

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,)	
)	
Petitioner,)	
)	5th DCA Case No. 5D99-1264
vs.)	
)	Supreme Court Case No. SC00-902
DOMINA TRAVIS,)	
)	
Respondent.)	
_____)	

**APPEAL FROM THE DISTRICT COURT
OF APPEAL, FIFTH DISTRICT**

RESPONDENT’S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CITATIONS

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STATEMENT OF THE CASE AND FACTS

Respondent generally accepts the Petitioner’s statement of the case and facts.

SUMMARY OF ARGUMENT

The district court was correct in holding that Travis could not have been in violation of the drug trafficking statute. Travis did not possess 4 grams or more of a schedule II substance or mixture of schedule II substances with an aggregate weight of 4 grams or more and therefore not in violation of the drug trafficking statute.

ARGUMENT

THE DISTRICT COURT WAS CORRECT IN HOLDING THAT TRAVIS COULD NOT HAVE BEEN IN VIOLATION OF THE DRUG TRAFFICKING STATUTE WHERE SHE POSSESSED A MIXTURE CONTAINING FOUR OR MORE GRAMS OF OXYCODONE, A SCHEDULE II SUBSTANCE, AND A NON-CONTROLLED SUBSTANCE.

The Petitioner assigns error to the district court's holding in Travis v. State, 754 So. 2d 59 (Fla. 5th DCA 2000) that Travis could not have been in violation of the drug trafficking statute. The Respondent respectfully disagrees. Although oxycodone is a schedule II substance the district court is correct because the 30 Roxicet tablets contained only fifteen one hundredths (.15) of a gram of oxycodone and therefore Travis could not be convicted of trafficking.

The Respondent contends that Section 893.135(1)(c)(1) requires that four or more grams of one of the enumerated controlled substances or a mixture of the enumerated controlled substances in an aggregate amount of four grams must be present and not merely the aggregate amount of controlled and non controlled substances. For example, possession of a mixture of 2 grams of oxycodone and two grams of one or more of the enumerated controlled substances would violate the trafficking statute but a mixture of 2 grams of oxycodone and 2 grams of a non-controlled substance would not. Respondent suggests any other interpretation of

Section 893.135(1)(c)(1) would result in a situation where two people, each possessing 5 milligrams of a schedule II substance in powder form, could each receive significantly different penalties for possession of the same quantity of the controlled substance. If one person dissolved the 5 milligrams in a soft drink, weighing over 4 grams, to consume he would be subject to trafficking penalties whereas the other person who left the controlled substance in powder form to consume would not be exposed to the same penalties. Respondent suggests such a result was not likely intended by the legislature and not required by the statute. In Hayes v. State, 750 So. 2d 1 (Fla. 1999), the court reaffirmed the principle that where statutory language is susceptible to differing constructions the statute must be construed most favorably to the accused. Respondent urges this court to adopt the interpretation of Section 893.195(1)(c)(1) advanced herein.

CONCLUSION

Based upon the foregoing argument and authority respondent respectfully requests this Honorable Court to affirm the opinion of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Robert Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, and mailed to: Ms. Domina Travis, Jail # 00-007172, Orange County Jail, P.O. Box 4970, Orlando, Florida 32802, on this 4th day of December 2000.

THOMAS J. LUKASHOW
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 pt.

THOMAS J. LUKASHOW
ASSISTANT PUBLIC DEFENDER

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APPENDIX