IN THE SUPREME COURT OF FLORIDA,

DAVID HARRIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC02-219
4th DCA Case No. 4D00-4197

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RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Appellee was the prosecution and Appellant was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida.

In this brief, the parties will be referred to as they appear before this Court, except that the Appellee may also be referred to as the "State."

The following symbols will be used:

IB = Appellant's Initial Brief

R = Record on Appeal

TA = Transcript of Appeals Case No. 4D99-1829

STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's Statement of the Case and Facts to the extent that it represents an accurate non-argumentative recitation of the procedural history and facts of this case.

SUMMARY OF ARGUMENT

The Fourth District Court of Appeal correctly extended the application of Fla. Stat. § 776.051(1) to situations involving illegal stops/detentions. It is unreasonable to conclude that the legislature would disallow the use of force during an illegal arrest but not during an illegal stop/detention, which involves less of an invasion of an individual's privacy than an arrest.

The fact that Officer Nieves found the abandoned drugs and confronted appellant with them is what caused appellant to first attempt to flee and then to batter Officer Nieves. Therefore, this evidence is inextricably intertwined and necessary to adequately describe the battery. To the extent that more evidence of the drug activities was admitted than necessary to describe the battery, this evidence was harmless because appellant never contested that he hit Officer Nieves. Therefore, there is no reasonable possibility that the admission of this evidence contributed to the battery conviction.

ARGUMENT

POINT I

THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY CONSTRUED FLA. STAT. § 776.051(1) TO EXTEND TO SITUATIONS INVOLVING AN ILLEGAL STOP OR DETENTION.

Appellant argues that the victim was not engaged in the lawful performance of his duties when the battery was committed because the stop was illegal, and that Fla. Stat. § 776.051(1) should not be extended to illegal stops/detentions. The only issue that needs to be addressed is whether Fla. Stat. § 776.051(1) should be extended to illegal stops/detentions, because the effect of Fla. Stat. § 776.051(1) is to eliminate the need for proof that the officer was engaged in the lawful performance of his or her duties. *See Taylor v. State*, 740 So. 2d 89 (Fla. 1st DCA 1999)(citing *Meeks v. State*, 369 So. 2d 109 (Fla. 1st DCA 1979)).

Appellant argues Fla. Stat. § 776.051(1) is irrelevant in determining what elements need to be proven, citing to *Nicolosi*

v. State, 783 So. 2d 1095 (Fla. 5th DCA 2001). However, *Nicolosi* is distinguishable, because the law enforcement officer was working at an off-duty job at a nightclub, where there was no criminal activity or investigation of criminal activity on the part of the defendant prior to the battery, and where there was no proof of any activities of an official police nature by the law enforcement officer but instead activities which were exclusively for the interest of the private employer. In other words, the law enforcement officer was not performing any duties in the capacity as a law enforcement officer, lawful or unlawful. Therefore, the court never addressed Fla. Stat. § 776.051(1) because it is not triggered, under any circumstance, unless the law enforcement officer is performing duties in that capacity as a law enforcement officer (arrest or detention). Clearly, the Fifth District has for years followed *Meeks*, where the First District held that the state is not required to prove that an officer was engaged in a lawful duty if the defendant has committed a battery on the officer in the course of resisting arrest. *See Jones v. State*, 570 So. 2d 433, 435 (Fla. 5th DCA 1990).

Appellant also argues that *Taylor v. State*, 740 So. 2d 89 (Fla. 1st DCA 1999) holds that Fla. Stat. § 776.051(1) cannot be extended to illegal stops/detentions, but the undersigned would

disagree. *Taylor* never directly addressed this issue in its holding. *Taylor* merely holds that Fla. Stat. § 776.051(1) cannot be extended to a situation in which an officer has entered a person's home without legal justification. *See Tillman v. State*, 807 So. 2d 106, 108-09 (Fla. 5th DCA 2002).

Appellant also argues that the plain language of Fla. Stat. § 776.051 limits its use to situations involving arrests. However, a statute should be construed so as to give effect to the evident intent of the legislature regardless of whether such construction varies from the statute's literal meaning. *Deason v. Florida Department of Corrections*, 705 So. 2d 1374 (Fla. 1998). Granted, penal statutes must be strictly construed but a strict construction involves more than the plain language of the statute where the manifest intention of the legislature is something more. *See State ex rel. Lee v. Buchanan*, 191 So. 2d 33 (Fla. 1966). Further, courts should avoid construing a statute in a manner that produces an unreasonable or absurd result. *Rodriguez v. Jones*, 64 So. 2d 278 (Fla. 1953). It was these later rules of construction obviously applied by the Fourth District Court of Appeal when extending the effect of Fla. Stat. § 776.051(1) to illegal stops/detentions.

As mentioned by appellant, in the opinion of this matter the court cites to *Dominique v. State*, 590 So. 2d 1059 (Fla. 4th DCA

1991) as its authority for extending the effect of Fla. Stat. § 776.051(1) to illegal stops/detentions. In *Dominique*, the court stated its rationale that the use of force would be even less acceptable when a law enforcement officer has merely stopped an individual, since a stop involves less of an invasion of an individual's privacy than does an arrest. *Id* at 1060. *See also Tillman v. State*, 807 So. 2d 106 (Fla. 5th DCA 2002)(agreeing with the rationale in *Dominique*). It is clearly unreasonable to conclude that the legislature's intent was that Fla. Stat. § 776.051(1) apply to arrests and not stops/detentions.

POINT II

EVIDENCE OF THE DRUGS APPELLANT POSSESSED WAS EITHER INEXTRICABLY INTERTWINED TO THE BATTERY ON OFFICER NIEVES OR HARMLESS.

Appellant argues that evidence relating to his drug possession is impermissible *Williams* rule evidence. However, evidence of other crimes that are "inseparable from the crime charged , or evidence which is inextricably intertwined with the crime charged" is admissible under section 90.402, because it is relevant and necessary to adequately describe the crimes at issue. *Coolen v. State*, 696 So. 2d 738 (Fla. 1997); *Ferrell v. State*, 686 So. 2d 1324 (Fla. 1996). In this matter, Officer Nieves testified that when Officer Guadagno stopped appellant's vehicle he parked his vehicle and observed appellant (TA II,

171-72). He observed appellant crouch down in his vehicle, while neither door was yet open, and then noticed a pill bottle fall from the bottom of the vehicle (TA II, 173-74). The bottle rolled down the hill toward him, so he picked it up, opened it, looked inside and observed several small yellowish white rocks that appeared to be crack cocaine (TA II, 174-75). He then approached appellant and asked him if the pill bottle was his (T II, 175/14-18). Appellant immediately attempted to flee (TA II, 175/19-22). Officer Nieves then grabbed appellant around his chest (TA II, 175/22-23). Appellant then hit Officer Nieves twice in the face (TA II, 177/1-13). Clearly, evidence of the pill bottle and its contents is necessary to adequately describe the battery on Officer Nieves. Therefore, even if appellant had a new trial this evidence would be admissible.

Appellant argues that even if this evidence is inextricably intertwined it is still inadmissible because it was a feature of the trial. However, the "feature of the trial" limitation is only applied to Williams Rule evidence. *See Williams v. State*, 117 So. 2d 473, 475 (Fla. 1960). Again, this evidence, which is inextricably intertwined, is not Williams Rule evidence. *Coolen*, supra; *Erickson v. State*, 565 So. 2d 328, 333 (Fla. 4th DCA 1990). Therefore, the "feature of the trial" rule is not applicable.

Of course, relevant evidence should still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Fla. Stat. § 90.403. However, such is not the case in this matter. The Fourth District correctly held that to the extent that evidence regarding the drugs was presented which exceeded the parameters of being inextricably intertwined it was harmless because appellant never contested that he hit the officer. Since appellant never denied hitting Officer Nieves there is no reasonable possibility that admission of the drug related evidence contributed to the battery conviction. *See Moore v. State*, 701 So. 2d 545 (Fla. 1997).

Appellant argues that the district court was incorrect because he did contest hitting the officer (IB 23). Appellant makes this argument because 1) defense counsel made the statement in opening that, "no police officer was battered" (TA 130/25-131/1); 2) Belinda Randall testified that she observed the officers hitting appellant after he had run between the homes, and that she did not then observe appellant hitting back at the officers (TA 256-58); and 3) because defense counsel argued in closing that it was appellant that got beat up (TA 305-06, 309-11, 314, 317). Contrary to appellant's assertion, this evidence does not contradict the district court's conclusion that he did not contest hitting the officer.

Appellant never testified (TA 250). Further, Officer Nieves testified that after he had initially stopped appellant from fleeing and after appellant had struck him twice in the face, appellant was able to tear himself free and run between some homes (TA 178). Belinda Randall never testified that appellant did not hit Officer Nieves before he ran between the homes. She only testified that she did not see appellant hit the officers when they were between the homes, but this was after appellant hit Officer Nieves and ran between the homes. There is nothing in the record to support appellant's contention that he presented any evidence that he did not hit Officer Nieves.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited herein, respondents respectfully request that this Honorable Court **AFFIRM** the opinion of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by courier to Benjamin W. Maserang, Esq., Office of the Public Defender 421 Third Street, 6th Floor, West Palm Beach, Florida this ____ day of _____,

2002.

_____
DAVID M. SCHULTZ
Of Counsel

CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief has been prepared in Courier

New font, 12 point, and double spaced.

_____
DAVID M. SCHULTZ
Of Counsel