

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-506

ROBERT VELAZCO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL
LOWER TRIBUNAL NO. 3D18-0165

ASHLEY MOODY
ATTORNEY GENERAL

MICHAEL W. MERVINE
Miami Bureau Chief—Criminal Appeals
Florida Bar No. 0692131

ASAD ALI
Assistant Attorney General
Florida Bar No. 111887
Office of Attorney General
One SE Third Avenue, Suite 900
Miami, FL 33131
(305) 377-5441
Asad.Ali@myfloridalegal.com
CrimAppMia@myfloridalegal.com
Counsel for the State of Florida

RECEIVED, 05/26/2021 10:02:27 AM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF CITATIONS.....iii

STATEMENT OF THE ISSUES..... 1

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF ARGUMENT.....4

ARGUMENT.....5

I. THIS COURT HAS DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW CERTIFIED EXPRESS AND DIRECT CONFLICT WITH THE FOURTH DISTRICT COURT OF APPEAL’S DECISION IN *ANGUILLE V. STATE*, 243 So. 3d 410 (Fla. 4th DCA 2018).....5

CONCLUSION..... 6

CERTIFICATE OF SERVICE.....7

CERTIFICATE OF COMPLIANCE.....7

TABLE OF CITATIONS

Cases

Anguille v. State,
243 So. 3d 410 (Fla. 4th DCA 2018) 4, 5

Velazco v. State,
305 So. 3d 72 (Fla. 3d DCA 2020) 2, 4, 5, 6

Statutes

§ 775.021(4), Fla. Stat. (2019) 2, 3

Constitution

Art. V, §3(b)(4), Fla. Const.

Rules

Fla. R. App. P. 9.030(a)(2)(A)(vi) 5

STATEMENT OF THE ISSUES

Whether dual convictions for driving under the influence (DUI) causing serious bodily injury and DUI causing property damage violate double jeopardy principles?

STATEMENT OF THE CASE AND FACTS

On June 4, 2014, a pickup truck collided with a scooter operated by Alexander Concepcion Rodas. (App. 2).¹ The driver of the truck fled the scene. *Id.* Mr. Rodas sustained transformative personal injuries and his scooter was severely damaged. *Id.* Leticia Suri informed authorities that Petitioner was the driver of the pickup truck. (App 3). Suri contended that she was seated in the front passenger seat of the truck at the time of the impact. *Id.*

Law enforcement officers traveled to Petitioner's home. (App 3). A pickup truck, matching the description of the vehicle involved in the earlier crash, was parked in the driveway. *Id.* There was damage on the exterior of the truck, along with shattered glass on the passenger side. *Id.* Petitioner exhibited signs of alcohol impairment, including slurred speech and bloodshot eyes. After having been informed that a traffic investigation was underway, Petitioner uttered a profanity-laced, tacit admission. *Id.* Ensuing

¹ Petitioner's appendix containing the Third District's decision in *Velazco v. State*, 305 So. 3d 72 (Fla. 3d DCA 2020), will be referenced as "A." followed by the applicable page number.

blood testing revealed an alcohol concentration exceeding the legal limit, and a urinalysis indicated the presence of cocaine. *Id.*

The State charged Petitioner with both DUI serious bodily injury and DUI property damage. The jury found him guilty as charged. (App. 3).

On appeal, Petitioner argued, *inter alia*, that “his dual convictions for DUI serious bodily injury and DUI property damage, arising out of the same criminal incident, are violative of double jeopardy.” (A. 4).³ The Third District concluded that there was no double jeopardy violation.

The district court first employed the *Blockburger*⁴ test, codified in section 775.021(4), Florida Statutes (2014). (A. 9). The offenses were separate offenses under section 775.021(4), because each contained a different element, *i.e.*, DUI serious bodily injury required proof that the accused caused serious bodily injury to another, while DUI property damage required proof that the accused caused damage to the property of another. (A. 10).

The Third District then determined that convictions and sentences for the two offenses were not precluded by the exceptions to the same element

³ Petitioner also argued that the trial court “reversibly erred in admitting the perpetuated testimony of a nontestifying witness.” (A. 4). The Third District concluded that there was no error in admitting the testimony. (A.18-19).

⁴ *Blockburger v. United States*, 284 U.S. 299 (1932).

test found in section 775.021(4)(b). These exceptions are: (1) offenses which require identical elements of proof; (2) offenses which are degrees of the same offense as provided by statute; and (3) offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

The first exception did not apply because DUI serious bodily injury and DUI property damage do not require identical elements of proof. The third exception was inapplicable because “property damage cannot be subsumed within serious bodily injury.” (A. 12, 18). Finally, the Court concluded that the two offenses were not degree-variants:

[O]ur supreme court and sister tribunals have consistently and unequivocally determined that multiple convictions imposed in conjunction with a single DUI episode, resulting in separate death or injury, do not run afoul of double jeopardy principles. . . . Implicit, at a minimum, in each of these decisions is a rejection of the notion that separate, non-imbricating harms emanating from a single act constitute degree-variants.

The sole factor differentiating the instant case . . . is that, here, in addition to suffering personal injuries, the victim owned the damaged scooter. The mere happenstance that property ownership was vested in the same critically wounded individual cannot be logically construed to insulate the accused from the prosecution of a separate, legislatively-proscribed crime. Accordingly, we conclude that, as the resultant injuries are entirely distinguishable and do not overlap.

(A. 12-14).

The district court certified conflict with the Fourth District Court of Appeal's decision in *Anguille v. State*, 243 So. 3d 410 (Fla. 4th DCA 2018). In *Anguille*, the Fourth District determined that convictions for "the offenses of DUI with serious bodily injury and DUI with property damage as they relate to one victim are degrees of the same offense as provided by statute," and thus violate double jeopardy. *Id.* at 415.

SUMMARY OF ARGUMENT

This Court has discretionary jurisdiction in this cause since the decision below certified express and direct conflict with the Fourth District Court of Appeal's decision in *Anguille v. State*, 243 So. 3d 410 (Fla. 4th DCA 2018). The exercise of this Court's discretionary jurisdiction is necessary to resolve the existing conflict.

ARGUMENT

- I. **THIS COURT HAS DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW CERTIFIED EXPRESS AND DIRECT CONFLICT WITH THE FOURTH DISTRICT COURT OF APPEAL'S DECISION IN *ANGUILLE v. STATE*, 243 So. 3d 410 (Fla. 4th DCA 2018).**

Based on the Third District's certification of direct conflict with a decision of the Fourth District Court of Appeal, this Court has discretionary jurisdiction to review this case, should it so choose. See Article V, Section 3(b)(4), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(vi), providing that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal, which is certified to be in direct conflict with a decision of another district court of appeal.

The exercise of this Court's discretionary jurisdiction is necessary to resolve conflict with the decision of the Fourth District Court of Appeal cited in the Third District's opinion, concerning double jeopardy principles as they relate to dual convictions for DUI with serious bodily injury and DUI with property damage.

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court accept discretionary jurisdiction of this cause to resolve conflict between the Third District's opinion and the decision of the Fourth District Court of Appeal concerning double jeopardy principles as they relate to dual convictions for DUI with serious bodily injury and DUI with property damage.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Asad Ali
ASAD ALI
Florida Bar No. 111887
Assistant Attorney General
Office of Attorney General
SunTrust International Center
One SE Third Avenue, Suite 900
Miami, FL 33131
(305) 377-5441
CrimAppMia@myfloridalegal.com
Asad.Ali@myfloridalegal.com

CERTIFICATE OF SERVICE

I certify that a copy of this Jurisdictional Brief has been electronically furnished to counsel for Petitioner, MICHAEL MIRER, 100 N. Biscayne Blvd., Suite 1300, Miami, FL 33132, at Michael@MिरerLaw.com, on May 26, 2021.

/s/ Asad Ali
ASAD ALI
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I certify that this Jurisdictional Brief complies with the font and word limit requirements set forth in Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(A). This Jurisdictional Brief was prepared in Arial 14-point font and contains less than 2,500 words.

/s/ Asad Ali
ASAD ALI
Assistant Attorney General