

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC10-2483

LAVARESS HOPKINS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

PRELIMINARY STATEMENTiv

STATEMENT OF THE CASE AND FACTS1

SUMMARY OF THE ARGUMENT.....1

ARGUMENT.....2

THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY
REVERSED THE TRIAL COURT'S ORDER DISMISSING
PETITIONER'S CONVICTION FOR BATTERY BY
DETAINEE IN VIOLATION OF §§784.03, 784.082
FLORIDA STATUTES (2007)

CONCLUSION..... 7

CERTIFICATE OF SERVICE.....8

CERTIFICATE OF TYPE SIZE.....9

TABLE OF AUTHORITIES

CASES

Ferguson v. State, 377 So.2d 709 (Fla. 1979). 5
Holly v. Auld, 450 So.2d 217 (Fla. 1984). 6
J.A. v. State, 743 So.2d 601 (Fla. 4th DCA 1999) 2, 3
J.A.D. v. State, 855 So.2d 1199 (Fla. 5th DCA 2003). 2, 3
Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So.2d 911,
914 (Fla. 1995). 6
Martin v. State, 367 So.2d 1119 (Fla. 1st DCA 1979). 6
Modder v. American Nat'l Life Ins. Co., 688 So.2d 330 (Fla.
1997). 4
State v. Hopkins, 47 So.3d 974 (Fla. 4th DCA 2010). 2, 6, 7
T.C. v. State, 852 So. 276 (Fla. 1st DCA 2003). 2, 3, 5, 7

OTHER AUTHORITY CITED

Section 784.03, Florida Statutes (2007). 1, 2
Section 784.075, Florida Statutes (2007). 5
Section 784.076, Florida Statutes (2007). 5
Section 784.082, Florida Statutes (2007). 1-7
Section 784.085, Florida Statutes (2007). 5
Section 943.03(19), Florida Statutes (2007). 6
Section 985.02(19), Florida Statutes (2007). 5
1996 Fla. Laws Ch. 293. 4

PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Petitioner was the Appellee and Respondent was the Appellant in the Fourth District Court of Appeal ("Fourth District"). In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

STATEMENT OF THE CASE AND FACTS

The State accepts Appellant's statement of the case and facts for purposes of this appeal only to the extent that they are relevant, non-argumentative, set forth verbatim the record of the proceedings with record citations, and subject to the additions and clarifications in the argument portion of this brief, which are necessary to resolve the legal issue presented upon appeal.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal correctly reversed the trial court's order dismissing Petitioner's conviction for Battery by Detainee in violation of §§784.03, 784.082, Florida Statutes (2007). The language of §784.082, Florida Statutes clearly establishes that the legislature intended to include a juvenile detention facility as an "...other detention facility" for purposes of culpability.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY REVERSED THE TRIAL COURT'S ORDER DISMISSING PETITIONER'S CONVICTION FOR BATTERY BY DETAINEE IN VIOLATION OF §§784.03, 784.082 FLORIDA STATUTES (2007)

Petitioner was charged with Battery on a Detainee in violation of §§784.03, 784.082, Florida Statutes for his actions while at a juvenile detention center. The section 784.082, Florida Statutes enhancement converted Petitioner's misdemeanor to a third degree felony. At the trial level, Petitioner filed a motion to dismiss arguing that he was not subject to the §784.082 enhancement where he committed the battery at a juvenile detention center. Citing the language in T.C. v. State, 852 So. 276 (Fla. 1st DCA 2003) that "[n]othing in section 784.082 indicates that the statute applies to juveniles held in juvenile facilities", the trial court dismissed Petitioner's cause. On appeal, the Fourth District Court of Appeal reversed the trial court's dismissal citing J.A. v. State, 743 So.2d 601 (Fla. 4th DCA 1999) and J.A.D. v. State, 855 So.2d 1199 (Fla. 5th DCA 2003) - decisions affirming juvenile convictions under the enhancement. State v. Hopkins, 47 So.3d 974 (Fla. 4th DCA 2010).

At bar, Petitioner argues that the Fourth District Court of Appeal erred in reversing the trial court's order dismissing the information charging him with Battery on a Detainee in violation of

§§784.03, 784.082, Florida Statutes. According to Petitioner, he is not subject to the enhancement featured in §784.082, Florida Statutes where the section does not apply to juveniles being held in juvenile facilities. Petitioner's Merits Brief, 4. Petitioner acknowledges that J.A. v. State, 743 So.2d 601 (Fla. 4th DCA 1999) and J.A.D. v. State, 855 So.2d 1199 (Fla. 5th DCA 2003) have affirmed adjudications of juveniles charged with the same enhancement for committing a battery while being held in a juvenile facility, however, implores this Court to resolve the conflict by ratifying the First District Court of Appeal's decision in T.C. v. State, 852 So. 276 (Fla. 1st DCA 2003). Petitioner's position is unavailing and must be rejected. Petitioner's Merits Brief, 4-5.

Section 784.082, Florida Statutes (1997) provides:

[w]henver a person who is being detained in a prison, jail or other detention facility is charged with committing...a battery...upon any visitor to the detention facility or upon any other detainee in the detention facility, the offense for which the person is charged shall be reclassified..

Although the section does not define the term "other detention facility", Respondent respectfully submits that a definition is not needed to determine legislative intent where the legislative intent was clearly pronounced through the preamble of Chapter 96-293, the chapter which added §784.02, Florida Statutes. Indeed, the

legislature explained that the group of laws introduced by Chapter 96-293 were in response to various concerns including the "...rising incidence of crime, especially juvenile crime". See, 1996 Fla. Laws Ch. 293. Respondent contends that, in light of such language, the legislature clearly intended enhancing the consequences of committing a violent crime while in a detention setting, including a juvenile detention facility.

Assuming that the preamble did not convey the legislature's intent, Respondent respectfully submits that the language of the statute itself plainly conveys its meaning - all persons (regardless of age) who commit said crime while being held at a facility meant for detention is subject to the enhancement. Modder v. American Nat'l Life Ins. Co., 688 So.2d 330, 333 (Fla. 1997)("[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.").

Despite its clarity, Petitioner insists that the term "other detention facility" is ambiguous in nature and must be construed in the form most favorable to him. Petitioner's Merits Brief, 4. Such a position, however, ignores two fundamental canons of statutory construction. First, if there was indeed ambiguity in

the terms used by the legislature when drafting §784.082, Florida Statutes, then the basic rule of statutory construction mandates that "statutes which relate to the same or to a closely related subject or object are regarded as in pari materia and should be construed together and compared with each other." Ferguson v. State, 377 So.2d 709, 710 (Fla. 1979).

Chapter 784 titled "Assault; Battery; Culpable Negligence" criminalizes several types of unlawful threats and touches. In addition to proscribing certain acts, the different sections in Chapter 784 instruct as to **who** can be held liable for such behavior. To be specific, Section 784.076, Florida Statutes, Battery on Health Services Personnel, can only be committed by "...[a] juvenile who has been committed to or detained by the Department of Juvenile Justice pursuant to a court order". §784.076, Florida Statutes (2007). Indeed, per statute, only a person over 18 can commit Battery of Child by Throwing, Tossing, Projecting, or Expelling Certain Fluids. §784.085, Florida Statutes.

Tellingly, however, the remaining crimes proscribed by Chapter 784, including Battery by a Detainee as described by §784.082, can be committed by any "person". The legislature's purposeful exclusion of adults in §784.076, Florida Statutes and children in §784.085, Florida Statutes supports the contention that the

legislature meant exactly what it said: §784.082 can be violated by any "person" regardless of their status as an adult or juvenile.

Respondent recognizes that §784.075, Florida Statutes - Battery on Detention or Commitment Facility Staff or Juvenile Probation Officer uses the term "detention center or facility as defined in s.984.03(19)..." . Although it is used in describing the victim's status, and not that of the offender, such a clause could arguably lead one to believe that "detention facility" for purposes of liability under §784.082 has been defined. Respondent respectfully submits, however, that such definition is irrelevant to §784.082 where §784.082 makes no reference to the juvenile justice chapter, Chapter 984. See, Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So.2d 911, 914 (Fla. 1995)(where legislature uses term in one section of statute but omits same term from other section, court "will not imply it where it has been excluded"). Indeed, reference to Chapter 984 could have the effect of excluding adults in detention facilities from criminal liability under §784.082. The lack of reference reinforces Respondent's argument that a violation of §784.082 can be committed by an adult as well as a juvenile.

Finally, contrary to Petitioner's position, the term "other detention facility" cannot be construed in the form most favorable to him where such construction would render absurd and unintended

results. See, Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984). Indeed, statutes "must not be construed so strictly as to emasculate the statute and defeat the obvious intention of the legislature." See, Martin v. State, 367 So.2d 1119 (Fla. 1st DCA 1979). Reading the statute in the form suggested by Petitioner would suggest that, despite §784.082, Florida Statutes' preamble and plain language, the legislature was solely concerned with the protection of visitors and detainees of adult detention facilities leaving visitors and detainees of a juvenile detention facility unprotected. Such a reading defeats the stated purpose and language of §784.082, Florida Statutes and must be rejected.

Respondent respectfully submits that the First District Court's conclusory opinion in T.C. that "[n]othing in section 784.082 indicates that the statute applies to juveniles held in juvenile facilities" is unfounded and ignores the legislature's clear intent behind the section's enactment. Accordingly, Respondent respectfully requests that this Court ratify the Fourth District's decision in Hopkins.

CONCLUSION

Based on the foregoing, the State respectfully requests that the decision of the District Court of Appeal in State v. Hopkins, 47 So.3d 974 (Fla. 4th DCA 2010) be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on the Merits" has been furnished to: Tom Wm. Odom, Office of the Public Defender, 421 Third Street, 6th Floor, West Palm Beach, FL 33401 on July 18, 2011.

KATHERINE Y. MCINTIRE

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R.App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

KATHERINE Y. MCINTIRE