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SC19-1947

In the Supreme Court of Florida

STATE OF FLORIDA,
Petitioner,

v.

JOSE MAISONET-MALDONADO,
Respondent.

On Petition for Discretionary Review from the
Fifth District Court of Appeal
DCA No. 5D18-492

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

I. THE COURT SHOULD FORMALLY RECEDE FROM THE SINGLE-HOMICIDE RULE.

With their differing elements, vehicular homicide and aggravated fleeing or eluding qualify as "separate criminal offenses" under section 775.021(4), Fla. Stat. As a result, the Legislature has mandated that they be separately punished. The single-homicide rule, running counter as it does to that clear legislative intent, has no place in modern double jeopardy jurisprudence.

Respondent does not dispute that it was within the power of the Legislature to separately punish vehicular homicide and aggravated fleeing or eluding. He admits, for instance, that "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." Ans. Br. 5. He similarly does not dispute that, under the plain terms of section 775.021(4), vehicular homicide and aggravated fleeing or eluding are "separate criminal offenses." § 775.021(4)(a), Fla. Stat.[1] Finally, he does not dispute that the cases adopting the single-homicide rule stray from this basic double jeopardy framework.

[1] Respondent points to what he sees as "an innate ambiguity in the statutory language" of section 775.21(4)(b)2. Ans. Br. 10. Yet he does not contend that vehicular homicide and aggravated fleeing or eluding are "[o]ffenses which are degrees of the same offense as provided by statute," § 775.21(4)(b)2., Fla. Stat., such that they might constitute the same offense.

Respondent nevertheless invites the Court to preserve the single-homicide rule as a matter of "fundamental fairness," Ans. Br. 7, 11; *see also id.* at 3–4 (citing the "Due Process Clause"), thereby invoking principles of substantive due process.[2] The Court should reject that theory.

The U.S. Supreme Court has repeatedly warned against substituting due process for more specific provisions of the Constitution. Those more specific provisions of the Bill of Rights were how "the[] Framers sought to restrict the exercise of arbitrary authority by the Government in particular situations." *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality opinion). By expanding those constitutional guarantees under the "open-ended rubric of the Due Process Clause," a court "invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." *Medina v. California*, 505 U.S. 437, 443 (1992) (emphasis added).

The clause therefore has only "limited operation" "[b]eyond the specific guarantees enumerated in the Bill of Rights." *Id.* (quoting *Dowling v. United States*, 493 U.S. 342, 352 (1990)). Indeed, "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must

[2] *See, e.g.*, *Bunkley v. State*, 882 So. 2d 890, 927 (Fla. 2004) (Pariente, J., dissenting) (arguing that "[f]undamental fairness" is a component of the "constitutional guarantee of substantive due process of law").

be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997).

That is equally true for the Double Jeopardy Clause. *See Sattazahn v. Pennsylvania*, 537 U.S. 101 (2003). In *Sattazahn*, a judge sentenced the defendant to death on retrial after the reversal of his life sentence. In the Supreme Court, he challenged the death sentence, arguing that it violated both his Double Jeopardy and Due Process Clause rights in the finality of the life sentence that the jury imposed at his first trial. *Id.* at 115. The Supreme Court rejected that argument, declining the defendant's "invitation to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause." *Id.* at 116.

The same analysis applies here. Accordingly, the doctrine of substantive due process does not apply, and certainly does not provide a basis for adhering to the single-homicide rule.

CONCLUSION

This Court should quash the decision below, recede from its cases judicially creating the single-homicide rule, and remand for further proceedings.

Dated: May 19, 2020

Respectfully submitted,

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CERTIFICATE OF FONT

I certify that this brief was prepared in 14-point Times New Roman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served through the e-Filing Portal on this **nineteenth** day of May 2020, to the following:

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