

IN THE SUPREME COURT OF FLORIDA

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FRANK ARMENIA,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 68,039

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## ARGUMENT

In reply to Respondent and in support of his contention that his conviction should be overturned because he did not cause the death of the victim, Petitioner would note that Respondent maintains that for conviction of D.W.I. manslaughter there is no need to prove a causal relationship between the defendant's manner of operating the vehicle and the death of the victim (Brief of Respondent, pages 2-11), then attempts to show such a link to make Armenia worthy of blame for the victim's death (Brief of Respondent, pages 11-12). It is, therefore, necessary to state at the outset that there was no evidence of such a link.

The only witness who testified to Armenia's erratic driving before the collision, Carl Ikonen, described the other car in which the victim was a passenger as causing the collision (R149). Ikonen was not close enough to see what William Hart, the only immediate eye witness observed, the car carrying the victim almost colliding with him and then cutting behind him into the path of Armenia (R19-20). The State acknowledges the testimony of the accident reconstruction expert that Armenia did not have time to avoid the collision, but then puts forward its own speculation that Armenia should have been forewarned of the possibility of an accident by Hart and should have slowed down to let the victim's car safely cut in front of him (Brief of Respondent, page 12). The only appropriate response to such speculation is a conjunction of the verb "give" and the noun "break" in a contemporary colloquialism. The victim's car crosses into two

lanes of traffic, stops in the first when Hart is passing, then immediately cuts behind him into the second lane as Hart passes, into the path of Armenia's vehicle, whose headlights Hart saw in his rearview mirror as he passed the victim's vehicle, which was creating the hazard - and Armenia is expected to accomodate the hazard!

At no stage of this case, until now, has the State attempted to accuse Armenia of causing the collision (Brief of Petitioner, page 14). Instead, it has invoked Baker v. State, 377 So.2d 17 (Fla. 1979). The trial judge acknowledged that Armenia did not cause the collision (R397-398); the question was certified by the district court because this case exemplifies the Baker anomaly - convicting a defendant of D.W.I. manslaughter without evidence that he was responsible for the fatal collision. The case would not be in this Court if Armenia was responsible for the collision.

Petitioner's legal argument, based on an analysis of causation language and the relationship between moral culpability and legal responsibility, is that while Baker's interpretation of the D.W.I. manslaughter statute has a rational basis - to deter drunk driving - it is not reasonably or rationally related to such deterrence, and creates the anomaly of legal responsibility without moral culpability. Petitioner does not "rail against the constitutionality of the statute", contrary to Respondent's misrepresentation (Brief of Respondent, page 10). He clearly stated in his initial brief: "Petitioner, unlike the petitioner in Baker, is not arguing against the constitutionality of the

statute, but against the constitutionality of Baker's interpretation of the statute" (Brief of Petitioner, page 14).

That interpretation makes it a no-fault D.W.I. manslaughter statute, not requiring proof of the minimal mental element of negligence or the physical act of effective causality. Such an interpretation is unreasonable because it is not rationally related to deterring drunk driving, a purpose achieved by punishing D.W.I. It depends on circumstances unrelated to the offender's culpability but related to the conduct of another who actually causes the incident resulting in death. Petitioner does not accept Respondent's contention that the statute is "totally devoid of fault words" (Brief of Respondent, page 6): what else are the words, "If the death of any human being is caused by the operation of a motor vehicle by any person while intoxicated, such person shall be deemed guilty of manslaughter", Section 316.1931(2)(c), Florida Statutes, but the attribution in ordinary language of moral and legal culpability for a death? It is Baker's strained interpretation of the statute, not the statute itself, which removes the necessity of a link between the death and the defendant's being the actual and effective cause of the death.

The crux of the issue in this case is not so much in the area of negligence as in causation. The criminally negligent act of driving while intoxicated can be rationally, morally and legally connected to the homicide of the victim only if the person responsible for the initial negligent and criminal misconduct of getting behind the wheel of a vehicle while intoxicated

is also responsible for the act which causes the victim's death. It is one thing to find the necessary element of culpable negligence in the initial misconduct and attributing it to the defendant at the time of the incident. Cannon v. State, 91 Fla. 214, 107 So. 360,362 (1926). It is another, and equally necessary, element to find that the defendant actually and effectively caused the incident. Baker relies on Roddenberry v. State, 152 Fla. 197, 11 So.2d 582 (1942), for dispensing with the element of causation.

Petitioner maintains that causation cannot be subsumed under negligence but is an independent element that must be proved, or at least as in this case disproved by evidence that Armenia could not have avoided the collision and was therefore not an efficient and proximate cause of the death of the victim. Otherwise the conviction for D.W.I. manslaughter is arbitrary, the punishment applied unfairly in a manner offensive to due process and equal protection - no matter whether the defendant is actually and morally responsible for the death. It is not the statute that needs to be changed, but its interpretation dispensing with causation.

Such an interpretation is an anomaly not just in the area of legal philosophy and jurisprudence, the constitutional underpinnings of the criminal law enshrined in the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Article I of the Florida Constitution. It is not supported by the history and development of D.W.I. manslaughter statutes. Michigan was the first state to codify homicide in

the operation of a motor vehicle, in 1921, and the leading case in the area of D.W.I. manslaughter has been People v. Townsend, 214 Mich. 267, 183 N.W. 177, 16 A.L.R. 902 (1921). Townsend clearly states the causation requirement - that there be a direct relation between the unlawful act of operating a vehicle while intoxicated and the accident; that the D.W.I. "directly contributed" to the manslaughter; a requirement that the death was a "proximate result" of the unlawful act. In the historical development, this requirement was all but taken for granted as attention focused on the other element, the degree of negligence required to convict of manslaughter as distinguished from negligent homicide or murder, and how much of that element was supplied by the intoxication. Comment, Criminal Law: Homicide Committed Through the Operation of a Motor Vehicle While Intoxicated; California Vehicle Code, Sections 501,502, 24 Calif.L.Rev. 555 (1935); Negligent Homicide: A Study in Statutory Interpretation, 25 Calif.L.Rev. 1 (1936).

This Court has recently stated that D.W.I. manslaughter is not merely an enhancement of the penalty for driving while intoxicated, and that the additional element of the death of a victim raises D.W.I. manslaughter beyond mere enhancement and places it squarely within the scope of this state's regulation of homicide. Houser v. State, 474 So.2d 1193,1196 (Fla. 1985). This distinction in kind, not just in degree was not recognized in Baker (Brief of Petitioner, page 11). Petitioner in no way disagrees with the rationality of the D.W.I. statute and the sense of punishing for D.W.I. His quarrel is with an interpreta-

tion of the statute which ignores its clear meaning and eliminates the requirement of causality, a question of fact in a homicide case to be established beyond a reasonable doubt. Howell v. State, 136 Fla. 582, 187 So. 163,166 (1939).

In the normal course of homicide conviction, the prosecution would produce evidence of the connection between Armenia's driving while intoxicated and the death. Unless there had been Hart's testimony that the death resulted from some other cause, the actions of the driver of the victim's car, the connection between the D.W.I. and the death would have been presumed. Coachman v. State, 114 So.2d 189,192 (Fla. 1st DCA 1959). Baker shortcircuits the normal procedure and eliminates the causal connection. While there may be more than one proximate cause, and the act of the accused need not be the immediate cause of death, to warrant conviction the prosecution must establish that the act of the accused was a proximate cause of death and that the immediate cause of death was the natural result of the accused's criminal act. Criminal responsibility arises when the act complained of caused or directly contributed to the death. State v. Cummings, 271 S.E.2d 277,279 (N.C. 1980); State v. Mitchell, 302 S.E.2d 265,268-269 (N.C. 1983). Even if the D.W.I. is considered negligence per se and there need be no other showing of a mens rea, conviction of the homicide requires a causal connection which is supplied by the plain meaning of the statute but eliminated by the Baker gloss on the statute. The public policy of deterring drunk driving is promoted by punishing real D.W.I. manslaughter, where the death is caused by the operation

of the vehicle by the drunk driver. It is a violation of due process to punish the person not responsible for the homicide.

CONCLUSION

BASED UPON the arguments made and authorities cited herein and in Petitioner's Initial Brief on the Merits, Petitioner respectfully asks this Honorable Court to answer affirmatively the question certified by the District Court of Appeal, and to overturn his conviction.

Respectfully submitted,

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PUBLIC DEFENDER  
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; and mailed to Frank Armenia, Inmate No. 095572, Union Correctional Institute, Post Office Box 221, Raiford, Florida 32083, on this 17th day of February, 1986.

*Michael L. O'Neill*

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