IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JOHANN S. WARREN,

Respondent.

CASE NO. SC00-695

PETITIONER'S INITIAL BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 325791

KARLA D. ELLIS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 122017

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 Ext 4604

COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, who was the Appellant in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, or the State. Respondent, Johann S. Warren, the Appellee in the First District Court of Appeal and the defendant in the trial court will be referenced in this brief as Respondent or by proper name.

The record on appeal consists of one volume, which will be referenced according to the respective number designated in the Index to the Record on Appeal, followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The Respondent was charged by information with one count of felony battery pursuant to § 784.03(2), Fla. Stat. (1997) due to his two prior convictions for battery and aggravated battery. (I 3). The Respondent filed a motion to dismiss the charge, and the State filed a response to the motion to dismiss (I 1-2; 3-5). A

hearing was held on the motion on March 29, 1999. (I 13-21). The trial court found that § 784.03(2), Fla. Stat. (1997) required two prior batteries, not a combination of a battery and a felony aggravated battery. (I 6). Thus, the trial court dismissed the information with leave for the Office of the State Attorney to refile the charge as a misdemeanor in county court. (I 6). The Office of the State Attorney timely filed a notice of appeal. (I 7). The First District Court of Appeal affirmed the trial court's dismissal of the information against the respondent and certified a question of great public importance: CAN A CONVICTION FOR AGGRAVATED BATTERY SERVE AS A PRIOR CONVICTION FOR BATTERY FOR PURPOSES OF SECTION 784.03(2), FLORIDA STATUTES? The State filed a timely notice to invoke discretionary jurisdiction, and this Court accepted jurisdiction.

SUMMARY OF ARGUMENT

ISSUE I.

The trial court committed reversible error by granting the Respondent's motion to dismiss by dismissing the information that charged the Respondent with felony battery. The trial court failed to apply the plain language of § 784.03(2), Fla. Stat. (1997) in finding that the respondent's prior felony conviction of aggravated battery did not qualify as a prior conviction of battery.

When the meaning of a statute is at all doubtful, the law favors a rational, sensible construction. Moreover, a statute must not be construed so as to defeat the obvious intention of the legislature and bring about an unreasonable or absurd result. It would be ludicrous to believe that the legislature would have intended that a person who had been convicted of a prior misdemeanor battery and a prior aggravated battery - a felony - be punished less severely than one who had committed two prior misdemeanor batteries. Accordingly, the State asks this honorable Court to follow the plain language of the statute and intent of the legislature by disapproving the district court's decision.

ARGUMENT

ISSUE I

DID THE TRIAL COURT ERR IN GRANTING THE MOTION TO DISMISS WHEN THE RESPONDENT WAS CHARGED WITH FELONY BATTERY DUE TO HIS TWO PRIOR CONVICTIONS OF BATTERY AND AGGRAVATED BATTERY PURSUANT TO § 784.03(2), FLA. STAT. (1997)?

Introduction

The respondent was charged as follows:

> WILLIAM N. MEGGS, State Attorney for the Second Judicial Circuit of the State of Florida, charges that in Leon County, Florida, the above-named defendant(s):
>
> COUNT I: On August 9, 1997, did unlawfully actually and intentionally touch or strike another person, Jeff Ness, against the will of the other; or did intentionally cause bodily harm to that person, and the defendant has two prior convictions for battery including R95-379, C90-13455, contrary to Section 784.03(2), Florida Statutes.

See Appendix B.

The trial court's ruling

The trial court granted the Respondent's motion to dismiss and reasoned that a prior conviction or aggravated battery did not qualify as a battery under § 784.03(2), Fla. Stat. (1997). (I 6).

Standard of Review

An issue involving statutory interpretation and construction is an issue of law. Accordingly, the appellate court must apply the de novo standard of review. Sarkis v. Pafford Oil Co., Inc., 697 So. 2d 524 (Fla. 1st DCA 1997).

Preservation

Appellant properly preserved this issue for appellate review. (I 13-21).

Merits

The Respondent was charged with felony battery pursuant to § 784.03(2), Fla. Stat. (1997), based upon his prior felony conviction for aggravated battery and a "misdemeanor" battery. The Respondent argued in his motion to dismiss that only prior "misdemeanor" batteries may serve as predicate offenses for purposes of reclassification. The trial court agreed. The trial court did not properly apply the plain language of the statute, which provides:

> A person who has two prior convictions **for battery** who commits a third or subsequent battery commits a felony of the third degree, punishable as provided in s.775.082, s.775.083, or s.775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

§ 784.03(2), Fla. Stat. (1997)(emphasis added).

The State asserts that the statute is clear and conveys a definite directive that a prior conviction for "battery" may serve as a predicate offense. "Battery" has no qualifying words preceding it; thus, any and all batteries necessarily fall under the title of "battery." "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Holly v. Auld, 450 So. 2d 217, 219

(Fla. 1984). Furthermore, courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)(citing American Bankers Life Assurance Company of Florida v. Williams, 212 So. 2d 777, 778 (Fla. 1st DCA 1968))(emphasis added).

The trial court improperly construed the plain word "battery" as possessing the qualifier "misdemeanor." Such construction would modify and limit not only the express term "battery" but the reasonable and obvious implication of the statute - to punish people for repeated acts of battery. Accordingly, the State urges this Court to view the statute as unambiguous, and to adopt the plain and obvious meaning that "battery" applies to all batteries regardless of their classification.

Nevertheless, should the Court view the statute as ambiguous, under a statutory construction analysis, the controlling factor is legislative intent. Winemiller v. State, 568 So. 2d 483, 484 (Fla. 4th DCA 1990). This honorable Court has stated that

> [i]t is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute. Furthermore, construction of a statute which would lead to an absurd or unreasonable result or would render a statute purposeless should be avoided. To determine legislative intent, we must consider the act as a whole, the evil to be corrected, the language of the act, including its title, the history of its

> enactment, and the state of the law already in existence bearing on the subject.

State v. Webb, 398 So. 2d 820, 824 (Fla. 1981). See also Wakulla County v. Davis, 395 So. 2d 540, 543 (Fla. 1981)(recognizing that there is an abiding "rule of statutory construction which provides that when the meaning of a statute is at all doubtful, the law favors a rational, sensible construction"); Speights v. State, 414 So. 2d 574, 578 (Fla. 1st DCA 1982)("Courts are to avoid an interpretation of a statute that would produce an absurd or unreasonable result"); Martin v. State, 367 So. 2d 1119, 1120 (Fla. 1st DCA 1979)("although a penal statute must be strictly construed, it must not be construed so strictly as to emasculate the statute and defeat the obvious intention of the legislature and bring about an unreasonable or absurd result").

Furthermore, just because the word "any" is not used before the word "battery" in § 784.03(2), Fla. Stat. (1997) does not mean that the word "battery" only refers to prior misdemeanor batteries. "Any" is a surplus word having no effect were it to be added to the statutory language "two prior convictions **for battery**." A person convicted for "any battery" is a person convicted for "battery."

In support of this "any" analysis, the Respondent cited cases that make a comparison to the felony petit theft statute. (I 3). For example, the Respondent addressed the pre-amendment

theft statute[1] as articulated in Jackson v. State, 515 So. 2d 394 (Fla. 1st DCA 1987), aff'd, 526 So. 2d 58 (Fla. 1988). In Jackson, this Court held that because the statute specifically identified prior convictions for petit theft, prior convictions for grand theft could not be used to reclassify a petit theft. Id. at 395. In contrast, the felony battery statute does not specifically provide that prior convictions for only misdemeanor battery can be used to reclassify the offense. Accordingly, unlike the pre-amendment theft statute, prior convictions for felony battery can serve to reclassify a misdemeanor battery.

The amended theft statute, section 812.014(3)(b), Fla. Stat. (1997), states as follows:

> A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083.

By replacing "petit theft" with "any theft," the legislature's obvious intent was to broaden the permissible predicate theft to include both petit and grand theft. Nevertheless, as stated

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[1]Section 812.014 (2)(c), Fla. Stat. (1985) provides:

> Theft of any property not specified in paragraph (a) or paragraph (b) is petit theft and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction for petit theft, the offender shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction for petit theft, the offender shall be guilty of a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

previously, the word “any” is not necessary in the battery statute because “battery” encompasses all batteries regardless of their classification. Moreover, while the legislature has not amended the felony battery statute, to apply the same legislative intent as the legislature did in the amended theft statute to the battery statute would lead to the conclusion that the legislature also intended the permissible predicate battery to include both misdemeanor and felony battery.

This conclusion is further supported by examining another reclassification statute - the felony DUI statute. Section 316.193(2)(b), Fla. Stat. (1997) provides:

> Any person who is convicted of **a fourth or subsequent violation of this section** is guilty of a felony of the third degree, punishable as provided in s.775.082, s.775.083, s.775.084. (emphasis added).

The statute specifies that a violation of “this section” may serve as a predicate offense for purposes of reclassification. In § 316.193, the statute includes misdemeanor DUI and felony DUI. For example, section (3)(c)1 states that a person who commits DUI, to include “damage to the property or person of another commits a misdemeanor of the first degree”, while section (3)(b)2 provides that one who commits DUI resulting in “serious bodily injury to another . . . commits a felony of the third degree.”

Accordingly, a prior DUI conviction, whether misdemeanor or felony, constitutes a violation of “this section” and may thus serve as a predicate offense. See State v. Woodruff, 676 So. 2d

975, 977 (Fla. 1997)(for a charge of felony DUI under section 316.193(2)(b), it is clear that the existence of three or more prior DUI convictions is an element of the crime); State v. Rodriguez, 575 So. 2d 1262, 1265 (Fla. 1991)(noting that it is well settled that the existence of three or more prior DUI convictions is an essential element of felony DUI; like the felony petit larceny statute, the existence of three or more prior DUI convictions elevates the degree or level of the crime); State v. Pelicane, 24 Fla. L. Weekly D940 (Fla. 3rd DCA April 14, 1999)(requiring the proof of three prior DUI convictions by the State once a defendant charged with felony DUI is convicted of driving under the influence). All these cases hold that prior "DUI convictions" are sufficient; none state that prior *misdemeanor* DUI convictions are necessary.

In sum, looking at the felony theft statute and the felony DUI statute - which both provide for reclassification - the legislative intent appears to be one of punishing repetitive behavior, irrespective of the prior convictions' classification. By analogy, this supports a conclusion that the intent behind the *felony battery statute* – which also provides for reclassification - is to punish repetitive acts of battery, regardless of the prior convictions' classification.

Finally, the Respondent argued in his motion to dismiss that the Court must adopt the interpretation most favorable to the him. (I 1). While this "rule of lenity" is a valid rule of construction, it is to be used as a last resort and is only

applicable after an impasse is reached on the meaning of the statute. As noted previously, when the meaning of a statute is at all doubtful, the law favors a rational, sensible construction. Speights v. State, 414 So. 2d 574, 578 (Fla. 1st DCA 1982). Furthermore, a statute must not be construed so as to defeat the obvious intention of the legislature and bring about an unreasonable or absurd result. Martin v. State, 367 So. 2d 1119, 1120 (Fla. 1st DCA 1979).

A rational, sensible construction is to view the felony battery statute as allowing any and all prior battery convictions to serve as predicate offenses for purposes of reclassification. Moreover, the Court should not construe the statute so as to defeat the obvious intention of the legislature - to punish people for repeated acts of battery. It is absurd to believe that the legislature could not have intended that a person who had committed two prior felonies to be punished less severely than one who had committed two prior misdemeanors. Accordingly, the State asks this honorable Court to disapprove of the First District's decision and to re-instate the original information which charged the Respondent for felony battery.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court to follow the plain language of the statute and intent of the legislature by disapproving the district court's decision.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

_____
KARLA D. ELLIS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 122017

_____
JAMES W. ROGERS
BUREAU CHIEF
FLORIDA BAR NO. 325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 Ext 4604

COUNSEL FOR APPELLANT
[AGO# L00-1-5001]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been furnished by U.S. Mail to Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 25th day of April, 2000.

_____
Karla D. Ellis
Attorney for the State of Florida

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