

IN THE SUPREME COURT OF FLORIDA

DAVID BAUTISTA,)
)
 Petitioner,)
)
 vs.) CASE NO. SC01-2121
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

PETITIONER'S REPLY BRIEF ON THE MERITS

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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 will rely upon the statement of the case and facts submitted in his initial brief.

SUMMARY OF THE ARGUMENT

POINT I

Petitioner will rely upon the summary of the argument submitted in his initial brief.

POINT II

Petitioner will rely upon the summary of the argument submitted in his initial brief.

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.

In response to petitioner's argument that the number of episodes during which one's driving under the influence causes death, rather than the number of deaths caused, defines the unit of prosecution for DUI manslaughter, respondent contends that the issue has previously been decided against him in *Melbourne v. State*, 679 So. 2d 759 (Fla. 1996) and *State v. Salazar*, 679 So. 2d 1183 (Fla. 1996). Petitioner disagrees. While this Court may decide to reject petitioner's argument, neither *Melbourne* nor *Salazar* require it to do so.

Melbourne rejected a double jeopardy challenge to multiple convictions for DUI manslaughter where the deaths arose out of a single incident. 679 So. 2d at 765. In *Salazar* the Court held that its ruling in *Melbourne* applied to section 316.193(3)(c)1., 2., & 3., *Florida Statutes* (1993). 679 So. 2d at 1183.¹

¹ The first two subsections address property damage, personal injury, and serious bodily injury, while the third addresses death.

Petitioner does not contend that his multiple convictions for DUI manslaughter violate double jeopardy, instead arguing that multiple convictions exceed the authorized unit of prosecution. As a result, *Melbourne* and *Salazar* are inapposite.²

This Court may conclude that the number of deaths, not the "a/any" test, is the appropriate method for determining the unit of prosecution where death is involved. That view does not strike counsel as unreasonable, *Ex Parte Rathmell*, 717 S.W. 2d 33 (Tex. Cr. App. 1986); *State v. Irvin*, 603 S.W. 2d 121 (Tenn. 1980); *State v. Rabe*, 291 N.W. 2d 809 (Wis. 1980), but ignores the different language employed by the legislature in Florida's various homicide statutes. Statutes addressing murder, manslaughter, and vehicular homicide proscribe killing "a human being." §§ 782.04, & 782.071, *Fla. Stat.* (1999). The statute addressing DUI manslaughter proscribes killing "any human being." § 316.193(3)(c)3., *Fla. Stat.* (1999). "The 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." *Overstreet v. State*, 629 So. 2d 125, 126 (Fla. 1993). The use of different language in statutes proscribing similar conduct

² This Court's holding "that only one homicide conviction and sentence may be imposed for a single death," *Houser v. State*, 474 So. 2d 1193, 1196 (Fla. 1985), does not mean that a separate conviction and sentence must be imposed for each death.

suggests the legislature intended the statutes to be construed differently. See *Scates v. State*, 603 So. 2d 504, 505-506 (Fla. 1992). In drafting the DUI manslaughter statute the legislature choose to criminalize the killing of "any human being," rather than "a human being." As a result, it appears that the legislature intended a different unit of prosecution for DUI manslaughter and other forms of homicide. Compare *Rathmell*, 717 S.W. 2d at 35 (crime to cause the death of *an* individual by accident or misfortune when driving a motor vehicle while intoxicated); *Rabe*, 291 N.W. 2d at 819 (causing death of *another* by negligent operation of a motor vehicle while under the influence of intoxicants). If the legislature disagrees, it will not shy away from making the necessary correction. See generally §§ 810.015 & 893.101, *Fla. Stat.* (2002).³

The "a/any" test provides a workable test from which to determine the allowable unit of prosecution. Employing a single test places all parties, the executive, legislative, and judicial branches included, on notice of the unit of prosecution for a criminal offense. With notice comes consistency in the drafting of legislation, charging decisions by the prosecutor,

³ The legislature may have intended that multiple deaths would affect the length of a single sentence, through an increase in victim injury points, but would not result in multiple convictions.

and the manner in which cases are adjudicated. Adopting more than one test to determine the unit of prosecution may well cause confusion, resulting in similarly situated defendants being treated differently. Therefore, this Court should reaffirm the "a/any" test and hold that it applies to the DUI manslaughter statute.

POINT II

THE TRIAL COURT ERRED BY ALLOWING PETITIONER TO BE ADJUDICATED GUILTY OF THE ENHANCEMENT OF FAILURE TO COMPLY WITH SECTION 316.062 IN BOTH COUNTS OF DRIVING UNDER THE INFLUENCE MANSLAUGHTER.

Petitioner will rely upon the argument submitted in his initial brief.

CONCLUSION

Based upon the foregoing arguments and the authorities cited therein, petitioner respectfully requests this Honorable Court to quash the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Mr. Daniel P. Hyndman, Assistant Attorney General, 1515 N. Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432 this ____ day of December, 2002.

Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared in compliance with the font standards required by Florida Fla. R. App. P. 9.210. The font is Courier New, 12 point.

Attorney for Petitioner