IN THE SUPREME COURT OF FLORIDA

GRANDERSON DAVIS, JR.,

Petitioner,

v.

CASE NO. 65,121

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL

BRIEF OF PETITIONER ON JURISDICTION

MICHAEL E. ALLEN
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SECOND JUDICIAL CIRCUIT

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BRIEF OF PETITIONER ON JURISDICTION

I PRELIMINARY STATEMENT

Petitioner was the appellant in the lower tribunal, but the parties will be referred to as they appear before this Court. Attached hereto is Appendix A, which contains the opinion filed February 8, 1984; Appendix B, petitioner's motion for rehearing dated Feburary 22; and Appendix C, order denying rehearing filed March 13.

II STATEMENT OF THE CASE AND FACTS

The history of this case is accurately stated by the opinion of the lower tribunal:

> Davis appeals from his convictions of first degree grand theft and of making a false statement in an application for a motor vehicle certificate of title. We affirm as to the grand theft conviction and reverse as to the false statement conviction.
>
> Both charges stem from the defendant's alleged scheme in connection with his attempt to purchase a 1982 Mercedes automobile from the victim, Kinnebrew Motors, in Tallahassee. We treat in our opinion two issues raised by appellant.
>
> With respect to the grand theft count, the state charged the defendant with first degree grand theft, a second degree felony, alleging that the motor vehicle had a value of $20,000 or more. The appellant contends that it was error to deny his motion to dismiss the charge of grand theft in the first degree. The appellant says that theft of a motor vehicle is a third degree felony under the theft statute and that the state is not at liberty to charge first degree grand theft where the property is a motor vehicle even though the vehicle has a value of $20,000 or more. We do not believe that the legislature intended such a construction of the provisions of the theft statute. A more reasonable construction, and one we adopt, is that the enumeration of certain kinds of property in section (2)(b) of the theft statute is a recognition that stealing certain kinds of property should be treated at least as third degree felonies regardless of the value of such property but that first degree grand theft may be charged where that property has a value of $20,000 or more. The fact that such a construction imbues the prosecuting authority with the discretion to decide

> whether to charge theft of a $20,000 motor vehicle as a third degree felony under subsection 2(b) or as a first degree felony under subsection 2(a) is unavailing to the defendant. See Soverino v. State, 356 So.2d 269 (Fla. 1978); State v. Copher, 395 So.2d 635 (Fla. 2nd DCA 1981); Cf. State v. Young, 371 So.2d 1029 (Fla. 1979).

Appendix A 1-3, footnotes omitted.

Petitioner's timely motion for rehearing pointed out the apparent conflict between this holding and that of this Court in State v. Getz, 435 So.2d 789 (Fla. 1983) (Appendix B). The motion for rehearing was denied by order dated March 13 (Appendix C). Petitioner filed a timely notice of discretionary review in the lower tribunal.

III ARGUMENT

ISSUE PRESENTED

THE DECISION OF THE FIRST DISTRICT IS IN EXPRESS AND DIRECT CONFLICT WITH THE HOLDING OF STATE V. GETZ, 435 So.2d 789 (Fla. 1983).

In the instant case, the First District held that where a motor vehicle has the value $20,000 or more, the state could prosecute the defendant for the more serious grand theft of the first degree, rather than the specific theft of a motor vehicle, a felony of the third degree. The First District's holding conflicts with that of this Court in State v. Getz, supra.

In Getz, the question presented was whether a defendant could be given separate judgments and sentences for theft of a firearm and theft of other enumerated property where all was stolen in the same burglary. This Court answered the question in the affirmative, and further held:

> It is clear from a reading of Section 812.014 that the legislature intended to treat the theft of different types of property as separate criminal offenses and to establish distinct punishments for the separate offenses. We note that if a firearm is stolen, its value is not an element of the offense . . . .

Id. at 791. Thus, this Court held in Getz that the taking of one of the specifically-enumerated items in the theft statute may be subject to prosecution without regard to value. Since the legislature has enumerated a motor vehicle in the list of specific property, along with a firearm, and other items, the

First District's holding that the value of a motor vehicle is an element of the crime cannot be squared with the holding in Getz, which held that the specifically-enumerated items may be prosecuted without regard to value. If the value of a firearm is not an element, than the value of a motor vehicle is not an element either. This Court must accept jurisdiction to resolve this conflict.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court accept jurisdiction and proceed on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Assistant Attorney General Lawrence Kaden, The Capitol, Tallahassee, Florida; and by mail to Mr. Granderson Davis, Jr., #061886, Post Office Box 699, Sneads, Florida, 32460, this 12 day of April, 1984.

P. Douglas Brinkmeyer

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