

IN THE FLORIDA SUPREME COURT

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CLERK, SUPREME COURT

Case No.

64,117

Chief Deputy Clerk

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IRA MARTIN AMAZON,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

SECOND
SUPPLEMENTAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

In view of this Court's decision in State v. Enmund, 476 So.2d 165 (Fla.1985), Appellant supplements his argument regarding Issue I of his Initial Brief as follows:

ISSUE I.

THE TRIAL COURT ERRED IN DENYING AMAZON'S MOTION TO DISMISS THE MURDER CHARGES ON THE GROUND THAT DOUBLE JEOPARDY PROTECTIONS BARRED THEIR PROSECUTION, OR ALTERNATIVELY, THE TRIAL COURT ERRED IN ALLOWING THE MURDER PROSECUTION TO PROCEED UNDER A FELONY MURDER THEORY.

The Double Jeopardy Clause prohibits successive prosecutions for the same offense. Brown v. Ohio, 432 U.S. 161 (1977). It also prohibits multiple punishments for the same offense during a single prosecution. Whalen v. United States, 445 U.S. 684, 63 L.Ed.2d 715, 100 S.Ct. 1432 (1980). These are two separate and distinct protections with different standards to be applied. Brown v. Ohio, 432 U.S. 161,166 n.6 (1977); State v. Katz, 402 So.2d 1184,1186 (Fla.1981); Ennis v. State, 364 So.2d 497 (Fla.2d DCA 1978). As the Second District Court of Appeal noted in Ennis,

The test for determining whether violation of two statutes constitutes the same offense for purposes of successive prosecution is whether "the second prosecution requires relitigation of factual issues already resolved by the first." Brown, supra, 432 U.S. at 167 n.6, 97 S.Ct. at 2226 n.6, 53 L.Ed.2d at 195 n.6. There are then different standards to be applied to cumulative sentences and successive prosecution actions.^{1/}

1/ As pointed out in Brown v. Ohio, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977), where cumulative punishment is prohibited successive prosecution is prohibited. The opposite is not necessarily true.

Ennis, 364 So.2d at 499. Consequently, it is important for this Court to follow the successive prosecution cases rather than the multiple punishment in a single prosecution cases when deciding this issue in this case.

In his initial brief, Amazon relied upon the holding of State v. Hegstrom, 401 So.2d 1343 (Fla.1981) for the proposition that the underlying felony of a felony murder is the same offense as the felony murder for double jeopardy purposes. Hegstrom was a single prosecution case, and this Court reached its holding through an application of the test set forth in Blockburger v. United States, 284 U.S. 299 (1932). Amazon relied upon Hegstrom's application of Blockburger since that test is one which may also be used in evaluating a successive prosecution double jeopardy question. See, Brown v. Ohio, 432 U.S. 161 (1977); Bell v. State, 437 So.2d 1057 (Fla.1983). The reliance on Hegstrom was not intended to suggest that this case should be analyzed as a single prosecution, multiple punishment double jeopardy problem. Consequently, the fact that this Court overruled Hegstrom in State v. Enmund, 476 So.2d 165 (Fla.1985) has no consequences for the instant case. Hegstrom's application of the Blockburger test is still relevant. While the Blockburger test will not control over other indicia of legislative intent in single trial, multiple punishment double jeopardy issues, Enmund, 476 So.2d at 167, legislative intent

for multiple punishments is irrelevant in successive prosecution cases. The same offense test of Blockburger controls.


The Blockburger test is the most stringent double jeopardy same offense test. If it is met, evaluation need go no further. However, if it is not met, the less vigorous same offense test for successive prosecution cases or the same evidence test must be considered and applied. See, e.g., Brown v. Ohio, 432 U.S. 161 (1977); Bell v. State, 437 So.2d 1057 (Fla.1983); State v. Katz, 402 So.2d 1184 (Fla.1981); Ennis v. State, 364 So.2d 497 (Fla.2d DCA 1978). All of these tests are met in the instant case. This Court must reverse Amazon's murder convictions.

CONCLUSION

Upon the reasons expressed in this Second Supplemental Brief, in the Initial and the first Supplemental Brief, Ira Amazon asks this Court to reverse his convictions and sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602 by mail on this 23rd day of December, 1985.


for: W.C. McLAIN