

# Supreme Court of Florida

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No. 74,428

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STATE OF FLORIDA, Petitioner,

vs.

RAYMOND JOSEPH, Respondent.

[March 29, 1990]

SHAW, J.

We have for review Joseph v. State, 550 So.2d 1134 (Fla. 3d DCA 1989), in which the district court certified the following question as one of great public importance:

IS A TWELVE-PERSON JURY REQUIRED IN A FIRST-DEGREE  
MURDER CASE IN WHICH THE PROSECUTION WAIVES THE  
DEATH PENALTY?

Id. at 1135. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

In State v. Griffith, No. 73,998 (Fla. Mar. 29, 1990), we answered the certified question and held that, regardless of whether the state seeks the death penalty, a twelve-person jury is required in first-degree murder trials unless waived by the defense. A record showing of the defendant's personal waiver is unnecessary--counsel may waive the right for the defense.

It is thus clear from Griffith that a defendant in a first-degree murder trial is entitled to a twelve-person jury unless the right is waived by the defendant or his counsel. The district court found in this instance that there was no waiver and the state has failed to direct our attention to a record waiver. We are unwilling to imply waiver from a silent record. We accordingly approve the district court's decision.

It is so ordered.

EHRlich, C.J., and McDONALD, BARKETT, GRIMES and KOGAN, JJ.,  
Concur  
OVERTON, J., Dissents

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

Third District - Case No. 87-2625  
(Dade County)

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