IN THE SUPREME COURT OF FLORIDA

DAVID BAUTISTA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC01-2121
	)	L. T. No. 4D01-1610
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

PETITIONER'S BRIEF ON THE MERITS

On Review from the Circuit Court
of the Fifteenth Judicial Circuit,
In and For Palm Beach County, Florida
[Criminal Division].

CAREY HAUGHWOUT
Public Defender

DAVID JOHN MCPHERRIN
Assistant Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

Attorney for David Bautista

TABLE OF CONTENTS

AUTHORITIES CITED

FLORIDA STATUTES

FLORIDA RULES OF CRIMINAL PROCEDURE

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach County, Florida, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and appellee in the lower courts.

The symbol "R" will denote the one-volume record on appeal, which consists of the relevant documents filed below.

The symbol "T" will denote the eight-volume trial transcript.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with two counts of driving under the influence manslaughter, both enhanced by his failure to comply with section 316.062 (hereinafter referred to as aggravated DUI manslaughter), in violation of section 316.193(3), *Fla. Stat.* (1999). *R 10-11.*[1] Count one named David Shapiro as the victim, while Evelyn Shapiro was named as the victim in count two. The case proceeded to trial before a jury.[2]

On the morning of February 6, 2000, petitioner ran a red light, broad-siding a car occupied by Mr. and Mrs. Shapiro. *T 56-59, 63, 168-169, 184-185, 219.* After exiting his car, petitioner, described by one witness as disoriented, began to walk away from the scene despite being told by other witnesses to remain. *T 64-69, 153, 200-201, 204-206, 222-223.* Daniel More ran after petitioner, asking where he was going. *T 698-699, 706-707.* Three times petitioner said "[d]on't F with me." *T 700-701.* When petitioner reached into a pocket, Mr. More broke off the chase. *T 706.* Police officers dispatched to the scene found petitioner lying under bushes next to an apartment building a

---

[1] The enhancement raised the degree of felony from second to first.

[2] Respondent nolle prossed a third count, charging driving without a license. *T 924.*

short distance away from the site of the crash. *T 281, 301-306, 313-314.* Mr. Shapiro was declared dead at the scene, while Mrs. Shapiro died later that night at the hospital. *T 125-126, 128-129, 243-244.* Autopsies determined that both deaths were caused by multiple blunt force trauma, consistent with a motor vehicle crash. *T 480, 484, 488, 493.* Expert testimony established that appellant's blood alcohol level was between .10 and .13 at the time of the crash. *T 561, 659-661.* Appellant was found guilty of both offenses as charged. *R 125-126; T 899-900.*

Before being sentenced, petitioner argued, consistent with the rule that multiple convictions for leaving the scene of a single accident cannot be sustained, that the enhancement for failing to comply with section 316.062 could not attach to both counts of DUI manslaughter. *T 911-922.* The trial court rejected petitioner's argument. *T 922-923.* Petitioner was adjudicated guilty of two counts of aggravated DUI manslaughter and sentenced to concurrent terms of 283.5 months in prison. *R 145-146; T 922-923, 948.*[3]

On appeal to the Fourth District Court of Appeal petitioner

---

[3] The Criminal Punishment Code scoresheet prepared for sentencing totaled 378 points, 92 of which were attributable to the primary offense, aggravated DUI manslaughter, 46 to the additional offense, a second count of aggravated DUI manslaughter, and 240 for victim injury. *R 147-149.*

renewed his argument that the enhancement for failing to comply with section 316.062 could not attach to both DUI manslaughter counts. Petitioner also argued, for the first time, that he could not be convicted of two counts of DUI manslaughter, both of which arose out of a single episode of driving under the influence, where the statute proscribing the conduct defined the unit of prosecution by the number of separate episodes during which driving under the influence causes death, not the number of deaths caused during a single episode. The district court, one judge dissenting, disagreed with petitioner's arguments but certified the following question as one of great public importance:

> DOES THE "A/ANY" TEST ADOPTED IN *GRAPPIN v. STATE* AND *STATE v. WATTS* AS THE METHOD FOR DETERMINING THE UNIT OF PROSECUTION FOR THE COMMISSION OF MULTIPLE PROSCRIBED ACTS IN THE COURSE OF A SINGLE EPISODE, PRECLUDE MULTIPLE CONVICTIONS FOR DUI MANSLAUGHTER WHERE MORE THAN ONE DEATH OCCURS IN A SINGLE ACCIDENT AS APPROVED IN *MELBOURNE v. STATE.*

Bautista v. State, 27 Fla. L. Weekly D1940, 1941 (Fla. 4th DCA Aug. 28, 2002). Notice of intent to invoke the discretionary jurisdiction of this Court was timely filed. By order dated October 3, 2002, this Court postponed the decision on jurisdiction and ordered petitioner to serve his initial brief on or before October 28, 2002. This brief now follows.

SUMMARY OF THE ARGUMENT

POINT I

Petitioner was adjudicated guilty of, and sentenced for, two counts of aggravated DUI manslaughter based upon deaths arising out of a single traffic crash. The statute petitioner violated proscribes causing the death of any human being. Use of the word "any" before "human being" indicates that the legislature intended the unit of prosecution to be defined by the number of separate episodes during which driving under the influence causes death, not the number of deaths caused during a single episode. At a minimum, the intended unit of prosecution is imbued with ambiguity, requiring the statute to be interpreted in the manner most favorable to the accused. Although petitioner did not raise the argument below, his dual convictions constitute fundamental error which may be raised for the first time on appeal. Accordingly, one of petitioner's convictions for aggravated DUI manslaughter must be vacated.

POINT II

Petitioner's convictions for DUI manslaughter were enhanced from second to first degree felonies because he failed to comply with the requirements of section 316.062. Multiple convictions for leaving the scene of an accident without complying with the requirements of section 316.062 are precluded by the protection

against twice being placed in jeopardy. The same rationale should be applied to preclude multiple enhancements for failing to comply with the requirements of section 316.062 where the failure arises out of a single traffic crash. As a result, one of petitioner's convictions should be reduced to DUI manslaughter.

ARGUMENT

POINT I

FUNDAMENTAL ERROR OCCURRED WHEN PETITIONER WAS ADJUDICATED GUILTY OF, AND SENTENCED FOR, TWO COUNTS OF DRIVING UNDER THE INFLUENCE MANSLAUGHTER, BOTH OF WHICH AROSE OUT OF A SINGLE EPISODE OF DRIVING UNDER THE INFLUENCE, WHERE THE UNIT OF PROSECUTION PERMITTED BUT A SINGLE CONVICTION.

Petitioner was charged by information with two counts of aggravated DUI manslaughter. *R 10-11.* Count one named David Shapiro as the victim, while Evelyn Shapiro was named as the victim in count two. Evidence introduced at trial established that Mr. and Mrs. Shapiro died when petitioner, driving with an unlawful blood alcohol level, ran a red light and crashed into their vehicle. Petitioner was convicted as charged, adjudicated guilty, and sentenced to prison on both counts. *R 125-127, 145-146; T 900, 903, 948.*

The issue raised by petitioner concerns the unit of prosecution allowed by the DUI manslaughter statute, not whether the double jeopardy clause of the state or federal constitutions preclude multiple convictions. *See Watts v. State*, 440 So. 2d 505, 506 (Fla. 1st DCA 1983) *approved*, 462 So. 2d 813 (Fla. 1985).[4] Establishing the unit of prosecution for a given crime

[4] This argument was not raised before the trial court.

is the responsibility of the legislature. *State v. Grappin*, 427 So. 2d 760, 762 (Fla. 2d DCA 1983) *approved*, 450 So. 2d 480 (Fla. 1984). The wording of the DUI manslaughter statute indicates that the legislature intended that the unit of prosecution be defined by the number of separate episodes during which driving under the influence causes death, not the number of deaths caused during a single episode. However, petitioner acknowledges that it would not be unreasonable to conclude that the allowable unit of prosecution is imbued with ambiguity. In that case, "where our own state legislature does not establish the allowable unit of prosecution with clarity, the ambiguity must be resolved in the accused's favor." *Id*. at 762. The language used in the DUI manslaughter statute and the rule of lenity preclude multiple convictions in this case.[5]

I

WORDING OF THE STATUTE

The statute petitioner violated states, in relevant part:

> (3) Any person:
> (a) Who is in violation of subsection (1);
> (b) Who operates a vehicle; and
> ©) Who, by reason of such operation,

[5] "[J]udicial interpretation of Florida statutes is a purely legal matter and therefore subject to de novo review." *Racetrac Petroleum, Inc. v. Delco Oil, Inc.,* 721 So. 2d 376, 377 (Fla. 5th DCA 1998).

causes:

* * *

3. The death of any human being commits DUI manslaughter, ...

§ 316.193(3), *Fla. Stat.* (1999).[6]

In *State v. Grappin*, 427 So. 2d 760 (Fla. 2d DCA 1983), where the defendant was charged with five separate counts of theft[7] for each firearm taken during a single burglary, the Second District Court of Appeal announced the "a/any" test for determining the allowable unit of prosecution. *Id*. at 763. Reversing the trial court's order dismissing the multi-count information, without prejudice to refiling a single count of theft, the district court held that the use of the article "a" in front of the noun "firearm" signified the legislature's intent to allow prosecution for the theft of each firearm as a separate crime.

---

[6] Subsection (1), the core offense of driving under the influence, prohibits driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages or certain chemical or controlled substances when affected to the extent that the person's normal faculties are impaired or while having a blood or breath alcohol level of .08 or above. § 316.193(1)(a)-(c), *Fla. Stat.* (1999).

[7] Section 812.014(2), *Florida Statutes*, proscribes theft, in relevant part, stating:

(b) It is grand theft of the second degree ... if the property stolen is:

* * *

3. A firearm.

Id. The court further stated, "[t]he article 'any,' unlike the article 'a,' does not necessarily exclude any part of plural activity. Thus, the article 'any,' unlike the article 'a,' does not clearly express the allowable unit of prosecution in singular terms." *Id*. The test announced by the district court was approved by our Supreme Court, which held, "[w]e find that the use of the article 'a' in reference to 'a firearm' in section 812.014(2)(b)3 clearly shows that the legislature intended to make each firearm a separate unit of prosecution." *Grappin v. State*, 450 So. 2d 480, 482 (Fla. 1984). Subsequently, in *State v. Watts*, 462 So. 2d 813 (Fla. 1985), the Court discussed the *Grappin* test stating:

> We specifically contrasted the article "a" with the article "any" by pointing out that federal courts have held that the term "any firearm" is ambiguous with respect to the unit of prosecution and must be treated as a single offense with multiple convictions and punishments being precluded.

Id. at 814.

Because the statute at issue in *Watts* made it a crime to possess "any firearm or weapon of any kind," § 944.47, *Fla. Stat*. (1981), the Court concluded that the simultaneous possession of two prisonmade knives by an inmate in a state correctional institution constituted one crime, not two. *Id; Compare Plowman v. State,* 622 So. 2d 91, 92 (Fla. 2d DCA 1993)(simultaneous

possession of three weapons constituted but one count of possession of a firearm by a convicted felon) *with C.S. v. State,* 638 So. 2d 181, 182-183 (Fla. 3rd DCA 1994)(simultaneous possession of two concealed firearms constituted two separate crimes). The test announced in *Grappin* and *Watts* was recently reaffirmed by this Court. *Wallace v. State,* 724 So. 2d 1176 (Fla. 1998). The legislature's use of the article "any" in reference to "human being" requires a finding that it did not intend to make each person killed a separate unit of prosecution.

Petitioner acknowledges that in *Houser v. State,* 474 So. 2d 1193 (1985) the Court found that DUI manslaughter was not merely an enhancement of driving under the influence, but fell "squarely within the scope of this State's regulation of homicide." *Id.* at 1196. That conclusion might be read to suggest that the unit of prosecution should be defined by the number of deaths caused. However, review of the statutes prohibiting murder, manslaughter, and vehicular homicide indicate otherwise. §§ 782.04, 782.07 & 782.071, *Fla. Stat.* (1999). Each of those statutes proscribe the killing of "a human being" indicating that the unit of prosecution be defined by each death. *See Ogletree v. State,* 525 So. 2d 967, 969-970 (Fla. 1st DCA 1988) *rev. denied,* 534 So. 2d 400 (Fla. 1st DCA

1988).[8] When it came to the DUI manslaughter statute the legislature chose to use the phrase "any human being." *See generally Overstreet v. State,* 629 So. 2d 125, 126 (Fla. 1993)("[t]he legislature is assumed to know the meaning of the words in the statute and to have expressed its intent by the use of those words."). The difference in wording indicates that while DUI manslaughter may fall within the prohibition against homicide, its unit of prosecution is not the same. *See Scates v. State,* 603 So. 2d 504, 505-506 (Fla. 1992)(presence of word "mandatory" in one statute, but its absence from another, implied legislature intended statutes to be construed differently); *See also Baker v. State,* 636 So. 2d 1342, 1344 (Fla. 1994)(courts may not modify statute "out of any consideration of policy or regard for untoward consequences.").

Petitioner also acknowledges *Melbourne v. State,* 679 So. 2d 759 (Fla. 1996) wherein the defendant, convicted of, among other

---

[8] Review of the DUI statute reflects that the unit of prosecution is different when death, rather than personal injury or property damage, is involved. By using the word "another," instead of the phrase "any other," the legislature has indicated that when property damage or personal injury, including serious bodily injury, is involved, the unit of prosecution is defined by each individual victim. § 316.193(3)(c)1. & 2., *Fla. Stat.* (1999). Contrary to the court's opinion in *State v. Wright,* 546 So. 2d 798 (Fla. 1st DCA 1989), while it may be abundantly clear that the legislature contemplated separate offenses where multiple victims are injured or their property damaged, the same cannot be said where multiple victims are killed.

things, two counts of DUI manslaughter, unsuccessfully argued that her dual convictions arising from a single violation of the driving under the influence statute violated double jeopardy.[9] However, as previously mentioned, petitioner's argument is not grounded in the protections afforded by the double jeopardy clauses, but is based upon the unit of prosecution prescribed by the statute. The unit of prosecution for a particular criminal offense and whether the double jeopardy clause precludes conviction for multiple offenses arising out of a single criminal episode raise different concerns. *See Watts,* 440 So. 2d at 506. Certainly, the legislature can authorize multiple convictions for DUI manslaughter arising out of a single instance of driving under the influence without offending double jeopardy protections. *See Grappin,* 427 So. 2d at 762. Although the legislature has the power to allow separate convictions for each death caused by a single episode of driving under the influence, it has chosen not to do so. *See generally Overstreet,* 629 So. 2d at 126 ("[i]f the legislature did not intend the results mandated by the statute's plain language, than the appropriate remedy is for it to amend the statute."). Cases

[9] This Court stated, "[t]he DUI driver may sustain multiple convictions because the violation causes injury to each victim." 679 So. 2d at 765.

rejecting double jeopardy challenges to multiple DUI manslaughter convictions do not apply to the argument raised herein. The issue need be decided based upon cases addressing unit of prosecution arguments. Because *Melbourne* did not address the unit of prosecution argument raised herein it is inapposite.

The wording of the DUI manslaughter statute demonstrates that the allowable unit of prosecution is the number of episodes during which driving under the influence causes a death, not the number of deaths that occur during a single episode. Although petitioner's actions resulted in the death of two human beings, the deaths were caused during a single episode of driving under the influence.

II

THE RULE OF LENITY

Penal statutes must be strictly construed against the state. *Perkins v. State,* 576 So. 2d 1310, 1312 (Fla. 1991). "[W]hen a statute is susceptible to more than one meaning, the statute must be construed in favor of the accused." *Cabal v. State*, 678 So. 2d 315, 318 (Fla. 1996). This 'rule of lenity,' codified by the legislature, states:

> The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible

> of differing constructions, it shall be construed most favorably to the accused.

§ 775.021(1), *Fla. Stat*. (1999).

At a minimum, the phrase "any human being" is ambiguous with respect to the allowable unit of prosecution. *See Wallace,* 724 So. 2d at 1180; *Watts*, 462 So. 2d at 814; *Grappin*, 450 So. 2d at 482. As a result of that ambiguity, petitioner may not be convicted of multiple counts of DUI manslaughter, even though he caused more than one death during a single episode of driving under the influence. *See Watts*, 462 So. 2d at 814.

The ambiguity present in the DUI manslaughter statute is not removed by relying upon section 775.021(4)(b), *Florida Statutes* (1999). Prior to the 1988 legislative session, section 775.021 read:

> (4) Whoever, in the course of one criminal transaction or episode, commits separate criminal offenses, upon conviction and adjudication of guilt shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

§ 775.021(4), *Fla. Stat*. (1987).

In *Carawan v. State*, 515 So. 2d 161 (Fla. 1987), where a single gunshot resulted in charges of attempted first degree murder,

aggravated battery, and shooting into an occupied structure, the Court applied the rule of lenity to vacate the conviction for either attempted manslaughter[10] or aggravated battery. *Id*. at 171. Concluding that section 775.021(4) was adopted as a rule of statutory construction to aid courts "in determining the intent behind particular penal statutes when that intent is unclear," *id*. at 167, the Court held that despite meeting the *Blockburger*[11] test, convictions for two different crimes might still be improper where they are based upon a single act and "there is a basis for concluding that the legislature intended a result contrary to that achieved by the *Blockburger* test," *id*. at 168, such as "where the accused is charged under two statutory provisions that manifestly address the same evil...," *id*.

The legislature responded to *Carawan* by amending section 775.021 to read:

> (4)(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt shall be sentenced separately for each criminal offense; and

---

[10] The defendant was convicted of attempted manslaughter as a lesser offense of attempted first degree murder.

[11] *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932).

> the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.
>
> (b) 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 to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. 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.

§ 7, Ch. 88-131, *Laws of Florida* (1988).[12]

That amendment, the purpose of which was to overrule the *Carawan* holding, articulates the legislative intent to convict for each separate offense committed during one criminal transaction or episode, even when based upon a single act. The amendment does not articulate legislative intent, vis-a-vis the allowable unit of prosecution, where multiple counts of the same offense are charged and, as a result, is not applicable to the issue raised

[12] The 1999 version of section 775.021(4)(a) & (b) is identical to the 1988 amendment.

in this appeal. *Hill v. State,* 711 So. 2d 1221, 1223-1224 (Fla. 1st DCA 1998) *rev. denied,* 722 So. 2d 193 (Fla. 1998).

III

FUNDAMENTAL ERROR

Although petitioner did not raise the instant argument below, "'a conviction imposed upon a crime totally unsupported by evidence constitutes fundamental error.'" *Vance v. State*, 472 So. 2d 734, 735 (Fla. 1985) (quoting *Troedel v. State*, 462 So. 2d 392, 399 (Fla. 1984)). Fundamental error may be raised for the first time on appeal. *Jordan v. State,* 801 So. 2d 1032, 1034 (Fla. 5th DCA 2001); *Valdes v. State*, 621 So. 2d 567, 568 n. 1 (Fla. 3rd DCA 1993). The facts of this case establish that petitioner violated the statute a single time. Petitioner's "second conviction is therefore totally unsupported by the evidence." *Vance,* 472 So. 2d at 735.

IV

CONCLUSION

The statute proscribing DUI manslaughter leaves the unit of prosecution subject to question, as evidenced by the not unreasonable dissenting opinion below and the argument set forth in this brief. *Grappin, Watts,* and *Wallace* suggest that the argument raised herein is meritorious. However, language found in *Melbourne*, although addressing a double jeopardy argument,

lends support to a contrary holding. To erase any confusion, this Court should accept jurisdiction over this case and quash the decision of the district court. Multiple convictions for DUI manslaughter are not permitted where the deaths resulted from a single episode of driving under the influence. Accordingly, one of petitioner's convictions for aggravated DUI manslaughter must be vacated and this cause remanded for resentencing based upon a corrected scoresheet.[13]

[13] Although the 46 additional offense points must be deleted from the scoresheet, victim injury points for both deaths may remain. *See* § 921.0021(7)(a), *Fla. Stat.* (1999); *Fla. R. Crim. P.* 3.704(d)(9); *Gonsalves v. State,* 26 Fla. L. Weekly D2530 (Fla. 2d DCA Oct. 19, 2001).

POINT II

THE PROTECTION AGAINST TWICE BEING PUNISHED FOR THE SAME OFFENSE PRECLUDED APPLICATION OF THE ENHANCEMENT FOR FAILURE TO COMPLY WITH SECTION 316.062 TO BOTH COUNTS OF DRIVING UNDER THE INFLUENCE MANSLAUGHTER.

A jury found petitioner guilty of two counts of aggravated DUI manslaughter. *R 10-11. 125-127; T 900.*[14] The evidence introduced at trial established that after petitioner, driving with an unlawful blood alcohol level, ran a red light and crashed into the Shapiro's vehicle, he fled the scene on foot. Prior to being sentenced, petitioner argued that the enhancement for failing to comply with section 316.062 could not attach to both counts. *T 911-922.*[15] The trial court denied petitioner's motion, adjudicating him guilty of two counts of aggravated manslaughter. *R 145; T 922-923, 948.*[16]

Section 316.193(3), *Florida Statutes* (1997) provides, in relevant part:

---

[14] Count one named David Shapiro as the victim, while Evelyn Shapiro was named as the victim in count two.

[15] Whether application of the enhancement to both manslaughter counts violates principles of double jeopardy is a question of law, subject to de novo review. *See Trotter v. State,* 825 So. 2d 362, 365 (Fla. 2002).

[16] Although not part of the district court court's certified question, the Court can entertain this issue if it chooses. *Hall v. State,* 752 So. 2d 575, 578 n.2 (Fla. 2000).

> (3) Any person:
> (a) Who is in violation of subsection (1);
> (b) Who operates a vehicle; and
> (c) Who, by reason of such operation, causes:
>
> * * *
>
> 3. The death of any human being commits DUI manslaughter, and commits:
>
> * * *
>
> B. A felony of the first degree ... if:
> (I) At the time of the crash, the person knew, or should have known, that the crash occurred; and
> (II) The person failed to give information and render aid as required by s. 316.062.

Section 316.062, *Florida Statutes* (1999) requires the driver of any vehicle involved in a crash resulting in injury, death, or property damage to provide relevant information to other parties involved in the crash and any investigating police officer and to render reasonable assistance to those injured. Failure to stop, and remain, at the crash scene until the requirements of section 316.062 are fulfilled is a felony of the third degree if the crash involved injury and a second degree felony if a death resulted from the crash. § 316.027(1)(a) & (b), *Fla. Stat.* (1999); *State v. Dumas,* 700 So. 2d 1223, 1225 (Fla. 1997).

The double jeopardy "clause provides three basic safeguards: it protects against a second prosecution for the same offense after a prior acquittal; it protects against a second prosecution for the same offense after conviction; and it

protects against multiple punishment for the same offense." *State v. Taylor,* 784 So. 2d 1164, 1167 (Fla. 2d DCA 2001). Offenses that require identical elements of proof may not result in separate convictions and sentences. *Hardy v. State,* 705 So. 2d 979 (Fla. 4th DCA 1998). In *Hardy,* where the defendant left the scene of an accident involving both death and injury, the Court determined that because "'there was but one scene of the accident and one failure to stop' ... there was but one offense." *Id.* at 981; *accord Hoag v. State,* 511 So. 2d 401, 402 (Fla. 5th DCA 1987) *rev. denied,* 518 So. 2d 1278 (Fla. 1987). A conviction for each individual involved in the accident would have necessarily relied in identical elements of proof. As a result, multiple convictions arising from leaving the scene of a single crash violate the protection against twice being placed in jeopardy. *See Id; Tellier v. State,* 754 So. 2d 88, 89 (Fla. 5th DCA 2000). Double jeopardy principles have also been relied upon to preclude dual convictions for vehicular homicide/leaving the scene of an accident causing death and leaving the scene of an accident causing injury, where the death and injury arose out of a single crash scene. *Pierce v. State,* 744 So. 2d 1193, 1195-1196 (Fla. 4th DCA 1999); *Hunt v. State,* 769 So. 2d 1109, 1110-

1111 (Fla. 2d DCA 2000).[17] The aforementioned cases hold that no matter how many victims are involved in the crash, the defendant's flight without complying with the requirements of section 316.062 constitutes a single offense of leaving the scene.

Both of petitioner's convictions for DUI manslaughter were enhanced from second to first degree felonies because he left the scene without complying with the requirements of section 316.062. Petitioner's flight could not have resulted in two convictions for leaving the scene of an accident involving death under section 316.027(1)(b), *Florida Statutes* (1999). *See Hardy,* 705 So. 2d at 980-981. Nor could petitioner's flight have resulted in a conviction for DUI manslaughter/leaving the scene of an accident involving death and a separate conviction for leaving the scene of an accident involving death. *See Pierce,* 744 So. 2d 1195-1196. Contrary to the rationale of *Hardy* and *Pierce*, petitioner was convicted of two separate instances of leaving the scene of an accident involving death, albeit as an enhancement to another crime. Both enhancements relied upon identical elements of proof. Because there was only one crash

[17] The failure to provide information and render aid enhancement under the vehicular homicide statute mirrors that found in the DUI manslaughter statute. § 782.071(2), *Fla. Stat.* (1999).

scene and one failure to stop and comply with the requirements of section 316.062, one of petitioner's convictions must be reduced to DUI manslaughter.[18]

[18] Resentencing based upon a corrected scoresheet is required. *Hunt,* 769 So. 2d at 1112.

CONCLUSION

Based upon the foregoing arguments and the authorities cited therein, petitioner respectfully requests this Honorable Court to accept this case for review and quash the decision of the district court.

Respectfully Submitted,

CAREY HAUGHWOUT
Public Defender
15th Judicial Circuit of Florida

_____

DAVID JOHN McPHERRIN
Assistant Public Defender
Attorney for David Bautista
Criminal Justice Building/6th Floor
421 3rd Street
West Palm Beach, Florida 33401
(561) 355-7600
Florida Bar No. 0861782

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Daniel P. Hyndman, Assistant Attorney General, 1515 North Flagler Drive, 9th floor, West Palm Beach, Florida 33401-3432 this _____ day of October, 2002.

_____

DAVID JOHN McPHERRIN
Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately this _____ day of October, 2002.

_____
DAVID JOHN McPHERRIN
Counsel for Petitioner