### IN THE SUPREME COURT OF FLORIDA

FEB 17 1992 CLERK, SUPPLEME COURT

Chief Deputy Clerk

LAWRENCE TAYLOR,

Appellant,

v.

CASE NO. 79-095

STATE OF FLORIDA,

Appellee.

### SUPPLEMENTAL JURISDICTIONAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

LAURA RUSH ASSISTANT ATTORNEY GENERAL FLORIDA BAR NO. 613959

DEPARTMENT OF LEGAL AFFAIRS THE CAPITOL TALLAHASSEE, FL 32399-1050 (904) 488-0600

COUNSEL FOR APPELLEE

# TABLE OF CONTENTS

PA	GE(S)
TABLE OF CONTENTS	
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
ISSUE	
THE DECISION OF THE DISTRICT COURT IS IN CONFLICT WITH GOULD $v.\ STATE$ , 577 So.2d 1302 (Fla. 1991)	
CONCLUSION	6
CERTIFICATE OF SERVICE	6

## TABLE OF CITATIONS

CASES	PAGE(S)
Gould v. State,	
577 So.2d 1302 (Fla. 1991)	4-6

# STATEMENT OF THE CASE AND FACTS

Respondent accepts the petitioner's statement of the case and facts.

## SUMMARY OF ARGUMENT

Respondent agrees that the district court's decision is in conflict with  $\underline{Gould\ v.\ State}$ ,  $\underline{infra}$ .

- 4 -

#### ARGUMENT

### <u>ISSUE</u>

THE DISTRICT COURT DECISION IS IN CONFLICT WITH GOULD V. STATE, 577 So.2d 1302 (Fla. 1991).

Respondent agrees that the district court decision, stating that "[b]ecause aggravated assault with a deadly weapon is a Category II lesser included offense of robbery with a firearm, we apply section 924.34 and order the trial court to enter the judgment of conviction in accordance with the above directive" (Petitioner's Appendix at 6) is in conflict with Gould v. State, 577 So.2d 1302 (Fla. 1991). In Gould, the court held that section 924.34, Florida Statutes, applies only to necessarily included offenses. Respondent's agreement to conflict jurisdiction under Gould imply agreement with the district court's does not conclusion that aggravated assault with a deadly weapon is a permissive lesser included offense of robbery with a firearm.

### CONCLUSION

Respondent agrees that the decision of the district court is in conflict with <u>Gould v. State</u>, <u>supra</u>.

Respectfully submitted,

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

LAURA RUSH

ASSISTANT ATTORNEY GENERAL FLORIDA BAR NO. 613959

DEPARTMENT OF LEGAL AFFAIRS THE CAPITOL TALLAHASSEE, FL 32399-1050 (904) 488-0600

COUNSEL FOR APPELLEE

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing answer brief has been furnished by U.S. Mail to Lynn A. Williams, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, FL 32301 this 17th day of February, 1991.

Laura Rush

Assistant Attorneý General