IN THE SUPREME COURT OF FLORIDA

DAVID WILLIAM TRAPPMAN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

_____/

FSC NO. SC21-1479
CASE NO. 1D19-1883
LT NO. 2017-CF- 2011

ON DISCRETIONARY REVIEW OF THE
FIRST DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

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SECOND JUDICIAL CIRCUIT

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I. PETITIONER'S CONVICTIONS FOR AGGRAVATED BATTERY ON A LAW ENFORCEMENT OFFICER AND BATTERY ON A LAW ENFORCEMENT OFFICER VIOLATE THE PROHIBITION AGAINST DOUBLE JEOPARDY.

Respondent correctly states that double jeopardy principles do not prohibit convictions and sentences for distinct criminal offenses arising out the same criminal episode or transaction. Indeed, Section 775.021(4)(b), Florida Statutes, which incorporates the law on double jeopardy principles in the State of Florida, clearly and explicitly states that

> 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 allow the principle of lenity as set forth in Subsection (1)[1] to determine legislative intent.

It is obvious that Respondent loves the first part of section 775.021(4), as quoted above, but dislikes and therefore ignores that

[1] Subsection (1) of Section 775.021, Florida Statutes, states that the statutes are to be strictly construed and when the language is susceptible to different constructions, it shall be construed in the light most favorable to the accused.

the Legislature created three exceptions to the double jeopardy provision that a person can be convicted of each criminal offense committed in the course of a criminal episode or transaction. Petitioner writes to make it abundantly clear that Section 775.021(4) provides that there are three exceptions to the general rule that a person can be convicted and sentenced for each criminal offense committed during a criminal episode or transaction. 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.**

(e.s.) Battery on a law enforcement officer is a degree variant of Aggravated Battery on a law enforcement officer as provided by statute and it is a lesser offense the statutory of elements of which are subsumed by the greater offense of Aggravated Battery on a law enforcement officer. In both of the offenses the state was required to prove that a battery occurred on a law enforcement officer while he/she was exercising his/her legal duties, only that Aggravated Battery was a degree higher offense if the state proved that the

officer suffered great bodily harm, permanent disfigurement or permanent disability. But all of the elements of Battery on a law enforcement were subsumed by the greater offense of Aggravated Battery on a law enforcement officer.

Respondent cites to **State v. Drawdy**, 132 So.3d 1209 (Fla. 2014), for the proposition that no double jeopardy exists in this cause. Respondent misinterprets **Drawy,** and fails to see that **Drawdy** dealt with sexual offenses and that the Legislature's intent as it relates to sexual offenses is to require convictions for each criminal act that a defendant commits during a single episode of transaction:

> Drawdy was convicted of sexual battery for penetrating the victim's vagina with his penis. He was convicted or lewd and lascivious molestation for intentionally touching the victim's breasts in a lewd and lascivious manner during the vaginal penetration. These offenses are distinct criminal acts of a separate character and type.
>
> * * *
>
> Touching the victim's breasts was not incidental to the vaginal penetration – as grabbing the victim's buttocks to facilitate the sex act, for example, might be. . . . The lewd act was not an integral part or necessary part of the sex act, but a separate act and distinct act by itself . . . .

Id. at 1214. The difference between **Drawdy** and the instant case is that here the Battery on a law enforcement is a degree lesser of

Aggravated Battery on a law enforcement and all of the elements of the Battery on a law enforcement are subsumed in the greater offense, and Battery of a Law Enforcement is a degree lesser of the same offense as provided by the state. That was not present in **Drawdy** and in fact this Court found that the offenses were different on character and type. Because Battery on a law enforcement is a degree variant of Aggravated Battery on law enforcement officer and because all of the elements of Battery on a law enforcement officer are subsumed in the greater offense, the exceptions provided by the Legislature apply and prohibit convictions for both offenses.

Likewise, the state relies on **Mercer v. State**, 219 So.3d 936 (Fla. 1st DCA 2017), where the District Court stated that there was no double jeopardy prohibition to convict Mercer of aggravated battery and manslaughter. The First District found that Mercer was guilty as a principal of an act that his co-defendant individually and independently committed during their attack of the victim, and that therefore, as a principal, he could be convicted and sentenced for the commission of that criminal act. Under those circumstances, his criminal act and that of his co-defendant were distinct and separate acts, and therefore, double jeopardy principles

were not implicated. But again, Petitioner asserts and points out that the situation in **Mercer** does not apply to this case because the offenses that Mercer committed did not involve offenses which fell within the exceptions created by the Legislature. Here, and in this case, Appellant's offenses of Battery of a law enforcement and Aggravated Battery of a law enforcement involved offenses where the elements of the Battery of a law enforcement are clearly subsumed in the greater offense of Aggravated Battery of the same law enforcement, and therefore, double jeopardy principles prohibits separate and convictions and sentences. Moreover, the offenses are degree variant of each other with Aggravated Battery of a law enforcement being the greater offense in degree. This Court should find that double jeopardy bars the conviction for Battery of a Law Enforcement.

CONCLUSION

Based on the foregoing arguments and cited authority, Petitioner requests that this Court find that it would be a violation of double jeopardy rights to support the conviction for Battery on a law enforcement because the offense was a degree variant of Aggravated Battery on a law enforcement, and because the elements of Battery on a Law Enforcement are subsumed within the elements of Aggravated Battery on a Law Enforcement. Petitioner respectfully requests that this Court set aside the conviction and sentence for the minor offense, and remand for resentencing because the record is not clear that the trial court would have imposed the same sentence on the Aggravated Battery on a Law Enforcement had the trial court known that the conviction for Battery with a Law Enforcement could not be included within the sentencing guidelines in this cause.

CERTIFICATES

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the applicable font and word-count-limit requirements. I hereby certify that this brief was served, via the Florida Courts E-Filing Portal, on David Welch, Assistant Attorney General, at crimapptlh@myfloridalegal.com, on June 6, 2022.

Respectfully submitted,

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