IN THE SUPREME COURT OF FLORIDA

LAURIE ADELE SCHUETTE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC01-1254
	)	DCA CASE NO. 4D00-1667
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Laurie Adele Schuette, was the defendant in the trial court and the Appellee in the district court of appeal. She will be referred to as Ms. Schuette or "Petitioner" in this brief. Respondent was the prosecution in the trial court and the Appellant in the district court and will be referred to as "the State" or "Respondent" in this brief.

The record on appeal is consecutively numbered. All references to the record will be by the following symbols:

"R" = Record on Appeal Documents

"T" = Record on Appeal Transcripts

"IB" = Initial Brief to the district court by Respondent, the State of Florida

"AB" = Answer Brief to the district court by Petitioner, Laurie Adele Schuette

"MR" = Motion for Rehearing to the district court by Petitioner

"SB" = Brief on the Merits of Petitioner in the Supreme Court of Florida

"SA" = Answer Brief on the Merits of Respondent in the Supreme Court of Florida

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement in her brief on the merits. SB2-5.

Additionally, Petitioner disputes Respondent's assertion that "the facts are not disputed," SA1, as she has done throughout this case. See AB2, 3, 6-7; MR2-3, 5; SB3, 11-12, 16, 18-19. No trial transcript was ever provided so the "undisputed" facts articulated by the Fourth District in its opinion, State v. Schuette, 782 So. 2d 935 (Fla. 4th DCA 2001), were never part of this record. T1-36; R1-74. The only undisputed facts that are part of this record are that Petitioner was convicted of driving under suspension and that while she was driving she was involved in an accident which resulted in injury to the complainant. R5, 46, 52, 60. These are the facts alleged in the two counts of the information under which Petitioner was convicted. R5. However, the circumstances of how that injury occurred are not part of the record on appeal. T1-36; R1-74. Respondent and the district court are utterly mistaken in presenting a statement which is part of the pre-sentence investigation which in turn simply quotes from the probable cause affidavit as the "facts" of a case which went to trial.

JURISDICTION

Petitioner relies on the statement concerning jurisdiction presented in her brief on the merits. SB6-7. She notes that Respondent does not contest this Honorable Court's exercise of jurisdiction over this matter. SA1-9.

SUMMARY OF THE ARGUMENT

POINT I

Petitioner relies on the summary in her brief on the merits.

POINT II

Petitioner relies on the argument she made in her brief on the merits. Respondent did not address this Point.

ARGUMENT

POINT I

THE DISTRICT COURT CORRECTLY HELD THE TRIAL COURT ERRED BY RULING RESTITUTION COULD NOT BE IMPOSED WHEN SENTENCING PETITIONER FOR DRIVING UNDER SUSPENSION WHERE THERE WAS NO SIGNIFICANT RELATIONSHIP BETWEEN PETITIONER'S OFFENSE AND THE COMPLAINANT'S INJURY.

Petitioner maintains the argument made in her brief on the merits and offers the following reply to Respondent's answer brief on the merits.

As a preliminary matter, Petitioner observes that Respondent does not challenge the standard of review which this Court is to apply or the fact that as the appellant below Respondent bore the burden of demonstrating "prejudicial error" pursuant to section 924.051(7), Florida Statutes. SA1-9. See SB10-11.

In its answer, Respondent first contends that the issue presented in this case is:

> [W]hether a person whose only criminal offense is the offense of driving while license 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.

SA4 (emphasis supplied).

However, this was not the issue decided by the district court. See State v. Schuette, 782 So. 2d 935 (Fla. 4th DCA 2001). Instead, the Fourth District essentially held that where a person whose only criminal offense is the offense of driving while

license suspended, and while illegally driving is involved in a collision involving personal injury, restitution ***must*** be assessed for damage caused by the collision. Id. That this was the district court's holding is made apparent by the fact that the district court stated it did not need a trial transcript to resolve this issue. Id. at 937 n.2. Thus, the district court's holding was based on the premise that no conceivable evidence or alternative theory could have supported the trial court's ruling denying restitution for driving under suspension. See Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979)(without record appellate court cannot know factual context and cannot resolve whether trial court's decision was supported by evidence or alternative theory). The mere fact that Petitioner drove while her license was suspended and was involved in a collision involving personal injury was all that the district court required for it to hold that restitution should have been assessed. Id. at 936-37. See R5.

Nonetheless, the issue which is presented to this Court is whether a trial court may ***not*** assess restitution under these circumstances. The trial court did ***not*** impose restitution. The question is whether this was permissible, and further, because there was no trial transcript to lay out the factual context of the offense, the more precise question is whether this was permissible under ***any*** circumstances. If there were any circumstances under which the trial court was permitted to not impose restitution, then

the district court was required to affirm the trial court and erred in doing otherwise. State v. R.M., 696 So. 2d 449, 451(Fla. 4th DCA 1997)("[E]ven where a trial court's stated reasons for ruling are erroneous, an appellate court will affirm if the result is right but for the wrong reason.").

Respondent cites subsection 775.089(1)(a)1 , Florida Statutes, in asserting, "It is clear the injuries suffered by the victim were caused directly by Schuette's driving." SA6. However, an argument based on this subsection was rejected by the Second District in Stewart v. State, 571 So. 2d 485 (Fla. 2d DCA 1990), and Ochoa v. State, 596 So. 2d 515 (Fla. 2d DCA 1992), and by the Fifth District in Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997). The Stewart court rejected the trial court's reasoning that "'but for' the petitioner driving while his license was suspended, the accident would not have happened." 571 So. 2d at 486. In vacating the restitution order, the court explained

> Restitution may be imposed only for damages that are caused directly or indirectly by a defendant's offense, section 775.089(1)(a), Florida Statutes (1987). There must be a significant relationship between the damages and the offense. J.S.H. v. State, 472 So. 2d 737 (Fla. 1985). The significant relationship test works in conjunction with the causation required by the statute. State v. Williams, 520 So. 2d 276, 277 (Fla. 1988).
>
> Applying the above to the facts herein, it is apparent that the suspension of the petitioner's license was an existing condition, not the cause of the accident. Because the

> driving with a suspended license was not the cause of the accident, it had no relationship to the damages suffered by the other driver. . . .

571 So. 2d at 486. Nothing about the instant case suggests that the complainant's injury was caused by the suspension so that restitution would be available under subsection 775.089(1)(a)1 .[1]

Respondent then cites subsection 775.089(1)(a)2 in asserting, "It is clear that the victim's injuries and damages are related to the criminal episode." SA7. However, the substantial relationship test applies to both subsections of section 775.089(1)(a). J.O.S. v. State, 689 So. 2d 1061, 1065 (Fla. 1997)("significant relationship" test applies in assessing whether to order restitution both for damage "caused directly or indirectly by the defendant's offense" and for damage "related to

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[1]In fact, because there is no trial transcript, it is impossible to know whether the actual factual context at trial was that the complainant was injured after she slammed her own car into the car in which Petitioner was sitting, parked yet in actual physical control, which Petitioner then drove away from the scene. In that circumstance, Petitioner's act of driving certainly would not have caused the complainant's injury. Even "but for" causation would not be met. Nor would the offense of driving under suspension have had any more significant relationship to the injury than would the offense of leaving the scene of the accident. This Court held in State v. Williams, 520 So. 2d 276 (Fla. 1988), that restitution could not generally be ordered in leaving the scene of the accident cases because damages are not generally caused by leaving the scene of the accident. Thus, under that factual context regardless of why Petitioner's license was suspended or how poorly her car was parked (unless perhaps if it could be shown that she was the person who had parked the car so poorly), restitution could not be assessed.

the defendant's criminal episode."). Even assuming the complainant's losses in the instant case are "related to" Petitioner's criminal episode, this does not end the analysis. The trial court must still determine whether there is a "significant relationship" between those losses and the offense. Id. Determining whether there is "but for" causation between a victim's losses and a defendant's criminal episode is simply a threshold consideration the trial court makes in applying the substantial relationship test. Once the trial court finds "but for" causation, it must then consider the particular facts of the offense to determine whether there is a significant relationship between the victim's losses and the criminal episode.

As discussed below and in the brief on the merits, the record reflects that Petitioner's license was not suspended for "points" or any other reason indicating poor driving. This alone is enough for the trial court to have concluded there was not a significant relationship between the complainant's losses and the offense. Further, although the facts presented at trial were not part of the record on appeal, the pre-sentence investigation strongly suggests that those facts may have included evidence that the complainant's criminal attack on the original driver and Petitioner was a supervening cause for her losses. This was another circumstance that may have led the trial court to properly conclude there was not a significant relationship between the complainant's losses and the offense.

Respondent then argues that under this Court's holding in Glaubius, the proper inquiry is whether "but for" Petitioner's illegal driving the complainant would have incurred her injuries and related medical expenses. SA8. Using this "but for" test which was employed by Respondent and the district court below, any time a person driving under suspension is involved in a collision, the trial court would be required to impose restitution regardless of the reason for the suspension; regardless of fault for the collision;[2] regardless of any supervening acts, even criminal acts by the person injured; regardless of the unclean hands doctrine;[3] and regardless of any other circumstance that conceivably may arise. However, using a "but for" test alone is

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[2]In Triplett v. State, 709 So. 2d 107 (Fla. 5th DCA 1998), the Fifth District Court of Appeal considered the public policy implications of imposing restitution on defendants who were involved in traffic accidents even where they were not at fault. The court reasoned:

> If the state's argument were correct that leaving the scene of an accident is enough to create the requisite "relation" to the accident for purposes of the restitution statute, restitution would be due even if the accident were not the fault of the person who leaves the scene. In any event, though "fault" was not a contested issue in this restitution proceeding, it is likely to be in others. The criminal courts are ill-equipped to litigate fault in automobile cases, especially in rear end collision cases. The place to determine the injured party's right to receive damages is in a civil action.

Id. at 107 n.2.

[3]For example, a complainant who was shown to have committed perjury or to have made a material misstatement in a police report may not be entitled to restitution under the unclean hands doctrine. Yet, because the district court reached its decision without a transcript of the trial, there was no way to know whether the trial court's decision may have been supported on this additional ground.

contrary to this Court's prior holdings which require both "but for" causation ***and*** a significant relationship between the offense and the loss or damage. Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997)("[T]o 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." (emphasis supplied)); J.O.S. v. State, 689 So. 2d 1061, 1065 (Fla. 1997)("significant relationship" test applies in assessing whether to order restitution for damage "caused directly or indirectly by the defendant's offense" and "related to the defendant's criminal episode."); State v. Williams, 520 So. 2d 276, 277 (Fla. 1988)(significant relationship test works in conjunction with causation required by statute).

Respondent also quotes the Fifth District's opinion in Triplett for the proposition that "[t]he correct test for restitution is whether 'but for' the criminal episode, the damages would have been incurred by the victim." SA9. However, this proposition is taken out of context. Properly stated, the proposition should be, "The correct test for ***excluding*** restitution from a criminal sentence is whether 'but for' the criminal episode, the damages would have been incurred by the victim." In other words, this is a threshold determination. If there is no "but for" causation between a criminal episode and a complainant's damages, then restitution will not be assessable. In Triplett, this is precisely what the court did – it excluded restitution from the

criminal sentence for leaving the scene of an accident. However, the correct test for ***including*** restitution in a criminal sentence is the significant relationship test articulated by this Court in Glaubius, J.O.S., and Williams, supra.

For these reasons and those stated in the brief on the merits, Petitioner respectfully asks this Honorable Court to accept jurisdiction over this cause and to reverse the decision of the Fourth District Court of Appeal.

POINT II

THE DISTRICT COURT INCORRECTLY HELD THE TRIAL COURT ERRED EVEN THOUGH RESPONDENT DID NOT PROVIDE A TRANSCRIPT SO THE COURT COULD VERIFY NO ALTERNATIVE GROUNDS SUPPORTED THE TRIAL COURT'S RULING.

Petitioner maintains the argument made in her brief on the merits and asks this Court to consider that argument in Point I above which relates to this issue. See supra p.8, n.1 and accompanying text. She notes that Respondent makes absolutely no argument regarding this Point in its answer brief on the merits. SA1-10.

CONCLUSION

Petitioner prays this Honorable Court will exercise its discretion to review the instant decision of the district court which is certified to be in conflict with Cheek v. State, 700 So. 2d 761 (Fla. 5th DCA 1997), and which also conflicts with this Court's decisions in Glaubius v. State, 688 So. 2d 913 (Fla. 1997); J.O.S. v. State, 689 So. 2d 1061 (Fla. 1997), and Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979).

This Honorable Court should reverse the decision of the Fourth District Court of Appeal in State v. Schuette, 78 So. 2d (Fla. 4th DCA 2001).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Don M. Rogers, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299 this 20th day of August, 2001.

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CERTIFICATE OF FONT COMPLIANCE

Undersigned counsel hereby certifies that the instant brief has been prepared with 14- point Times New Roman type.

_____
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