045

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

JAMES MICHAEL SNOWDEN,

Respondent.

CASE NO. 65,176

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, FL 32014-6183
(904) 252-3367

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, vs. STATE OF FLORIDA, Respondent.	)	CASE NO. 65,176

RESPONDENT'S BRIEF ON JURISDICTION

ARGUMENT

THE DECISION OF THE DISTRICT COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE CURRENT CASE LAW OF THIS COURT.

The petitioner suggests that the instant decision of the district court apparently conflicts with the decisions of this Court in State v. Hegstrom, 401 So.2d 1343 (Fla. 1981), and State v. Monroe, 406 So.2d 1115 (Fla. 1981). This would appear to be true if this Court had not specifically receded from Monroe, and hence from Hegstrom upon which Monroe relied. In this Court's most recent pronouncement on the subject of double jeopardy, Bell v. State, 437 So.2d 1057 (Fla. 1983), this Court stated unequivocally that the double jeopardy clause prohibits not only multiple sentences, but also multiple convictions for both a greater and a lesser included offense. As this Court noted:

> We did not intend to hold in Hegstrom that the double jeopardy clause of amendment 5, United States Constitution, or article 1, section 9, Florida Constitution, permits a defendant to be convicted of both a greater and a lesser included offense provided no sentence is imposed for the lesser included offense. AS we have stated before, the explicit exclusion of lesser included offenses in section 775.021(4) makes clear that the legislature does not intend separate convictions and punishments for two or more statutorily defined offenses when in fact only one crime has been committed. [Borges v. State, 415 So.2d 1265 (Fla. 1982)] at 1267. We recede from State v. Monroe, 406 So.2d 1115 (Fla. 1981), to the extent it is in conflict with this conclusion.
> Bell v. State, supra at 1058.

In the instant case the offense of grand theft is a lesser included offense of the third-degree felony murder, the greater offense. (In order to prove the third-degree felony murder, the state must prove as a portion of that charge, the offense of grand theft. See Bell v. State, supra at 1060.) Thus, following Bell, as the district court correctly did, no conviction for the lesser offense of grand theft can properly result.

Bell v. State, supra, is the current law of this State on this issue. The district court followed this decision. Since Bell v. State, supra, receded from any apparently conflicting portions of Monroe and Hegstrom, no conflict now exists. See also State v. Harris, 439 So.2d 265 (Fla. 2d DCA 1983). This Court need not exercise its discretionary jurisdiction.

CONCLUSION

BASED UPON the foregoing argument, the respondent requests that this Honorable Court decline discretionary jurisdiction in the instant case.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, FL 32014-6183
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 9th day of May, 1984 to: Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, FL 32014 and Mr. James Snowden, Inmate No. 087411, P. O. Box 500, Olustee, FL 32092.

JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER