IN THE SUPREME COURT OF FLORIDA

LAURIE ADELE SCHUETTE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC01-1254
	)	DCA CASE NO. 4D00-1667
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Laurie Adele Schuette, was the defendant in the trial court and the Appellee in the district court of appeal. She will be referred to as Ms. Schuette or "Petitioner" in this brief. Respondent was the prosecution in the trial court and the Appellant in the district court and will be referred to as "the State" or "Respondent" in this brief.

The record on appeal is consecutively numbered. All references to the record will be by the following symbols:

"R" = Record on Appeal Documents

"T" = Record on Appeal Transcripts

"IB" = Initial Brief to the district court by Respondent, the State of Florida

"AB" = Answer Brief to the district court by Petitioner, Laurie Adele Schuette

STATEMENT OF THE CASE AND FACTS

Petitioner, Laurie Adele Schuette, was charged by Information filed in the Fifteenth Judicial Circuit with leaving the scene of an accident involving injury and driving under suspension. R5. She was found guilty of both counts after a non-jury trial. R18, 46.

At sentencing, the State sought restitution totaling $97,000 in medical bills and lost wages. T5-8, 17. Acknowledging that restitution could not be imposed for the leaving the scene of an accident count, the State asserted that it could be imposed for the driving under suspension count. T7-8. The trial court recognized that restitution could not be imposed for the offense of leaving the scene of an accident unless the act of leaving the scene caused the damage or loss. T6-7. However, the trial court ruled that in the case of the driving under suspension, there was no "nexus between the crime and the injuries. . . . the fact that she didn't have a driver's license . . . didn't cause the injuries." T8-9. Therefore, the trial court denied the State's motion to impose restitution. R60-61; T8-9.

The State filed timely notice of appeal to the Fourth District Court of Appeal. R66.

On appeal, the record consisted of documents from the trial court file as well as the sentencing hearing transcript but not the trial transcript. R1-74; T1-36. Based

on this record alone and in spite of contrary authority by the Fifth District Court of Appeal in Cheek v. State, 700 So.2d 731 (Fla. 5th DCA 1997), the State argued the trial court should have ordered restitution IB8-9. The State contended Petitioner's criminal episode began when she started driving without a valid license. IB7. The State reasoned that, under § 775.089 (1)(a)2, Fla. Stat., and this Court's decision in Glaubius v. State, 688 So. 2d 913 (Fla. 1997), "'but for' the illegal and reckless driving of the vehicle by appellee the injuries and related medical expenses would not have been incurred." IB10.

Petitioner answered by arguing the trial judge properly applied the substantial relationship test in denying restitution. AB7. She also argued that because there was no trial transcript, there was no way to know whether any alternative grounds supported the trial judge's ruling including the fact that Petitioner's driver's license was not suspended for "points" or any other reason indicating poor driving, AB7-8, or that the judge may have found that the complainant caused her own injuries by her supervening criminal act of running into the road and spraying mace into the car as suggested in the pre-sentence investigation and probable cause affidavit. AB8-9.

The State did not provide a trial transcript even after Petitioner argued that this alone was reason to deny its appeal. AB6-9, 11; State v. Schuette, 782 So. 2d 935,

937 n.2 (Fla. 4th DCA 2001).[1] Nonetheless, the district court found the record sufficient for it to resolve the issue of whether restitution should have been imposed for the driving under suspension count. Id. In its opinion, the Fourth District Court of Appeal described the incident as follows:

> The facts of this case are undisputed. Schuette was the passenger in a vehicle driven by Lorraine Vaughn. As they drove past the pedestrian victim along Summit Boulevard in West Palm Beach, the victim shouted obscenities at them. Vaughn then proceeded to make a u-turn and drove back in the victim's direction, stopping in the roadway near the victim.
>
> At that point, while still shouting obscenities, the victim sprayed pepper spray into the vehicle, hitting Vaughn in the face. Vaughn then drove a short distance from the victim, but switched places with Schuette due to Vaughn's inability to see with pepper spray in her eyes. Schuette, whose driver's license was suspended, turned the vehicle around and drove in the direction of the victim. Although it was the same direction in which Schuette and Vaughn originally proceeded, Schuette improperly entered the wrong lane of a divided roadway and traveled the wrong way on a one-way road. The victim then entered the roadway and was struck by the vehicle driven by Schuette. After hitting the victim, Schuette drove away from the scene.

Id. At 936. The Fourth District reversed the order denying restitution. Id. at 936-37. In so doing, the district court agreed with the State and held that restitution should have been imposed because "Schuette's driving without a legal right began the criminal

[1]Copy of original Fourth District opinion provided in Appendix.

episode during which the accident occurred, and but for her driving with a suspended license, the victim would not have incurred damages." Id. at 937. The district court certified conflict with the Fifth District Court of Appeal's opinion in Cheek, 700 So. 2d 731 (Fla. 5th DCA 1997). Id.

On June 1, 2001, the Fourth District issued its mandate.

Timely Notice of Discretionary Review was filed by Petitioner on July 2, 1996, and on June 21, 2001, this Court issued its Order postponing a decision on jurisdiction and setting a briefing schedule.

JURISDICTION

This Honorable Court has the authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. See The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988).

In the decision under review, the Fourth District Court of Appeal expressly and directly certified conflict with the Fifth District Court of Appeal's decision in Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997). State v. Schuette, 782 So. 2d 935, 937 (Fla. 4th DCA 2001)(certifying conflict with Cheek). Therefore, Petitioner respectfully submits this Honorable Court has discretionary jurisdiction over this case on the basis of express and direct conflict on the same question of law.

Additionally, Petitioner contends that the Fourth District's decision applies a but-for causation test rather than the significant relationship test articulated by this Court in numerous decisions including J.O.S. v. State, 689 So. 2d 1061 (Fla. 1997), and Glaubius v. State, 688 So. 2d 913 (Fla. 1997). Thus, this Court may exercise discretionary jurisdiction on this basis as well.

Finally, in holding that it could overrule the trial court without a transcript, the Fourth District's decision conflicts with this Court's decision in Applegate v. Barnett

Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979). This is yet another basis upon which the Court may exercise discretionary jurisdiction.

On all of these bases, this Honorable Court should exercise its discretionary jurisdiction.

SUMMARY OF THE ARGUMENT

POINT I

The trial court correctly denied the State's motion to impose restitution for losses caused by an accident while Petitioner was driving under suspension where there was no significant relationship between the losses and Petitioner's offense. The record reflected alternative grounds for the trial court's ruling including, but not limited to, the fact that Petitioner's license was not suspended for "points" or any other reason indicating poor driving and that the complainant may have caused her own injuries by her supervening criminal act of spraying the original driver with pepper spray and then running back into the road at the car after Petitioner took over driving for the original driver. In addition to overlooking these alternative grounds for the trial court's ruling, the district court applied a more expansive but-for causation test rather than the significant relationship test articulated by this Court in numerous decisions including J.O.S. v. State, 689 So. 2d 1061 (Fla. 1997), and Glaubius v. State, 688 So. 2d 913 (Fla. 1997). For these reasons, the decision below should be reversed.

POINT II

Additionally, because there was no trial transcript, the record was inadequate to consider whether any alternative grounds supported the trial court's ruling. In concluding that the trial court erred and expressly holding that a transcript was

unnecessary before reaching this conclusion, the district court itself erred. Based on this Court's holding in Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979)("Without a record of the trial proceedings, the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory."), the decision below should be reversed.

ARGUMENT

POINT I

THE DISTRICT COURT INCORRECTLY HELD THE TRIAL COURT ERRED BY RULING RESTITUTION COULD NOT BE IMPOSED WHEN SENTENCING PETITIONER FOR DRIVING UNDER SUSPENSION WHERE THERE WAS NO SIGNIFICANT RELATIONSHIP BETWEEN PETITIONER'S OFFENSE AND THE COMPLAINANT'S INJURY.

At the sentencing hearing below, the trial court denied the State's request to impose restitution against Petitioner. In reaching this decision, the trial court noted Florida case law requires "a nexus between the crime and the injuries." T8. The trial court found there was no nexus between the instant charge of driving under suspension and the injury caused to the complainant, Laura Boone. T8-9.

The standard of review which an appellate court applies in reviewing a trial court's ruling granting or denying restitution is abuse of discretion. See e.g. Cyrus v. State, 712 So. 2d 811 (Fla. 4th DCA 1998). The trial court's ruling is clothed in a presumption of correctness. DeConingh v. State, 433 So. 2d 501, 504 (Fla. 1983)("A trial court ruling comes to a reviewing court with the same presumption of correctness that attaches to jury verdicts and final judgments.").

Before restitution may be imposed, "[t]he State must establish by a preponderance of the evidence that a significant relationship existed between the loss

and the defendant's actions." Jackson v. State, 711 So. 2d 602, 602 (Fla. 4th DCA 1998); Bakos v. State, 698 So. 2d 943, 944 (Fla. 4th DCA 1997). See J.O.S. v. State, 689 So. 2d 1061, 1065 (Fla. 1997)(holding that "significant relationship" test applies in assessing whether to order restitution for damage or loss "caused directly or indirectly by the defendant's offense" and "related to the defendant's criminal episode."). This determination is a mixed question of fact and law. See e.g. Hines v. State, 737 So. 2d 1182, 1184 (Fla. 1st DCA 1999). The standard of review for findings of fact is whether competent, substantial evidence supports the findings. Hines, 737 So. 2d at 1184. Findings of fact should be reviewed only for "clear error" with "due weight to be accorded to inferences drawn from those facts" by the lower tribunal. Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Glover v. State, 677 So. 2d 374, 376 (Fla. 4th DCA 1996)("[D]eterminations of factual questions and resolutions of conflicting evidence are to be accepted by appellate courts and not disturbed on appeal."). "On appeal, the facts should be viewed in the light most favorable to sustaining the trial court's order." Rokeach v. Glickstein, 718 So. 2d 831 (Fla. 4th DCA 1998). See Cole v. State, 701 So. 2d 845, 855 (Fla.1997), cert. denied, 523 U.S. 1051, 118 S.Ct. 1370, 140 L.Ed.2d 519 (1998).

As the appellant below, Respondent bore the burden of demonstrating "prejudicial error" pursuant to section 924.051(7), Florida Statutes (1999). However,

because the trial transcript was not part of the record on appeal, it was impossible to know whether the evidence at trial established a significant relationship between Petitioner's offense of driving under suspension and the complainant's injury.

In holding that the trial court erred by ruling Petitioner would not have to pay restitution pursuant to section 775.089, Fla. Stat.,[2] for an accident which occurred while she was driving under suspension, the Fourth District Court of Appeal certified conflict with the Fifth District Court of Appeal's decision in Cheek v. State, 700 So. 2d 731 (Fla. 5th DCA 1997). State v. Schuette, 782 So. 2d 935, 937 (Fla. 4th DCA 2001).

In Cheek the facts considered were that Cheek, whose driver's license was suspended, backed his car into the roadway into the path of another vehicle causing a crash. 700 So. 2d at 731. In sentencing Cheek for driving under suspension, the trial court ordered him to pay restitution for the damages caused by the crash. Id. The Fifth District quashed this restitution order holding,

> Numerous cases hold this was error because the fact that his license was suspended was not causally related to the crash. State v. Williams, 520 So. 2d 276 (Fla. 1988); Longshore v. State, 655 So. 2d 1139 (Fla. 5th

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[2]Section 775.089(1)(a), Florida Statutes, provides that:

> In addition to any punishment, the court shall order the defendant to make restitution to the victim for:
>
> 1. Damage or loss caused directly or indirectly by the defendant's offense; and
>
> 2. Damage or loss related to the defendant's criminal episode.

> DCA 1995); Ochoa v. State, 596 So. 2d 515 (Fla. 2d DCA 1992); Stewart v. State, 571 So. 2d 485 (Fla. 2d DCA 1990). See Glaubius v. State, 688 So. 2d 913 (Fla. 1997).

Id.

At bar, the Fourth District found the only facts necessary to consider were that Petitioner, while driving under suspension, struck the complainant causing injury. Schuette, 782 So. 2d at 936-37. The Fourth District did not address the fact that Petitioner's license was not suspended for "points" or any other reason indicating poor driving. Id. Nor did it find it necessary to have a trial transcript to determine whether there were any alternative grounds for the trial court's ruling such as complainant causing her own injury with her supervening criminal act of spraying mace into the original driver's face and then rushing out at the car again when Petitioner was driving.[3] Id. at 937 n.2. Certifying conflict with Cheek, the Fourth District held under the significant relationship test as articulated by this Court in Glaubius v. State, 688 So. 2d 913 (Fla. 1997), Petitioner's "driving without a legal right began the criminal episode during which the accident occurred, and but for her driving with a suspended license, the victim would not have incurred damages." Id. at 937.

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[3]Yet another possible alternative ground is the unclean hands doctrine. Although not specifically mentioned in the district court, it was certainly not excluded by Petitioner's argument as one of the possible alternative grounds which may have supported the trial court's ruling.

The Fourth District's reasoning eviscerates the substantial relationship test which the Fifth District applied in Cheek and which this Court has repeatedly held applies in determining whether restitution may be imposed under section 775.089(1)(a), Florida Statutes, and effectively replaces it with a but-for causation test.. This Court has previously held that "to order restitution under the statute, the court must find that the loss or damage is causally connected to the offense ***and*** bears a significant relationship to the offense." Glaubius, 688 So. 2d at 915 (emphasis supplied). See J.O.S. v. State, 689 So. 2d 1061, 1065 (Fla. 1997)("significant relationship" test applies in assessing whether to order restitution for damage "caused directly or indirectly by the defendant's offense" and "related to the defendant's criminal episode."); State v. Williams, 520 So. 2d 276, 277 (Fla. 1988)(significant relationship test works in conjunction with causation required by statute). Application of the but-for causation test employed by the Fourth District below would require restitution to be imposed any time a citizen is involved in an accident while driving under suspension. Thus, restitution would have to be imposed even where the victim's damages were unrelated to the suspension or where there were any intervening causes for the damages including the victim's own supervening criminal act.

Although there is but-for causation every time there is a substantial relationship between damages and the offense, this does not mean every time there is but-for causa-

tion there is a substantial relationship between damages and the offense. Rather, but-for causation is merely a threshold finding the trial court makes in applying the substantial relationship test. It does not subsume the substantial relationship test. The trial court begins its analysis with but-for causation. Once but-for causation is found, the trial court continues this analysis by considering the particular circumstances of the offense and how the damages arose. Therefore, even though damages occur during the commission of an offense, the trial court must still consider the particular facts of the offense and any intervening causes for the damages.

Thus, once a trial court finds that damages would not have occurred but for a defendant's act of driving under suspension, it must then consider the particular facts of the offense including the nature of the suspension and any intervening causes. The substantial relationship test requires a nexus between the offense of driving under suspension and the victim's damages and not merely between the act of driving and the victim's damages.

The instant driving record shows that Petitioner's driver's license was suspended due to her failure to provide proof of insurance and her failure to appear in court for two traffic court hearings.[4] R14-16. Her driver's license was not suspended for

[4]Appellant's driving record reflects suspensions imposed November 30, 1998, and December 15, 1998, for failure to appear in traffic court. R15 (1st and 3rd entries).

"points" or any other reason indicating poor driving.[5] R14-16. Petitioner could have reinstated her license simply by providing proof of insurance and rescheduling her traffic court hearings. See §§ 318.15(2); 324.072, Fla. Stat. Thus, there was no significant relationship between her offense of driving under suspension and the complainant's injuries. On this basis, the trial court correctly denied the State's motion to impose restitution.

The record further suggests the complainant may have caused her own injuries by her supervening criminal act of spraying the original driver with pepper spray and then running back into the road at the car after Petitioner took over driving for the original driver. R2. Without a trial transcript, there is simply no way to know whether this alternative ground supported the trial court's ruling.

Nor is there any indication the accident would not have occurred anyway no matter who was driving. T1-34; R1-74. Again, without a trial transcript it is impossible

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A separate financial responsibility suspension ("FR SUSP") was imposed December 12, 1998, for not providing proof of auto liability insurance. R15 (last entry).

[5]Appellee's driving record reflects her driver's license was suspended Nov. 16, 1998, for 30 days due to points. R15 (8th entry). However, this suspension ended long before the instant offense which occurred June 16, 1999. R1, 5, 7. A number of other suspensions for failure to appear and failure to pay were previously satisfied in 1997 and 1998. R16.

to know whether the accident would have occurred anyway had the original driver continued driving or had someone else been available to take over driving.

Based on the district court's error in overlooking these alternative grounds which supported the trial court's ruling and because the district court erred in merely applying a but-for causation test instead of the significant relationship test articulated by this Court, Petitioner respectfully asks this Honorable Court to accept jurisdiction over this cause and to reverse the decision of the Fourth District Court of Appeal. For this frequently recurring issue of whether restitution may be imposed for the offense of driving under suspension, she asks this Court to hold that but-for causation is merely a threshold finding the trial court makes in applying the substantial relationship test but does not subsume the significant relationship test and that the trial court must then consider the particular circumstances of the suspension and any intervening causes for the damages.

POINT II

THE DISTRICT COURT INCORRECTLY HELD THE TRIAL COURT ERRED EVEN THOUGH RESPONDENT DID NOT PROVIDE A TRANSCRIPT SO THE COURT COULD VERIFY NO ALTERNATIVE GROUNDS SUPPORTED THE TRIAL COURT'S RULING.

The Fourth District Court of Appeal expressly stated that it could resolve this issue even though the State did not provide a transcript. Schuette, 782 So. 2d at 937 n.2. However, as this Honorable Court has held

> Without a record of the trial proceedings, the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory. Without knowing the factual context, neither can an appellate court reasonably conclude that the trial judge so misconceived the law as to require reversal.

Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979). Without the trial transcript, the Fourth District could not properly resolve the underlying factual issues so as to conclude that the trial court's judgment was not supported by the evidence or by an alternative theory. As discussed in the previous point, those alternative theories include, but are not limited to, the fact that Petitioner's license was not suspended for "points" or for any other reason indicating poor driving and that the complainant may have caused her own injuries by her supervening criminal act of

spraying the original driver with pepper spray and then running back into the road at the car after Petitioner took over driving. Another alternative ground is the unclean hands doctrine. However, because the State as appellant provided no trial transcript, it was impossible for the district court to know the factual context for the trial court's ruling. Therefore, the district court could not conclude that the trial court so misconceived the law as to require reversal. See Applegate, supra. It may well be that based on the facts presented at trial, the trial court correctly denied restitution.

Based on the district court's holding that it could determine the trial court erred without a trial transcript, Petitioner respectfully asks this Court to accept jurisdiction over this cause and to reverse the decision of the Fourth District Court of Appeal.

CONCLUSION

Petitioner prays this Honorable Court will exercise its discretion to review the instant decision of the district court which is certified to be in conflict with Cheek v. State, 700 So. 2d 761 (Fla. 5th DCA 1997), and which also conflicts with this Court's decisions in Glaubius v. State, 688 So. 2d 913 (Fla. 1997); J.O.S. v. State, 689 So. 2d 1061 (Fla. 1997), and Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979).

This Honorable Court should reverse the decision of the Fourth District Court of Appeal in State v. Schuette, 78 So. 2d (Fla. 4th DCA 2001).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Don M. Rogers, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299 this 14th day of July, 2001.

_____
Attorney for Laurie Adele Schuette

CERTIFICATE OF FONT COMPLIANCE

Undersigned counsel hereby certifies that the instant brief has been prepared with 14- point Times New Roman type.

_____
BENJAMIN W. MASERANG
Assistant Public Defender

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_____	)	

APPENDIX

State v. Schuette, 782 So. 2d 935 (Fla. 4th DCA 2001)