punishments; but once the legislature has acted courts may not impose more than one punishment for the same offense." Consequently, "the question of whether punishments imposed by a court after a defendant's conviction upon criminal charges are unconstitutionally multiple cannot be resolved without determining what punishments the Legislative Branch has authorized." Velazco v. State, 45 Fla. L. Weekly D394 (Fla. 3d DCA Feb. 19, 2020) (citations omitted).

There is no constitutional prohibition against narrowly interpreting double jeopardy exceptions precisely because there is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal episode, as long as the Legislature intends such punishments. Valdes v. State, 3 So. 3d 1067, 1076 (Fla. 2009)

Courts are obligated to apply statutory language that is clear and unambiguous according to its plain meaning. Montgomery v. State, 897 So.2d 1282, 1285 (Fla.2005). Because legislative intent is not always clear from the statutory language, the United States Supreme Court has designed a test to resolve ambiguities. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). Under that test, "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 offenses or only one is whether each provision requires proof of an additional fact which the other does not." Id. at 304. The Supreme Court has cautioned that this test is "not a constitutional rule requiring courts to negate clearly expressed legislative intent," Missouri v. Hunter, 459 U.S. 359, 368, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983), but merely a "rule of statutory construction" used to ascertain legislative intent when it has not been clearly manifested. Albernaz v. U.S., 450 U.S. 333 (1981)

The single homicide rule was first adopted by the Supreme Court in Houser to preclude dual convictions for DWI manslaughter and vehicular homicide based on a single death. Houser v. State,474 So.2d 1193 (Fla. 1985)

The rule, which is based on the premise "that the legislature did not intend to punish a single homicide under two different statutes," applies even in circumstances where the double jeopardy analysis set forth in Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932), may not grant relief. McCullough, 230 So.3d 586 (Fla. 2d DCA 2017) (quoting Houser v. State, 474 So.2d 1193, 1197 (Fla. 1985)).

The Houser court recognized that the two crimes passed muster under Blockburger, but it explained that "Blockburger and its statutory equivalent in section 775.024(1), Fla. Stat. (1983), are only tools of statutory interpretation which cannot contravene the contrary intent of the legislature." Houser, 474 So.2d at 1196. Because "Florida courts have repeatedly recognized that the legislature did not intend to punish a single homicide under two different statutes," these dual convictions were impermissible regardless of whether the offenses satisfy the Blockburger test. Id. at 1197.

This Court went further in State v. Chapman and stated: “We see nothing more in the 1988 amendment than that it was intended to limit the rule of lenity and to override Carawan v. State, 515 So.2d 161 (Fla.1987). State v. Smith, 547

So.2d 613 (Fla.1989). Especially, we do not read the amendment as an overruling of Houser and its holding that a single death cannot support convictions of both DUI manslaughter and vehicular homicide." State v. Chapman, 625 So. 2d 838, 839–40 (Fla. 1993)

The single homicide rule "is based on notions of fundamental fairness which recognize the inequity that inheres in multiple punishments for a singular killing." Gordon v. State, 780 So.2d 17, 25 (Fla. 2001), receded from on other grounds by Valdes v. State, 3 So.3d 1067 (Fla. 2009). "[P]hysical injury and physical injury causing death, merge into one and it is rationally defensible to conclude that the legislature did not intend to impose cumulative punishments." Id. (quoting Carawan v. State, 515 So.2d 161, 173 (Fla. 1987) (Shaw, J., dissenting)). Although there was no death in Gordon, this Court determined that "the logical extension of" the single homicide rule precludes dual convictions based on a single attempted homicide.

In Cooper, the Supreme Court approved of the Fifth District's holding that convictions for DUI manslaughter and driving while license suspended (DWLS) causing death or serious bodily injury violated the single homicide rule. 634 So.2d at 1074-75. The DWLS statute at issue in Cooper contained language which is congruent to the fleeing or eluding statute here-the defendant must have caused "death of or serious bodily injury to another." See Cooper v. State, 621 So.2d 729,

732 (Fla. 5th DCA 1993) (quoting § 322.34(3), Fla. Stat. (1991)), approved, 634 So.2d 1074 (Fla. 1994). This court determined that the defendant could be convicted of both DUI manslaughter and DWLS as long as the latter charge was not enhanced for causing death as provided in section 322.34(3), Florida Statutes (1991). Cooper, 634 So.2d at 1075.

In Kelly v State, 987 So.2d 1237 (Fla. 2d DCA 2008), The second DCA found the Kelly defendant's dual convictions for DUI causing serious bodily injury and driving without a valid license causing serious bodily injury were analogous to those in Cooper in that they imposed two penalties for causing serious injury to a single victim by one act of operating a vehicle while under the influence. Id. at 1239. Thus, the dual convictions violated the defendant's double jeopardy rights. Id.

The Second District in McCullough v. State stated “We can discern no meaningful difference between DWLS causing death or serious bodily injury at issue in Cooper and the fleeing and eluding "caus[ing] serious bodily injury or death to another." McCullough v. State, 230 So. 3d 586, 594 (Fla. 2d DCA 2017). In McCullough, the defendant committed one homicide and was sentenced for two homicide offenses, vehicular homicide and fleeing or eluding causing serious bodily injury or death. The Second District held that because McCullough was

punished twice for causing the same death, that pairing of convictions places McCullough in double jeopardy.

Here, Maisonet-Maldonado committed two homicides and was sentenced for four homicide offenses-vehicular homicide and fleeing or attempting to elude a law enforcement officer causing serious injury or death. Maisonet-Maldonado was punished twice for causing the same death and these pairings of convictions places Maisonet-Maldonado in double jeopardy. See McCullough, 230 So.2d at 594; Cooper, 634 So.2d at 1075; Houser, 474 So.2d at 1197;

Cases involving homicide are distinguishable from Valdes v. State, 3 So.3d 1067 (FLA 2009), because the Legislature never intended to allow for multiple homicide convictions arising from one death. See Ivey v. State, 47 So.3d 908, 911 (Fla. 3d DCA 2010) ("Valdes did not overrule the well-settled principle that a single death cannot give rise to dual homicide convictions."); see also Jones v. State, 502 So.2d 1375 (Fla. 4th DCA 1987) ("There is no need in this case to engage in an extensive discussion of double jeopardy and the applicability of the test in Blockburger ... because in Florida the legislature did not intend to punish the one death by multiple convictions under different statutes."). Thus, Maisonet-Maldonado's enhanced convictions for a single death violate the constitutional prohibition against double jeopardy.

Petitioner cites the doctrine of *inclusion unius est exclusion alterius*,

> "when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded." Jones v. Fla. Parole Com'n, 48 So. 3d 704 (Fla. 2010) (internal quotation marks omitted).
> As a result, this Court has recognized that subsection (4)(b) "list[s] the only three instances where multiple punishments shall not be imposed." State v. Smith, 547 So. 2d 613, 616 (Fla. 1989) (emphasis added)."

(IB 16).

The text of section 775.021(4) is not the beginning and end of the court's double jeopardy analysis. See Brown v. Ohio, 432 U.S. 161 (1977) ("The legislature remains free under the Double Jeopardy Clause to define crimes and fix punishments; but once the legislature has acted courts may not impose more than one punishment for the same offense.")

The divergent judicial interpretations given section 775.021(4)(b)(2) by the courts reflect an innate ambiguity in the statutory language. The Third District Court of Appeals released Velazco v. State on February 19, 2020 and reiterated the ambiguity in the statutory language. Velazco v. State, 45 Fla. L. Weekly D394 (Fla. 3d DCA Feb. 19, 2020).

The Third District Court of Appeals certified direct conflict between their decision in Velazco and the Fourth District Court of Appeal's case Anguille v. State, 243 So.3d 410 (Fla. 4th DCA 2018). This Court accepted jurisdiction. See Florida Supreme Court Case No. SC20-506. This Court has stayed the proceedings

in SC20-506 pending disposition of State v. Marsh, Case No. SC18-1108, which relies on Kelly v. State, 987 So.2d 1237 (Fla. 2d DCA 2008).

In this case, we are dealing with constitutional considerations of double jeopardy which address fundamental fairness. The statutory language set forth in section 775.021(1) states the statute shall be construed most favorably to the accused. The statue implies that courts must be a bulwark against legislative, judicial and prosecutorial (executive) constitutional mistakes such as double jeopardy violations. Considering double jeopardy principles is not "allow[ing] the principle of lenity as set forth in subsection (1) to determine legislative intent." All statutes and legislative intent must be examined through the prism of fundamental rights as expressly set forth in both the U.S. Constitution and the Florida Constitution. The Legislature attempted to make clear through section 775.021 that defendants can be punished for every single crime committed during a single episode. The instant case revolves around the constitutional right to be free from being prosecuted twice for a single death. That constitutional right was properly upheld by the Fifth District Court of Appeals and this Court should affirm.

CONCLUSION

Based on the arguments and authorities presented herein, the Respondent respectfully requests this Honorable Court affirm the Fifth District Court of Appeals' ruling.

Respectfully submitted,

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtaccess.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118, at mcrimappdab@myfloridalegal.com; and a true and correct copy thereof delivered by mail to Respondent on this 20th day of April, 2020.

/s/ *Andrew Mich*
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