

IN THE SUPREME COURT OF FLORIDA

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APR 23 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA)
) Petitioner,
))
v.))
))
JAMES MICHAEL SNOWDEN)
) Respondent.
_____)

Case No. 65 176
5DCA No. 82-1740

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

James Michael Snowden was convicted of the crimes of third degree murder and grand theft. The opinion of the District Court correctly sets forth the details of the case. (App 1-10)

Relevant to this petition are the following facts:

- (a) Mr. Snowden was separately convicted and sentenced for the grand theft and third degree murder.
- (b) The Fifth District considered these separate convictions and sentences a violation of the constitutional guarantee against double jeopardy (App 4).
- (c) In doing so, the Fifth District noted conflicts between this case and certain decisions of this Honorable Court. (App 6).

IT IS SUGGESTED THAT THIS HONOR-
ABLE COURT HAS JURISDICTION.

ARGUMENT

The district court of appeal, relying upon Bell v. State, 437 So.2d 1057 (Fla. 1983), held that Mr. Snowden was incorrectly sentenced and convicted for the crimes of grand theft and third degree murder. This conclusion stemmed from the fact that, by statute, a homicide committed in the course of a grand theft is third degree murder. See §782.04(4), Fla.Stat.

The evidence, as correctly set out by the court, supported the homicide and the theft, but, since grand theft is apparently one of the felonies covered by §782.04, the question arises as to whether a separate judgment and sentence may be imposed.

Using the analysis used in Bell, we find that the elements of grand theft do not include a death, but the elements of third degree murder include proof that the person "was engaged in the perpetration of ..." an included felony; factually, the record reflects the theft and an unintended killing. Thus, although (by definition), theft is an "element" of third degree murder, the question is whether acts of theft and murder are one crime or two.

That question was noted in the opinion of the district court which, while deciding the question in Snowden's favor, noted the existence of inconsistencies between Bell and

State v. Hegstrom, 401 So.2d 1343 (Fla. 1981); State v. Monroe,¹
406 So.2d 1115 (Fla. 1981) Faison v. State, 426 So.2d 963
(Fla. 1983); and Hawkins v State, 436 So.2d 44 (Fla. 1983).
See also, Squires v. State, ___ So.2d ___ (Fla. 1984) [9 FLW 98];
Portee v. State, ___ So.2d ___ (Fla. 1984) [9 FLW 93].

In an attempt to reconcile the cases, the district court questioned whether this Court would consider "underlying felonies" to be the same as "lesser included offenses" (rejecting the notion) or whether Hawkins was either issued in error or superseded by Bell. (App. 6)

The conflicts, therefore, are not mere conflicts of "results," rather, the conflicts involve questions of analysis and classification; and the need to clarify Bell, at least as to the question of the difference, if any, between "underlying offenses" and "lesser included offenses" for double jeopardy purposes.

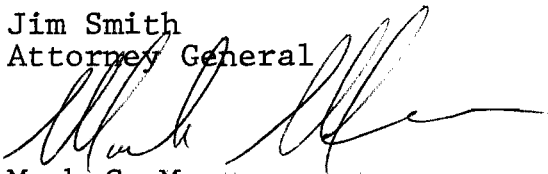
¹Monroe did seem to recede from Hegstrom.

CONCLUSION

The District Court of Appeal has entered an opinion which, on its face, notes the existence of conflict between itself and certain decisions of this Honorable Court, as well as apparent accord with certain other decisions of this Court. If there is conflict between the referenced decisions of this Honorable Court, (and the state respectfully submits that there is), then certiorari should be granted to resolve the question. The conflict arises over whether underlying felonies are to be treated as necessarily lesser included offenses for double jeopardy purposes despite the elements of the offenses involved.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to James R. Wulchak, Chief Appellate Division, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Florida 32114-6183, this 19th day of April, 1984.



Of Counsel