

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CARSON CITY, NEVADA,
Appellant,
vs.
ANTHONY DOUGLAS ECHOLS,
Respondent.

No. 37993

FILED

JUL 22 2002

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a sheriff's appeal from an order of the district court granting respondent Anthony Douglas Echols' pretrial petition for a writ of habeas corpus.

On October 23, 2000, Echols was charged by way of a criminal information with one count each of open murder with the use of a deadly weapon, and burglary with the use of a deadly weapon. The criminal information alleged two alternative means of committing the crime of open murder with the use of a deadly weapon.

On December 18, 2000, Echols filed a pretrial petition for a writ of habeas corpus and a motion to dismiss in the district court. The State opposed both the petition and the motion. On May 22, 2001, after conducting a hearing, the district court filed an order denying Echols' motion to dismiss, and granting Echols' petition for a writ of habeas corpus. In granting Echols' petition, the district court struck the State's alternative theory of felony murder from the criminal information and ordered the filing of an amended criminal information. The State now appeals from the portion of the district court's order granting Echols' petition.

In his pretrial petition below, Echols contended that the criminal information was defective and that the justice court erred in binding him over to the district court to stand trial. Specifically, Echols cited to People v. Wilson¹ for support and argued that the State's alternative theory of open murder with the use of a deadly weapon -- felony murder -- was "impermissible bootstrapping" because "burglary may not form the basis to elevate a murder to first degree if the intent of the burglar was to enter the structure to commit assault, battery or murder." We disagree with Echols' contention and conclude that the district court erred in granting his pretrial habeas petition.

This court recently addressed the same issue and similar facts in State v. Contreras.² In Contreras, this court stated that the legislative intent was clear and that "[w]e do not believe it is appropriate to apply the merger doctrine to felony murder when the underlying felony is burglary, regardless of the intent of the burglary."³ The court subsequently reversed the district court's order dismissing the felony-murder charge against the defendants.⁴ A similar result is required in this case. Accordingly, we

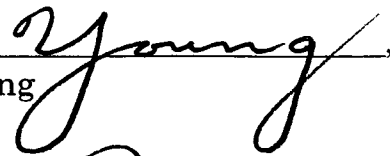
¹462 P.2d 22 (Cal. 1969).

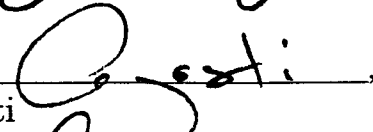
²118 Nev. ___, 46 P.3d 661 (2002).


³Id. at ___, 46 P.3d at 664; see also NRS 200.030(1)(b); NRS 205.060(1).

⁴Id. at ___, 46 P.3d at 664.

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. William A. Maddox, District Judge
Attorney General/Carson City
Carson City District Attorney
Nathan Tod Young
Carson City Clerk