

FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

Bautista v. State

832 So. 2d 122 (Fla. 4th DCA 2002) · Decided August 28, 2002

SUMMARY

The Florida Fourth District Court of Appeal affirmed David Bautista’s convictions and sentences for two counts of first-degree DUI manslaughter with failure to render aid. The court rejected challenges concerning prosecutorial comments, felony enhancement, and multiple convictions arising from one accident, relying on Florida precedent permitting separate DUI manslaughter convictions for deaths of multiple victims. The court certified a question of great public importance concerning the application of the “a/any” test to multiple DUI manslaughter convictions.

CASE DETAILS

COURT	Fourth District Court of Appeal of Florida
WRITING FOR THE COURT	John W. Dell, Senior Judge; Shahood, J.; Klein, J.
JURISDICTION	Florida
DECIDED	August 28, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	David Bautista appealed the final judgment adjudicating him guilty of and sentencing him for two counts of first-degree DUI manslaughter with failure to render aid.
STANDARD OF REVIEW	The court reviewed alleged prosecutorial misconduct for fundamental or reversible error and reviewed the statutory and double-jeopardy issues de novo.
PRECEDENTIAL VALUE	Published opinion; precedential Florida district court of appeal decision, with a certified question of great public importance.
PARTIES	David Bautista v. State of Florida

TOPICS

[criminal procedure](#) [statutory interpretation](#) [appellate procedure](#) [appellate jurisdiction](#) [double jeopardy](#)

PRACTICE AREAS

criminal law

criminal procedure

DUI manslaughter

statutory interpretation

double jeopardy

appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor's comments during opening statement denied Bautista a fair trial and required a new trial.
2. Whether Bautista's failure to render aid and provide information permitted enhancement of both DUI-manslaughter counts to first-degree felonies.
3. Whether multiple convictions and sentences for DUI manslaughter may arise from the deaths of two victims in a single accident, notwithstanding the statutory phrase 'the death of any human being' and the a/any unit-of-prosecution test.

HOLDINGS

1. The prosecutor's comments did not constitute fundamental error or reversible error and therefore did not require a new trial.
2. Both DUI-manslaughter convictions were properly enhanced to first-degree felonies because Bautista failed to render aid and provide information for the two victims.
3. Multiple convictions and sentences for DUI manslaughter are permissible when one DUI violation causes the deaths of multiple victims in a single accident.

KEY QUOTATIONS

"The DUI driver may sustain multiple convictions because the violation causes injury to each victim." (125)

"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." (125)

FACTUAL BACKGROUND

Bautista's vehicle collided with another vehicle, fatally injuring both occupants. He was operating the vehicle with an unlawful blood-alcohol level and fled without rendering aid or providing information to responding police officers. A jury convicted him of two counts of first-degree DUI manslaughter with failure to render aid.

PROCEDURAL HISTORY

After Bautista's vehicle collided with another car and killed its two occupants, a jury convicted him of two counts of first-degree DUI manslaughter with failure to render aid. The trial court entered final judgment and imposed sentence on both counts. The Fourth District Court of Appeal affirmed the convictions and sentences and certified a question of great public importance concerning multiple DUI-manslaughter convictions arising from one accident.

DISPOSITION

affirmed

CASES CITED

- Grappin v. State, 450 So. 2d 480 (Fla. 1984)
- State v. Watts, 462 So. 2d 813 (Fla. 1985)
- Melbourne v. State, 679 So. 2d 759, 765 (Fla. 1996)
- Boutwell v. State, 631 So. 2d 1094 (Fla. 1994)
- Wright v. State, 592 So. 2d 1123 (Fla. 3d DCA 1991)
- State v. Wright, 546 So. 2d 798, 799 (Fla. 1st DCA 1989)

OPINION

DELLJOHN, J.

DELL, JOHN W., Senior Judge: David Bautista (“appellant”), appeals the trial court’s final judgment ‘adjudicating him guilty of and sentencing him for two counts of first degree driving under the influence (“DUI”) manslaughter Mth failure to render aid.

We affirm. Appellant’s vehicle collided with another car fatally injuring the two passengers therein. He was operating his vehicle with an unlawful blood alcohol level. He fled the scene of the accident without rendering aid to the passengers or providing information to the responding police officers. A jury convicted him of two counts of first degree DUI manslaughter with failure to render aid.

Appellant raises three points on appeal. He contends that he should be granted a new trial because the prosecutor made comments during opening statement that denied him of a fair trial and that the trial court erred’ when it enhanced both DUI manslaughter counts to first degree felonies for his failure to render aid.¹ He also contends that trial court erred when it convicted and sentenced him for two counts of DUI manslaughter.

He argues for the first time on appeal that the multiple conviction for the death of two victims arising out of a single accident cannot stand because the manslaughter statute is ambiguous and will support only a single conviction because the statute refers to “the death of any human being” instead of “a” human being. See § 316.193(3)(c), Fla. Stat.’

(2001).² *124We have considered appellant’s argument concerning the prosecutor’s comments during opening statement. We conclude that the comments neither reached the level of fundamental error nor did they constitute reversible error. Next, for the reasons which we will discuss concerning the DUI manslaughter statute, we affirm the enhancement to the first degree

for both counts of DUI manslaughter because appellant failed to render aid and provide information for the two victims.

We are not persuaded by appellant's argument that the DUI manslaughter statute is ambiguous because it contains the article "any" instead of the article "a." Appellant's argument relies upon the "a/ any test," a product of the decisions in *Grappin v. State*, 450 So.2d 480 (Fla.1984), and *State v. Watts*, 462 So.2d 813 (Fla.1985).

In *Watts*, the court discussed *Grappin* and explained that, We reasoned that *Grappin* may be charged in a five-count information with five thefts because the article "a" prefaced firearm. We noted that the use of the article "a" in reference to "firearm" in section 812.014(2)(b)3 clearly shows that the legislature intended to make each firearm a separate unit of prosecution.

Id. at 482. 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. *Watts*, 462 So.2d at 813-14.

The Florida Supreme Court has not applied the "a/any test" in a case of multiple convictions of DUI manslaughter resulting from the death of more than one victim during one accident. However, the court has held in *Melbourne v. State* that multiple convictions of DUI manslaughter in such a circumstance does not violate double jeopardy principles. This Court has held that only one conviction can arise from a single violation of the driving with a suspended license statute even though injury results to several persons.

Boutwell v. State, 631 So.2d 1094 (Fla.1994). Florida courts also have held, however, that multiple convictions can arise from a single violation of the DUI statute where injury results to several persons. See, e.g., *Wright v. State*, 592 So.2d 1123 (Fla. 3d DCA 1991), quashed on other grounds, 600 So.2d 457 (Fla.1992).

The different constructions of these two statutes, we conclude, are not contradictory; the link between the statutory violation and resultant injury is fundamentally different. ' In the case of driving with a suspended license, the link between the violation and injury is indirect — the suspended license in no way causes the driver's carelessness or negligence.

To allow multiple convictions for a single violation of this statute would be illogical because the violation does not cause injury to any of the victims. In the case of DUI, on the other hand, the link is direct — the driver's intoxication results in his or her inability to drive safely.

The DUI driver may sustain multiple convictions because the violation causes injury to each victim. *Melbourne v. State*, 679 So.2d 759, 765 (Fla.1996). See also *State v. Wright*, 546 So.2d 798, 799 (Fla. 1st DCA 1989)("It is abundantly clear from Section 316.193 that the legislature

contemplated separate offenses where different victims are injured or killed, or where the driver causes damage to different victims' property.”).

We recognize that Melbourne addressed a double jeopardy argument and not the application of the “a/any test.” However, we conclude that appellant’s convictions and sentences must be affirmed based on the more recent and explicit language in Melbourne: “The DUI driver may sustain multiple convictions because the violation causes injury to each victim.” 679 So.2d at 765.

Accordingly, we affirm appellant’s convictions and sentences, and we certify 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.

AFFIRMED.’ SHAHOOD, J., concur. KLEIN, J., dissents with opinion.. § 316.193(3)(c)3.b, Florida Statutes (2001), provides that a person who drives under the influence and by reason of such operation causes the death of any human being commits a DUI manslaughter classified as 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.

If the two conditions do not apply, however, the person commits a felony of the second degree. See § 316.193(3)(c)3.a.. Any person: (a) Who is in violation of subsection (1) [driving under the influence]; (b) Who operates a vehicle; and *124(c) Who, by reason of such operation, causes: 3.

The death of any human being commits DUI manslaughter.... § 316.193(3)(c), Fla. Stat. (2001).