

IN THE SUPREME COURT OF FLORIDA

**GAYSON J. MILLS,**

Petitioner,

v.

**CASE NO. SC01-68**

**STATE OF FLORIDA,**

Respondent.

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**PETITIONER'S BRIEF ON THE MERITS**

NANCY A. DANIELS  
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SECOND JUDICIAL CIRCUIT

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**PRELIMINARY STATEMENT**

Petitioner was the defendant in the trial court and the appellant in the lower tribunal. Attached hereto as Appendix A is the decision of the lower tribunal, which has been reported as Mills v. State, 773 So. 2d 650 (Fla. 1st DCA 2000).

Appendix B is this Court's opinion in Merritt v. State, 712 So. 2d 384 (Fla. 1998).

## STATEMENT OF THE CASE AND FACTS

The trial court sentenced Mills to six years in prison as an habitual felony offender for battery on a law enforcement officer. The First District Court of Appeal affirmed Mill's sentence, in a split opinion published December 20, 2000. (Apx. A). The majority declined to follow as "dicta" this Court's holding in Merritt that the statute for battery on a law enforcement officer is an enhancement statute. The dissent stated that Merritt precluded a habitual offender sentence as an impermissible double enhancement barred by the constitutional prohibition of double jeopardy.

A timely notice of discretionary review was filed January 5, 2001. This Court accepted jurisdiction on June 13, 2001.

### **SUMMARY OF THE ARGUMENT**

The First District Court wrongly decided not to follow this Court's precedent in Merritt v. State, 712 So. 2d 384 (Fla. 1998). In Merritt, this Court held that the statute creating battery on a law enforcement officer was an enhancement statute rather than a statute defining and creating any distinct substantive offense. The trial court committed fundamental error in imposing habitual felony offender sanctions for battery on a law enforcement officer. The First District Court of Appeal's opinion should be vacated.

Further, the rules of lenity and strict construction require reversal. The plain language of the statute at issue shows that it is an enhancement statute. Further, the rule of lenity requires that where, as here, statutes are susceptible of differing constructions, they shall be construed most favorably to the accused. The court's sentence constituted an impermissible double enhancement in violation of the double jeopardy provisions of the state and federal constitutions. This Court should reverse and remand for resentencing without the habitual-offender enhancement.

## ARGUMENT

### PETITIONER'S SENTENCE AS AN HABITUAL FELONY OFFENDER FOR BATTERY ON A LAW ENFORCEMENT OFFICER VIOLATES DOUBLE JEOPARDY.

The trial court effected a double enhancement by imposing a habitual offender sentence for battery on a law enforcement officer. The habitual offender sentence for the battery violates the prohibition against double jeopardy because a criminal offense cannot be enhanced twice. This Court may be guided by a de novo standard of review as the issue raised herein pertains to statutory construction. See, City of Jacksonville v. Cook, 765 So. 2d 289 (Fla. 1<sup>st</sup> DCA 2000); Dept. of Insurance v. Keys Title, 741 So. 2d 599 (Fla. 1<sup>st</sup> DCA 1999). This Court should reverse.

In Merritt v. State, 712 So. 2d 384 (Fla. 1998) this Court held:

Section 784.07, Florida Statutes (1995), **is an enhancement statute rather than a statute creating and defining any criminal offense.** The plain language of the statute indicates that the legislature enacted section 784.07 in order to increase the penalties for the enumerated crimes of assault, aggravated assault, battery, and aggravated battery for offenders who commit these crimes upon law enforcement officers.

Merritt, 712 So. 2d at 385 (emphasis added). This Court noted that §784.07 provides:

Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer ... while the officer ... is engaged in the lawful performance of his duties, the offense for



which the person is charged **shall be reclassified as follows:**

....

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

Merritt, 712 So. 2d at 384 (emphasis added). The statute's plain language shows that battery on a law enforcement officer is reclassified as a felony by virtue of the aggrieved individual's position as a law enforcement officer, as noted in Merritt.

Further, the habitual offender statute does not create a new substantive offense. Eutsey v. State, 383 So. 2d 219 (Fla. 1980). Thus, the trial court in the instant case imposed a double enhancement by imposing an habitual offender sentence for battery on a law enforcement officer. The double jeopardy clauses of the state and federal constitutions prohibit this double enhancement. U.S. Const. amend. V & XIV and Fla. Const. art. I, §9.

In Merritt, this Court accordingly concluded that battery on a law enforcement officer is an enhancement of simple battery, rather than a new substantive offense. The prohibition of double jeopardy would therefore bar a trial court from imposing habitual offender sanctions for battery on a law enforcement officer.

In State v. Crumley, 512 So. 2d 183 (Fla. 1987), this Court approved the First District Court's holding in Crumley v.

State, 489 So. 2d 112 (Fla. 1st DCA 1986). In Crumley v. State, the District Court held that:

[B]y enacting the enhancement statute, section 784.07, the legislature merely provided for a felony punishment when the victim ... is a law enforcement officer.

Crumley, 489 So. 2d at 114.

In Steverson v. Singletary, 741 So. 2d 1161, 1162 (Fla. 2d DCA 1999), the Second District Court similarly held that the statutes pertaining to offenses committed against law enforcement officers constitute enhanced offenses instead of new substantive offenses. The Second District Court thus held:

[§§775.0825 and 784.07(3), Florida Statutes (1993)] do not set out a separate criminal offense, rather they provide for a sentencing enhancement that is to be applied when a defendant has been convicted of specific crimes against law enforcement officers.

See, State v. Iacovione, 660 So. 2d 1371, 1373-74 (Fla. 1995) (holding that the penalty for attempted first-degree murder is enhanced when undertaken against a law enforcement officer).

In Evans v. State, 625 So. 2d 915, 916 (Fla. 1<sup>st</sup> DCA 1993), the First District Court held that section 784.07(2)(c) creates a separate substantive offense consisting of the elements of aggravated assault plus the added elements that the victim was a law enforcement officer engaged in the lawful performance of his duties and that the defendant knew the victim was a law enforcement officer. However, this Court implicitly overruled Evans in Merritt and should explicitly do

so here. Cf. Spann v. State, 772 So. 2d 38 (Fla. 4<sup>th</sup> DCA 2000) (en banc) and King v. State, 763 So. 2d 546 (Fla. 5<sup>th</sup> DCA 2000) (each concluding that habitual offender sentence for battery on a law enforcement officer does not violate double jeopardy).

**The rule of lenity and the rule of strict construction compels reversal under the facts of this case.** §775.021, Fla. Stat. (2000) provides:

The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

Thus, statutes should be strictly construed, as this Court did in Merritt. There, this Court stated:

The plain language of the statute indicates that the legislature enacted section 784.07 in order to increase the penalties for the enumerated crimes ... for offenders who commit these crimes upon law enforcement officers.

Merritt, 712 So. 2d at 1612. A strict construction of the statute therefore requires that battery on a law enforcement officer be considered an offense enhanced from simple battery, rather than a new substantive offense.

Moreover, the rule of lenity requires reversal, under the facts of this case. In State v. Huggins, 26 Fla. L. Weekly S174 (Fla. March 22, 2001), this Court applied the rule of lenity in holding that the prison release reoffender statute is not applicable to burglary of an unoccupied dwelling. This

Court held:

The defendant argues that the PRR provision clearly applies to burglary of an occupied structure or an occupied dwelling. The defendant further suggests that if the statute is ambiguous, any ambiguity must be resolved in favor of the defendant under the rule of lenity and section 775.021(1), Florida Statutes (1997). Indeed, the same criminal code which contains the PRR outlines certain rules of construction. Section 775.021(1) provides, "The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." This provision of chapter 775 mandates the result reached by both the trial and appellate courts.

Neither the State's nor the defendant's interpretation of the language "occupied structure or dwelling" can be said to be unreasonable. Because we hold that the phrase "occupied structure or dwelling" as used in section 775.082(8)(1)(q) is susceptible to differing constructions, we are bound to construe the language most favorably to the defendant. For that reason, we approve the Fourth District's decision below.

In the instant case, the language of the statutes at issue are "susceptible of differing constructions", as evinced by the split opinion. In other words, the statutes here have been deemed as either enhancement offenses or substantive offenses. Thus, the rule of lenity requires that the statutes be "construed most favorably to the accused", i.e., this Court should vacate Petitioner's sentence because it constitutes an impermissible double enhancement in violation of the

constitutional prohibitions of double jeopardy.

**The First District Court did not correctly apply the law by declining to follow this Court's precedent in Merritt as "dicta."** The First District Court's determination that the words used by this Court in Merritt are dicta is clearly erroneous, as noted by the dissent in the instant case.

In Merritt, this Court had to determine whether §784.07 was an enhancement or substantive statute because Merritt was convicted of an attempted battery on a law enforcement officer. The statute contained no specific reference to an attempt being a crime. Thus, in Merritt, this Court had to determine whether the statute is substantive, in which case the general attempts statute, §777.04, would apply, or an enhancement statute, in which case the attempts statute did not apply. This Court concluded that §784.07 is an enhancement statute, and this finding went to the crux of the decision. This Court expressed itself precisely as intended, because it was impelled by the facts to do so. The pertinent language is unambiguous and does not constitute dicta.

In the instant case, the majority violated the fundamental notion of stare decisis by not following this Court's holding in Merritt. In Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973), this Court held that district courts of appeal may state their reasons for advocating that this Court recede from established precedent, but are bound to follow such precedent until

overruled. Similarly, in Shands Teaching Hospital & Clinics, Inc. v. Smith, 480 So. 2d 1366 (Fla. 1st DCA 1985), approved, 497 So. 2d 644 (Fla. 1986), the First District Court held that in the absence of constitutional or statutory authority reflecting a change in established law, the district courts of appeal do not have the authority to overrule controlling precedent of this Court.

In the instant case, the trial court violated Double Jeopardy by imposing an impermissible double enhancement. The court committed fundamental error in imposing habitual felony offender sanctions for battery on a law enforcement officer, and the majority's holding in the instant case is in express conflict with established precedent. This Court should reverse.

**CONCLUSION**

Based on the foregoing arguments and authorities, Petitioner requests that this Court vacate the opinion of the First District Court of Appeal and remand for resentencing.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished to Douglas Squire, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, FL, and a copy has been mailed to Gayson J. Mills, DOC# N01289, Everglades Corr. Institution, P. O. Box 658001, Miami, FL 33265, on this \_\_\_\_\_ day of July, 2001.

**CERTIFICATE OF FONT SIZE**

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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