IN THE SUPREME COURT OF THE STATE OF FLORIDA,

CHARLES PAUL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC11-690

****
ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL
****

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited **Page Number**

Rules and Statutes:

Other Authorities:

PRELIMINARY STATEMENT

Petitioner was the appellant and Respondent was the appellee in the Florida Fourth District Court of Appeal.

Petitioner appealed his from the denial of a motion for postconviction relief which, although it was successive, raised a claim which the Fourth District Court of Appeal said "could have been considered under Rule 3.800(a)" of the Florida Rules of Criminal Procedure. The Fourth District added that it had rejected the claim on direct appeal, and once again held that it lacked merit.

The Fourth District went on to certify that its decision directly conflicts with the decision of the Firth District Court of Appeal in *Crapps v. State*, 968 So.2d 627 (Fla. 1st DCA 2007). Thereafter, Petitioner filed a Notice to Invoke Discretionary Jurisdiction in this Court and filed a jurisdictional brief.

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

The following symbols will be used;

JB = Petitioner's Initial Brief on Jurisdiction

R = Record on Appeal

T = Transcripts

STATEMENT OF THE CASE AND FACTS

In the year 2002, in the Circuit Court of the Seventeenth Judicial Circuit of Florida, Petitioner was found guilty of shooting into an occupied vehicle and sentenced to fifteen years in the Florida Department of Corrections. Thereafter, on March 31, 2004, his conviction was affirmed by the Florida Fourth District Court of Appeal in a *per curiam* decision without written opinion. See *Paul v. State*, 871 So.2d 242 (table)(Fla. 4th DCA 2004).

In the case at bar, Petitioner filed a successive motion for postconviction relief in the Circuit Court which contained a claim of illegal sentence pursuant to Rule 3.800(a) of the Florida Rules of Criminal Procedure. The motion was denied. On appeal, the Florida Fourth District Court of Appeal held that the claim was without merit, but added that it certified conflict with the decision of the First District Court of Appeal in *Crapps v. State*, 968 So.2d 627 (Fla. 1st DCA 2007).

The relevant facts in this case is found in the Fourth District Court of Appeal affirmance found in *Paul v. State*, 59 So.3d 193 (Fla. 4th DCA 2011). A copy of the Fourth District Court of Appeal's decision is attached hereto for the convenience of this Court.

SUMMARY OF THE ARGUMENT

There are four separate and distinct parts to section 790.19, Fla. Stat. (2003): the second part makes it a crime for a person to shoot at or into "a vehicle of any kind which is being used or occupied by a person."

Proper statutory interpretation requires that statutory language be given "its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature."

The word "use" (yooz) commonly means, "To bring into service or action; employ." It is logically impossible to "use or occupy" a vehicle without being inside of it as a driver or passenger. The First District Court of Appeal misapplied '790.19 in *Crapps* when it applied the "occupied or unoccupied" building portion of the statute to a case that involved the offense of throwing a deadly missile into an occupied vehicle.

Given the specific language of the statute and the facts in the case at bar, the decision of the Fourth District Court of Appeal is a proper application of the law. Petitioner's petition should be denied.

ARGUMENT

PETITIONER HAS IMPROPERLY INVOKED THE JURISDICTION OF THIS COURT; THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN *CRAPPS V. STATE*, 968 SO.2D 627 (FLA. 1ST DCA 2007).

Petitioner asks this Court to review the decision of the Fourth District Court of Appeal in *Charles Paul v. State,* 59 So.3d 193 (Fla. 4th DCA 2011), wherein the Fourth District Court held that the crime of shooting into an occupied vehicle qualified under the forcible felony catch-all provision of the Prison Releasee Reoffender statute, section 775.082(9)(a)1.o., Fla. Stat. (2001). In its written opinion, the Fourth District Court recognized and certified conflict with the First District Court of Appeal's opinion in *Crapps v. State,* 968 So.2d 627 (Fla. 1st DCA 2007. Respondent respectfully submits that despite the Fourth District's opinion, there is no conflict.

That "catch all provision" referred to by the Fourth District defines a "prison releasee reoffener" or PRR as "any defendant who commits, or attempts to commit . . . [a]ny felony that involves the use or threat of physical force or violence against an individual . . ." Section 790.19 makes it a felony of the second degree for any person to shoot at or throw any missile "at, within, or into . . . any public or private building, occupied or unoccupied, or public or private bus or . . . vehicle of any kind which is being used or occupied by any person . . ."

In deciding whether section 790.19 was a forcible felony for the purposes of the PRR statute, the First District looked to the decision of the Fourth District Court in *Peterson Paul v. State*, 958 So.2d 1135, 1136 (Fla. 4th DCA 2007) where the Court held that the appellant, who was convicted of shooting a deadly missile into a dwelling, did not qualify as a PRR, and the Third District Court of Appeal in *Hudson v. State*, 800 So.2d 627, 628-29 (Fla. 3d DCA 2001) where the Court held that the crime proscribed by section 790.19 is not a forcible felony because it includes shooting or throwing at unoccupied buildings and, thus, does not, by statutory definition, necessarily involve physical force or violence against an individual. (In so doing, the First District noted its reliance on this Court's opinion in *State v. Hearns*, 961 So.2d 211 (Fla. 2007), where this Court reiterated that "the only relevant consideration is the statutory elements of the offense. If 'the use or threat of physical force or violence against any individual' is not a necessary element of the crime, 'then the crime is not a forcible felony within the meaning of the final clause of section 776.08.'")

Respondent respectfully submits that in certifying conflict, the Fourth District Court overlooked the fact that there are four separate and distinct parts to section 790.19. The first part of the statute deals with shooting at or into "any public or private building, occupied or unoccupied"; the second part makes it a crime for a person to shoot at or into "a vehicle of any kind which is being used or occupied by a person";

the third part deals with shooting at "any vessel . . . lying in or plying the waters of this state"; and the fourth prohibits shooting at any "aircraft flying through the airspace of this state."

The language makes it clear that a defendant can violate two parts of the statute without using physical force or violence against an individual: by shooting at or into an unoccupied building, and by doing the same to a vessel "lying in the waters of this state" which, of course, could be unoccupied. One might also make the argument that in the current era of drone aircraft, a defendant might even shoot at an "aircraft flying through the airspace of this state" without using physical force or violence against an individual. However, it is logically impossible to "use or occupy" a vehicle without being in it.

This Court has have often stated the basic tenet of statutory interpretation is that it must give "statutory language its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature." *State v. Finelli,* 780 So.2d 31 (Fla. 2001) quoting *Green v. State,* 604 So.2d 471, 473 (Fla. 1992). The word "use" (yooz) commonly means, "To bring into service or action; employ"; and "to put to some purpose." See Webster's New Riverside University Dictionary, Houghton Mifflin Company, 1984. With that definition in mind, Respondent submits there is only one way to "use or occupy" a vehicle: by being inside of it as a driver or

passenger. Thus, Respondent respectfully submits the First District Court of Appeal misapplied section 790.19 in *Crapps* when it applied the "occupied or unoccupied" building portion of the statute to a case that involved the offense of throwing a deadly missile into an occupied vehicle.

Given the specific language of the statute and the facts in the case at bar, the decision of the Fourth District Court of Appeal is a proper application of the law. Petitioner's petition should be denied.

CONCLUSION

WHEREFORE based on the foregoing arguments and the authorities cited herein, Respondent respectfully contends the decision of the Fourth District Court of Appeal is not in conflict with any decision of this Court or any of the district courts, and, therefore, this Court should decline jurisdiction in the premises.

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 Jurisdiction" was sent by United States mail to: CHARLES PAUL, *Pro* Se, DC #L30122, Everglades Correctional Institution, 1599 S.W. 187th Avenue, Miami, FL 32194-2801 on June 23, 2011.

_____

JOSEPH A. TRINGALI,
Assistant Attorney General
Counsel for Respondent

CERTIFICATE OF TYPE FACE AND FONT

Counsel for the Respondent/Appellee hereby certifies, pursuant to this Court's Administrative Order of July 13, 1998, that the type used in this brief is Times Roman 14 point proportionally spaced font.

_____

JOSEPH A. TRINGALI,
Assistant Attorney General
Counsel for Respondent

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****

APPENDIX

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