

2009

Utah v. Eddie Bustos : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)

Plaintiff,)

vs.)

EDDIE BUSTOS,)

Case No. 20090079

Defendant.)

BRIEF OF APPELLANT

THIS APPEAL IS FROM A CONVICTION AND SUBSEQUENT SENTENCING TO FAILURE TO RESPOND TO AN OFFICER'S SIGNAL TO STOP RESULTING IN INJURY OR DEATH, A SECOND-DEGREE FELONY; AND TWO COUNTS OF AUTOMOBILE HOMICIDE, A SECOND-DEGREE FELONY; AND WAS SENTENCED TO SERVE CONCURRENT TERMS ON AUTOMOBILE HOMICIDE OF ONE TO FIFTEEN YEARS AND A CONSECUTIVE TERM OF ONE TO FIFTEEN YEARS ON THE FAILURE TO RESPOND AT THE UTAH STATE PRISON, IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE PAMELA G. HEFFERNAN PRESIDING.

THE DEFENDANT/APPELLANT IS CURRENTLY INCARCERATED AT THE UTAH STATE PRISON.

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Plaintiff,)	
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	i
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
CONSTITUTIONAL OR STATUTORY PROVISIONS.....	2
STATEMENT OF THE CASE	7
STATEMENT OF FACTS	8
SUMMARY OF ARGUMENT	10
ARGUMENT	11
I. THE TRIAL COURT ERRED IN NOT MERGING THE FAILURE TO RESPOND TO OFFICER’S SIGNAL TO STOP CHARGE WITH THE AUTOMOBILE HOMICIDE CHARGES IN ACCORDANCE WITH THE MERGER DOCTRINE	11
CONCLUSION.....	19
CERTIFICATE OF MAILING	20
ADDENDA:	
Addendum A: Sentence, Judgment and Commitment	

TABLE OF AUTHORITIES

UTAH STATE CASES

<i>State v. Avila</i> , 2006 UT App 71; 131 P.3d 864	15
<i>State v. Baker</i> , 671 P.2d 152, 156 (Utah 1983)	15, 16
<i>State v. Bluff</i> , 2002 UT 66; 52 P.3d 1210	2
<i>State v. Finlayson</i> , 994 P.2d 1243 (Utah 2000)	13, 14
<i>State v. Hill</i> , 674 P.2d 96, 97 (Utah 1983)	17
<i>State v. Smith</i> , 2005 UT 57, 122 P.3d 153	18

STATUTES AND RULES

UTAH CODE ANNOTATED

§41-6A-210	1, 2, 10, 17
§76-1-402(3)	3, 10, 11, 15, 17
§76-2-103	4, 6, 13
§76-5-207	1, 5, 10
§78-2a-3(2)(j)	1, 7

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BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction for two counts of Automobile Homicide, a second-degree felony in violation of §76-5-207 and one count of Failure to Stop at the Command of a Police Officer, a second-degree felony in violation of §41-6A-210. This court has jurisdiction over this appeal pursuant to U.C.A. §78-2a-3(2)(j).

STATEMENT OF ISSUE ON APPEAL AND STANDARD OF REVIEW

DID THE TRIAL COURT ERR IN NOT MERGING THE FAILURE TO RESPOND TO OFFICER'S SIGNAL TO STOP CHARGE WITH THE AUTOMOBILE HOMICIDE CHARGE IN ACCORDANCE WITH THE MERGER DOCTRINE?

STANDARD OF REVIEW: The Court should review the merger doctrine under a statutory interpretation standard. Reviewing whether the merger doctrine applies is “a matter of statutory interpretation, a legal question, which we review for correctness.” *State v. Bluff*. 2002 UT 66; 52 P.3d 1210. This issue is preserved for appeal by Defendant’s timely motion to apply the merger doctrine presented during the sentencing phase of the trial.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UTAH CODE ANNOTATED

§41-6a-210. Failure to respond to officer’s signal to stop -- Fleeing -- Causing property damage or bodily injury -- Suspension of driver’s license - - Forfeiture of vehicle -- Penalties

(1) (a) An operator who receives a visual or audible signal from a peace officer to bring the vehicle to a stop may not:

(i) operate the vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person; or

(ii) attempt to flee or elude a peace officer by vehicle or other means.

(b) (i) A person who violates Subsection (1)(a) is guilty of a felony of the third degree.

(ii) The court shall, as part of any sentence under this Subsection (1), impose a fine of not less than \$ 1,000.

(2) (a) An operator who violates Subsection (1) and while so doing causes death or serious bodily injury to another person, under circumstances not amounting to murder or aggravated murder, is guilty of a felony of the second degree.

(b) The court shall, as part of any sentence under this Subsection (2), impose a fine of not less than \$ 5,000.

(3) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1)(a) or (2)(a) shall have the person's driver license revoked under Subsection 53-3-220(1)(a)(ix) for a period of one year.

(b) (i) The court shall forward the report of the conviction to the division.

(ii) If the person is the holder of a driver license from another jurisdiction, the division shall notify the appropriate officials in the licensing state.

§76-1-402. Separate offenses arising out of single criminal episode -- Included offenses

(1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.

(2) Whenever conduct may establish separate offenses under a single criminal episode, unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when:

(a) The offenses are within the jurisdiction of a single court; and

(b) The offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.

(3) A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or

(c) It is specifically designated by a statute as a lesser included offense.

(4) The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

(5) If the district court on motion after verdict or judgment, or an appellate court on appeal or certiorari, shall determine that there is insufficient evidence to support a conviction for the offense charged but that there is sufficient evidence to support a conviction for an included offense and the trier of fact necessarily found every fact required for conviction of that included offense, the verdict or judgment of conviction may be set aside or reversed and a judgment of conviction entered for the included offense, without necessity of a new trial, if such relief is sought by the defendant.

§76-2-103. Definitions

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

§76-5-207. Automobile homicide

(1) As used in this section:

(a) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), “negligent” means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) As used in this Subsection (3), “criminally negligent” means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(1).

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

§78-2a-3. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(j) cases transferred to the Court of Appeals from the Supreme Court.

STATEMENT OF THE CASE

The Defendant was charged by information with one count of Failure to Respond to an officer's signal to stop resulting injury or death, a second-degree felony; and two counts of criminal homicide, automobile homicide, a second

degree felony. (R. 3) The Defendant was tried before a jury on March 28 and 29, 2007, empanelled by the Honorable Pamela G. Heffernan. The jury found the Defendant guilty of all charges. On May 8, 2007, the Defendant was sentenced on the automobile homicide counts to serve concurrent terms of one to fifteen years at the Utah State Prison. Subsequently, the Defendant was sentenced on the Failure to Respond count to serve one to fifteen years, consecutively to the other counts. The Defendant is currently serving this term at the Utah State Prison.

STATEMENT OF THE FACTS

The Defendant was charged with two counts of automobile homicide and one count of failure to stop for a police officer, resulting in injury or death. (R.3) The Defendant stopped at the house a friend in the early morning of December 15, 2005(R. 280/104) The police just happened to be watching that house in the course of an investigation not involving the Defendant. (R.280/106) The Defendant stopped in front of the house in a white 1991 Chevrolet Beretta. (R. 280/106) Officer Jones, the officer watching to house, witnessed the Beretta stop at the house; and it became an object of interest to the police. While searching on his computer to find the Defendant's registration information, the white Beretta began going backward down the street toward Officer Jones. (R. 280/107) The Defendant was driving in the opposite lane of traffic and in the middle of the

street, and Defendant eventually drove past Officer Jones, forcing him to the side of the road. (R. 280/112) Officer Jones testified that, “After he ran me off the road, he was just going slow and staring straight ahead. I thought was a very strange reaction. Most people that just ran somebody off the road is gonna be worried. But he just continued driving, staring straight ahead, acting like I wasn’t even there.” (R. 280/115)

Officer Jones eventually pulled behind the Defendant and activated his overhead lights, but the Defendant did not respond. (R. 280/118) Eventually Officer Jones activated his siren, and the Defendant started to accelerate R. 280/120) and was speeding down the street, through intersections, red lights, and on the wrong side of the street. (R. 280/120-125) Officer Jones was told by his sergeant to discontinue the chase due to safety reasons between 26th and 27th Streets. (R.280/126) The Defendant continued driving at a high rate of speed, ran through a red light at the intersection at 24th Street and collided with a car resulting in the death of two individuals. (R. 280/131) The jury convicted the Defendant of all charges. After the jury verdict, the Defendant filed a motion to arrest judgment making two claims: first, that there was insufficient evidence; and second, that based upon the merger doctrine, charge of failure to respond to a police officer should have been merged with the two automobile homicide

charges.(R. 205-213) The trial court, after having read the brief and hearing oral arguments, denied the motion.

SUMMARY OF ARGUMENTS

The principal issue on appeal is the Defendant was convicted of two charges that are separate in name but practically identical in the elements. The trial court committed error by not merging the two charges at the Defendant's request. The charge of Failure to Stop for an officer's signal, §41-6a-210(2)(a), reads, "An operator who violates Subsection (1) and while so doing causes death or serious bodily injury to another person, under circumstances not amounting to murder or aggravated murder, is guilty of a felony of the second degree." The charge of Automobile Homicide, §76-5-207(3)(a), reads, "Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another..." The only other element added to the automobile homicide statute is that the person charged must have ingested an unsafe amount of alcohol or drugs. Utah Code §76-1-402(3) reads:

A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:

- (a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged.

To convict an individual for the charge of Failure to Stop for a Police Signal, the State is required to prove that an individual received a signal to stop and operated his vehicle in a willful and wanton disregard of the signal, thereby endangering the operation of any vehicle or person together with the death or serious bodily injury of another person. Those two elements in essence are identical to the elements of an Automobile Homicide charge. The only difference between the two charges is that Automobile Homicide has an element where alcohol or drugs must be ingested. The provision in the Failure to Stop charge is included in the elements of Automobile Homicide and therefore should be merged.

ARGUMENT

THE TRIAL COURT ERRED IN NOT MERGING THE FAILURE TO RESPOND TO OFFICER'S SIGNAL TO STOP CHARGE WITH THE AUTOMOBILE HOMICIDE CHARGE IN ACCORDANCE WITH THE MERGER DOCTRINE.

Utah Code §76-1-402 codifies the merger doctrine that “protects criminal defendants from being twice punished for committing a single act that may violate more than one criminal statute.” *State v. Smith*, 2005 UT 57, 122 P.3d 153. Under §76-1-402, an offense meets the criteria as a lesser included offense when the crime is “is established by proof of the same or less than all the facts required to establish the commission of the offense charged.” *Id.* §76-1-402(3)(a).

The general rule involved in this doctrine is that if all of the elements of the lesser included offense are contained within the higher offense, the merger doctrine requires the dismissal of the lesser offense. In applying that doctrine to the two offenses in the present case, in a side by side comparison, we find as follows:

Automobile Homicide

- (1) Operates a motor vehicle in a criminally negligent manner,
- (2) Causes the death of another: and
- (3) The defendant was under the influence of alcohol or drugs to the extent that his driving was impaired.

Failure to respond to Officers Signal

- (1) Operates a vehicle in willful or wanton disregard of the signal so as to ...endanger the operation of any vehicle or person;
- (2) Causes death or serious bodily injury to another person.

The facts established in the present case to convict the Defendant of automobile homicide were covered entirely under the failure to respond to an officer's signal to stop felony conviction. In order to establish automobile homicide the State is required to prove that the Defendant was driving in a

reckless or criminally negligent manner¹. In the present case, this was established by the Defendant driving at a high rate of speed and running a red light in an attempt to elude a police officer. Finally, the State is required to prove that the Defendant killed an individual as a direct and proximate result of this criminally negligent driving pattern.

The only difference between the two statutes, as established in the case at bar, is the fact that the criminal homicide statute requires that the Defendant be under the influence of drugs or alcohol. Since that would be higher offense, the Defendant should have been convicted of the automobile homicide, and the failure to stop charge should be dismissed under the merger doctrine.

The Utah Supreme Court has dealt with these merger issues in several cases. In the case of *State v. Finlayson*, 994 P.2d 1243 (Utah 2000), the court was presented with a defendant that was convicted of both robbery and kidnapping. The factual situation of that case established that the defendant met the victim, and they decided to study together. They went to the defendant's home, and eventually the defendant tried to kiss the victim and was rebuffed. The defendant

¹ UCA § 76-2-103(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

then picked up the victim, carried her to his bedroom, and proceeded to rape the victim. The remaining facts are critical and are described by the Court as follows:

After the assault, the victim tried to leave defendant's apartment, but was made to wait ten minutes while defendant dressed. While leaving the apartment, defendant tried to put a paper bag over the victim's head so she would not see his address. When she refused to wear the bag, defendant placed a jacket over her head. The drive to the victim's apartment lasted one hour, despite the fact that she lived less than thirty minutes away. When the victim stated that she wanted to die, defendant refused to take her home until she promised not to harm herself. (Id. at 1245)

The defendant was charged and convicted of Rape, Forcible Sodomy and Aggravated Kidnapping. The Utah Supreme Court reversed the defendant's conviction for Aggravated Kidnapping under the theory of merger. In that case the Court held:

To prevent double punishment for essentially the same act, *Couch* established a test for determining when a defendant's kidnapping conviction is sustainable in addition to his sexual assault convictions. To sustain convictions for both kidnapping and sexual assault, the prosecutor must show that the kidnapping detention was longer than the necessary detention involved in the commission of the sexual assault. Thus, the facts establishing the kidnapping detention must not be merely incidental to the sexual assault, but separate and independent therefrom. (citing *State v. Couch*, 635 P.2d 89 (Utah 1981))

The Court in *Finlayson* found that although the defendant had forcibly detained the victim, including the handcuffing the victim to the bed, this was done in furtherance of the rape and sodomy and did not constitute a separate crime of kidnapping. The Court stated;

Defendant's acts to that point, apart from the rape and forcible sodomy, had no independent significance sufficient to support a separate conviction for aggravated kidnapping. As we stated in *Couch*, to hold otherwise would transform virtually every rape and robbery into a kidnapping as well. (Id. at 1249)

In a case very similar to the one at bar, the court determined that a DUI charge merged with an automobile homicide charge under very similar facts. The case of *State v. Avila*, 2006 UT App 71, ¶ 9 131 P.3d 864 is a recent decision that shows the fairness of combining similar charges. In *Avila*, the defendant rolled his pickup truck killing his wife and unborn child and seriously injuring himself and his two children. Based on a blood draw taken just after the accident, defendant's blood alcohol concentration was over the legal limit. Specifically, the test results of the blood draw put defendant's blood alcohol concentration at .240 – three times the legal limit. All of the elements of DUI had to be proven to establish automobile homicide. This Court reasoned that the conclusion that the defendant was facing double jeopardy appeared so obvious that trial counsel should have requested that the two offenses be consolidated. The Court reversed the defendant's conviction and further held that defendant's counsel was ineffective for failing to seek consolidation of the charges pursuant to the merger doctrine in Utah Code Ann. §76-1-402.

The merger doctrine has been invoked by the Supreme Court of Utah in an inverse application in the case of *State v. Baker*, 671 P.2d 152 (Utah 1983). In

that case, the defendant broke into a gas station where he was previously employed with the motive of stealing money from the cash register. The police were called and found that a desk drawer lock had been broken, and the contents scattered around the station. The owner returned to open the gas station, heard a loud noise, and defendant was discovered hiding in the storage closet. He was subsequently convicted of burglary, in violation of Utah Code Ann. §76-6-202(1) (1953). On appeal, the Court affirmed the conviction and held that defendant was not entitled to an instruction on criminal trespass, a lesser included offense of burglary, because he did not point to any evidence in the record which went to the specific intent elements of criminal trespass. The court held that under Utah Code Ann. §76-6-202(1), a lesser included offense instruction would have been required only if the evidence was prone to alternative interpretations. This alternate interpretation would require a rational basis for an acquittal of defendant on the offense charged as well as a rational basis for convicting him of the lesser included offense. The Court held that the defendant's argument went only to the sufficiency of the evidence to convict him of burglary, but failed to address the separate and distinct intent elements necessary for criminal trespass. The Court stated:

Both the legal elements and the actual evidence or inferences needed to demonstrate those elements must necessarily be included within the original charged offense...(but) when the two charges are such that the greater cannot be committed without necessarily having

committed the lesser, then as a matter of law they stand in the relationship of greater and lesser offenses, and the defendant cannot be convicted or punished for both. *Baker* at 156.

In *State v. Hill*, 674 P.2d 96, 97 (Utah 1983), the Utah Supreme Court created a two part test for identifying whether a conviction for a second offense arising out of the same set of facts violates section UCA §76-1-402(3), requiring a comparison of “the statutory elements of the two crimes [first] as a theoretical matter and [second], where necessary, by reference to the facts proved at trial.” (*Id.* at 97 emphasis added)

The issues in the present case meet both parts of the two part test outlined in *Hill*. The main provision of the failure to respond to an officer’s signal charge is identical to the primary element of automobile homicide. The provision reads “An operator who violates Subsection (1) and while so doing causes death or serious bodily injury to another person, under circumstances not amounting to murder or aggravated murder, is guilty of a felony of the second degree.” UCA § 41-6a-210. The Automobile Homicide statute reads, “Criminal homicide is automobile homicide if the person operates a motor vehicle in a negligent manner causing the death of another.” In essence, in the facts of this particular case one cannot commit the crime of failure to respond to an officer’s signal at the level of a second-degree felony without also committing automobile homicide. It statutorily encompasses the exact same behavior.

The second prong of the *Hill* test was likewise met because the facts proven at trial by the prosecution ultimately established that the elements of automobile homicide and failure to stop are the same. It was proven in trial that Mr. Bustos caused an accident where two people lost their lives. (R. 280/131). Several police officers testified that Mr. Bustos failed to stop for the various signals given by Officer Jones while he was being chased. (R. 280/125-131). It is precisely the speeding and running red lights in an attempt to flee from the officer that constituted the criminally negligent element of the criminal homicide statute. As a result of this criminally negligent behavior by the defendant in running from Officer Jones, two people died. This is not in dispute. However, what is in dispute is the propriety of charging the Defendant with both automobile homicide, a second-degree felony, and failure to respond to an officer's signal to stop, a second-degree felony. It is undisputed that both charges are based on the same two facts; the criminal negligence in running from the police and the fact that two people were killed as a result of this negligence.

Similarly, in the present case the State could not prove that the Defendant failed to respond to the signal of an officer as a second degree felony without also proving that the Defendant committed automobile homicide². Typically, failure to respond to an officer's signal is a third-degree felony. However, the enhancement


² It was undisputed that the third element of the automobile homicide (i.e. under the influence of drugs) was present.

provision (causing death or bodily injury) makes the charge identical to automobile homicide. That is the only element required to make failure to respond a second-degree felony. It is also the main requirement of automobile homicide. Since the elements are virtually identical, the merger doctrine should apply and the lesser charge of failure to respond to an officer's signal should be dismissed.

CONCLUSION

Based upon the foregoing, the error of not merging the two charges together was in contravention to clearly established statutory law and violated the Defendant's rights, resulting in a conviction that does not meet the standards required by this Court. The effect of not applying the merger doctrine in this case can only be cured by a reversal of the felony failure to respond to an officer signal.

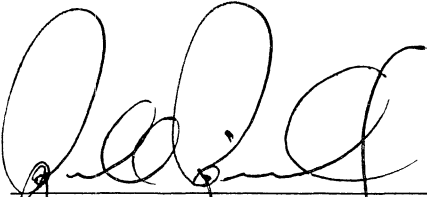
DATED this 22nd day of July 2009.

A handwritten signature in black ink, appearing to read 'Randall W. Richards', is written over a horizontal line.

RANDALL W. RICHARDS
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to Mark Shurtleff, Utah Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0180, postage prepaid this day of 22nd day of July 2009.



RANDALL W. RICHARDS
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ADDENDUM A



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pages:

051906366 BUSTOS, EDDIE RAYMOND

2007 MAY 10 A 9:52

SECOND DISTRICT COURT - ~~OGDEN~~ DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

MAY 10 2007

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	HEARING / APP SENTENCING
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 051906366 FS
	:	
EDDIE RAYMOND BUSTOS,	:	Judge: PAMELA G. HEFFERNAN
Defendant.	:	Date: May 8, 2007

PRESENT

Clerk: roxanneb

Prosecutor: DAINES, WILLIAM F

Defendant

Defendant's Attorney(s): RYAN BUSHELL, PDA

Agency: Adult Probation and Parole

DEFENDANT INFORMATION

Date of birth: June 21, 1957

Video

Tape Number: PGH050807 Tape Count: 135, 205

CHARGES

2. FAIL TO STOP/RESPOND AT COMMAND OF POLIC - 2nd Degree Felony
Plea: Not Guilty - Disposition: 03/29/2007 Guilty
3. AUTOMOBILE HOMICIDE - 2nd Degree Felony
Plea: Not Guilty - Disposition: 03/29/2007 Guilty
4. AUTOMOBILE HOMICIDE - 2nd Degree Felony
Plea: Not Guilty - Disposition: 03/29/2007 Guilty

HEARING

This is the time set for hearing on a Motion to Arrest Judgment.
Defendant is present in custody from the Weber County Jail.
Defendant is represented by Ryan Bushell.

The Court hears argument on the motion and denies the motion.

COUNT: 2:05

Case recalled. The Court hears from the victim's mother (Jessica).
Mr. Daines reads a statement from Marvin Ellis. The Court hears
from the defendant.

Case No: 051906366
Date: May 08, 2007

The Court proceeds with sentencing.

SENTENCE PRISON

Based on the defendant's conviction of FAIL TO STOP/RESPOND AT COMMAND OF POLIC a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of AUTOMOBILE HOMICIDE a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of AUTOMOBILE HOMICIDE a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the WEBER County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

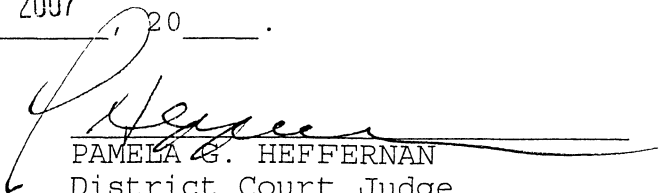
The Court orders sentence imposed on count 1 to run concurrent with the other counts. Sentence on counts 2 and 3 shall run consecutive to each other.

SENTENCE RECOMMENDATION NOTE

The Court recommends defendant pay restitution of \$14,000 as a condition of parole. The Court also recommends defendant receive credit for time served since 03/29/07

Case No: 051906366
Date: May 08, 2007

Dated this ____ day of MAY 7, 2007.


PAMELA G. HEFFERNAN
District Court Judge