IN THE SUPREME COURT OF FLORIDA,

LAURIE ADELE SCHUETTE, **CASE NO. SC01-1254**

Petitioner, **DCA Case No. 4D00-1667**

vs.

State of Florida,

Respondent.

****
ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL
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RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida, was the prosecution in the trial court and Appellant in the Fourth District Court of Appeal. Respondent will be referred to herein as "the state". Petitioner, Laurie Schuette, was the defendant in the trial court and Appellee in the Fourth District Court of Appeal. She will be referred to as "Respondent" or Schuette.

STATEMENT OF THE CASE AND FACTS

The facts are not disputed. The Fourth District outlined the facts in the opinion as follows. State v. Schuette, 782 So. 2d 935, 936 (Fla. 4th DCA 2001)

> **The facts of this case are undisputed. Schuette was the passenger in a vehicle driven by Lorraine Vaughn. As they drove past the pedestrian victim along Summit Boulevard in West Palm Beach, the victim shouted obscenities at them. Vaughn then proceeded to make a u-turn and drove back in the victim's direction, stopping in the roadway near the victim. At that point, while still shouting obscenities, the victim sprayed pepper spray into the vehicle, hitting Vaughn in the face. Vaughn then drove a short distance from the victim, but switched places with Schuette due to Vaughn's inability to see with pepper spray in her eyes. Schuette, whose driver's license was suspended, turned the vehicle around and drove in the direction of the victim. Although it was the same direction in which Schuette and Vaughn originally proceeded, Schutette improperly entered the wrong lane of a divided roadway and traveled the wrong way on a one-way road. The victim then entered the roadway and was struck by the vehicle driven by Schuette. After hitting the victim, Schuette drove away from the scene. During the sentencing hearing, the state asked the trial court to order restitution. The court noted that there must be a nexus between the crime and the injuries to order restitution, but found that the fact that Schuette did not have a valid driver's license did not create the victim's injuries. It, therefore, issued an order denying restitution which states,**
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> > **The court ruled the victims were not entitled to restitution under either Count 1 or Count 2, holding that in cases of Leaving the Scene of an**

> Accident Involving Injury or Driving Under Suspended License there is no nexus between the criminal act and the injury suffered.

The Fourth District Court of Appeal reversed the trial court and held as follows.

> Like the Triplett court, we agree with Judge Sharp's dissent and hold that restitution should have been imposed in this case. Schuette's driving without a legal right began the criminal episode during which the accident occurred, and but for her driving with a suspended license, the victim would not have incurred damages. See Glaubius, 688 So.2d at 915. Accordingly, we reverse the trial court's order denying restitution and remand for a new hearing affording the state an opportunity to submit documentary evidence to prove the amount of the victim's damages. See Craft v. State, 769 So.2d 1096, 1097 (Fla. 2d DCA 2000). Because the Triplett court did not recede from its prior opinion, however, we also certify conflict with Cheek.

782 So. 2d at 936 (footnotes omitted).

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal correctly ruled that the trial court judge erred in failing to order restitution. The respondent here, Laurie Schuette, was convicted of driving while licence suspended or revoked. The victim suffered extensive injuries while Schuette was engaged in an activity which she was legally prohibited from performing--driving. It is clear the injuries suffered by the victim were caused directly by Schuette's driving. The criminal episode at bar started when Schuette took control of the vehicle. Schuette was performing an illegal activity at the time she started to drive. Moments after she started driving, the victim was struck with the vehicle Schuette was driving. The victim was severely injured. It is clear that the victim's injuries and damages are directly related to the criminal episode and would not have occurred "but for" Schuette's driving. The Fourth District Court of Appeal correctly held that in such a factual scenario restitution must be imposed.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY HELD THAT BASED ON THE UNDISPUTED FACTS OF THIS CASE THE TRIAL JUDGE SHOULD HAVE IMPOSED RESTITUTION

Petitioner, Laurie Schuette, was convicted of the third degree felony of leaving the scene of an accident involving injury and the second degree misdemeanor of driving while licence suspended or revoked. (R 5-7) The present issue involves only the driving while licence suspended count. The precise question presented in this case is whether a person whose only criminal offense is the offense of driving while licence is suspended, and while illegally driving is involved in a collision involving personal injury, may be assessed restitution for damage caused by the preceding collision. In the present case the Fourth District Court of Appeal held that restitution should have been imposed in such a situation. The Fourth District Court of Appeal certified conflict with the Fifth District's decision in Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997).

The undisputed facts[1] clearly indicate that Schuette was driving illegally without a valid licence when she struck the victim with the vehicle she was driving causing severe injuries[2]. Restitution was requested but not ordered by the trial judge. The State asserts that the Fourth District Court of Appeal correctly held that in the present case the trial judge erred in failing to order restitution.[3] It is clear that in the case at bar petitioner's "criminal episode began when [s]he started driving without a licence." Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997)(Judge Sharp dissenting); Littlepage v. State, 7 Fla. L. Weekly Supp 180 (Fla. 15th Cir. 1999). Had appellee followed the law she would not have been driving and would not have struck the victim and no damages or injuries would have resulted.

Section 775.089(1)(a) Fla. Stat.(1999) provides in relevant

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[1]**Petitioner does not dispute the factual rendition contained in the opinion of the Fourth District Court of Appeal. It must be stressed that the Fourth District Court of Appeal reviewed the entire transcript of the restitution hearing held in the trial court. The "alternate theories" discussed in the initial brief were never presented to the trial judge during the restitution hearing.**

[2]**Testimony at the sentencing hearing revealed that medical bills exceeded $80,000 and lost wages were $13,000. (T 17)**

[3]**Schuette was also convicted of the third degree felony of leaving the scene of an accident involving injury. However in State v. Williams, 520 So. 2d 276 (Fla.1988), this court held that restitution could not be ordered in cases involving leaving the scene of an accident because damages are not generally caused by leaving the of an accident.**

part:

> In addition to any punishment, the court shall order the defendant to make restitution to the victim for:
> 1. Damage or loss caused directly or indirectly by the defendant's offense; and
> 2. Damage or loss related to the defendant's criminal episode[4][.]

In State v. Williams, 520 So. 2d 276 (Fla. 1988), this court stated that to order restitution under the statute, the court must find that the loss or damage is causally connected to the offense and bears a significant relationship to the offense. See Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997)("Under the plain language of the statute, the loss or damage to be compensated must be 'directly or indirectly' related to the offense committed by the defendant.") The standard of proof required to impose restitution is by a preponderance of the evidence. § 775.089 Fla. Stat. (1999)

The petitioner here was convicted of driving while licence suspended or revoked. The victim suffered extensive injuries while Schuette was engaged in an activity which she was legally prohibited from performing--driving. It is clear the injuries suffered by the victim were caused directly by Schuette's driving. § 775.089(1)(a)1, Fla. Stat. (1999).

The criminal episode at bar started when Schuette took control

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[4]Subsection 2 was added by the legislature in 1993. Ch. 93-37, § 1, Laws of Florida.

of the vehicle. Schuette was performing an illegal activity at the time she started to drive. Moments after she started driving, the victim was struck with the vehicle Schuette was driving. The victim was severely injured. It is clear that the victim's injuries and damages are related to the criminal episode. 775.089(1)(a)2, Fla. Stat.(1999).

The Fourth District Court of Appeal acknowledges that Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997) holds that restitution cannot be imposed in cases involving driving with a suspended licence because driving on a suspended licence "was not causually related to the crash." The opinion of the Fourth District Court of Appeal is in conflict with the conclusion of Cheek. The holding in Cheek has also been questioned by a different panel of the Fifth District Court in Triplett v. State, 709 So. 2d 107, 112, n. 3 (Fla. 5th DCA 1998), rev. denied, 725 So. 2d 1110 (Fla. 1998) noting: "Either under the causation test or the criminal episode test, however, an argument can be made that driving without a legal right either caused the accident or began the criminal episode during which the accident occurred." The Honorable Judge Cobb in his concurring opinion in Triplett wrote "I also concur with the misgivings expressed by Judge Griffin in respect to the majority opinion in Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997)." Triplett, 709 So. 2d at 108.

The holding of the Fifth District in Cheek is incorrect and is based on an erroneous interpretation of § 775.089 Fla. Stat. (1999). The correct interpretation is expressed by the Fourth District Court of Appeal in the opinion below.

In Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997) this court explained it's earlier decision in Williams as follows:

> **In Williams, we reviewed the issue of whether the offense of leaving the scene of an accident bore a significant relationship to the damages arising out of the accident. We held that it did not because the damages were not caused either directly or indirectly by the defendant's leaving the scene of the accident; the damages would have occurred with or without the defendant's having left the scene and were independent of that crime. This is distinct from the issue before us here because "but for" Glaubius' criminal misconduct, no investigation would have occurred. The fact that the expenses would have been incurred even if no misconduct had been discovered is irrelevant under these circumstances because, unlike the situation in Williams, the investigative costs were caused by and were significantly related to Glaubius' misconduct.**

At bar the injuries suffered by the victim were directly caused by Schuette's driving. "But for" the illegal and reckless[5] driving of the vehicle by Schuette the injuries and related medical expenses would not have been incurred. Following the reasoning of

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[5]**The record shows that appellee was driving with a cast on her leg and driving the wrong way on the divided highway at 2:30 a.m. while her eyesight was obscured with mace. (R 21)**

Glaubius it is apparent that the Fourth District Court of Appeal correctly interpreted the restitution statute at issue. See also Triplett v. State, 709 So.2d 107, 108 (Fla. 5th DCA 1998) ("The correct test for restitution is whether 'but for' the criminal episode, the damages would have been incurred by the victim.")

The State of Florida requests that this court affirm the decision of the Fourth District Court of Appeal.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the State of Florida respectfully requests this Honorable Court to affirm the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished Courier to: Benjamin Maserang, Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL. 33401 on ____of July, 2001.

_____
Don M. Rogers

CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for the State of Florida hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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Don M. Rogers