

Supreme Court of Florida

ORIGINAL

No. 79,752

LONNIE CHRISTOPHER FAWCETT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[March 25, 1993]

PER CURIAM.

We have for review Fawcett v. State, 595 So. 2d 1105 (Fla. 5th DCA 1992), which certified the following questions of great public importance:

When a charging document in charging a specified offense includes additional language sufficient to also charge a permissive (Category 2) lesser offense is the accused thereby placed in

jeopardy as to a conviction of the permissive (Category 2) lesser offense?

If a charging document is sufficient to allege a permissive (Category 2) lesser offense and the defendant is thereby put in jeopardy of a conviction of that offense is the State entitled, over the objection of **the** defendant, to have the jury instructed as to the permissive (Category 2) lesser offense?

Id. at 1105. We find the first certified question irrelevant and moot in light of our disposition of the second question, and we thus decline to answer it. Based on State v. Johnson, 601 So. 2d 219 (Fla. 1992), we answer the second question in the affirmative as qualified in Johnson and approve the decision below.

It is so ordered.

BARKETT, C.J., and **OVERTON**, **McDONALD**, **SHAW**, **GRIMES**, **KOGAN** and **HARDING**, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance

Fifth District - Case No. 91-1192

(Volusia County)

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Florida,

for Petitioner

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