

**FILED**

SID J. WHITE

MAY 30 1995

CLERK, SUPREME COURT  
By *[Signature]*  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 85,478

THE STATE OF FLORIDA

Petitioner,

vs.

TREVOR MILLER,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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AMENDED BRIEF OF RESPONDENT ON THE MERITS

RUSSELL K. ROSENTHAL, ESQ.  
1925 Brickell Avenue  
Suite D207  
Miami, Florida 33129  
FBN: 319244

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| <u>Amlotte vs. State,</u><br>456 So.2d 448 (1984)          | 1,2,4 |
| <u>Gray vs. State,</u><br>19 FLW D1039 (Fla.3rd DCA, 1994) | 1,4   |

## STATEMENT OF THE CASE AND FACTS

The Respondent, TREVOR MILLER, and his co-defendants COLLIN GRAY and ANDREW JACKSON were convicted of committing an armed robbery at a restaurant on April, 9, 1992. Thereafter the defendants left the scene in a gray Toyota, driven by Gray, pursued by police vehicles. The Toyota ran a red light during the pursuit and struck another vehicle, seriously injuring its occupant.

In Gray vs. State, 19 FLW D1039 (Fla.3rd DCA, 1994), the Third District Court of Appeal affirmed Miller's co-defendant Gray's conviction on the armed robbery charge, but reversed his conviction and sentence for attempted felony murder and certified the following questions to this Court.

Whether the "overt act" referred to in Amlotte v. State, 456 So. 2d 448,449 (Fla.1984), includes one, such as fleeing, which is intentionally committed but is not intended to kill or injure another? (R.133-134).

On March 22, 1995 the Third District Court of Appeal similarly reversed Miller's conviction in light of its ruling in Gray. (Third District Case No.: 94-448), and certified the identical question to this Court. The State thereafter sought discretionary review of that decision before this Court.

In an opinion issued on May 4, 1995, this Court affirmed the Third District Court of Appeal decision in State vs. Gray, in case number 83,766.

## QUESTIONS PRESENTED

### I

WHETHER THE "OVERT ACT" REFERRED TO IN AMLOTTE VS. STATE, 456 So.2d 448,449 (Fla.1984), INCLUDES ONE, SUCH AS COMMITTED BUT IS NOT INTENDED TO KILL OR INJURE ANOTHER.

### II

SHOULD THE COURT RECEDE FROM AMLOTTE VS. STATE, 456, So.2d 448, (Fla.1984), WHICH FORMED THE CRIME OF ATTEMPTED FELONY MURDER TO EXIST UNDER FLORIDA LAW.

**SUMMARY OF THE ARGUMENT**

The Respondent, TREVOR MILLER, suggests that State vs. Gray, case no. 83,766, is dispositive of this appeal.

## ARGUMENT

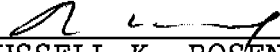
The Respondent TREVOR MILLER, was convicted along with co-defendants COLLIN GRAY of Attempted Felony Murder. In State vs. Collin Gray, case no. 83,766, this Court receded from Amlotte vs. State, 456 So.2d 448 (1984) and held that there is no criminal offense of Attempted Felony Murder. Miller, who was Gray's co-defendant at trial, respectfully suggests that the decision of this Court in Gray is dispositive as to him.

**CONCLUSION**

This Court should let stand the decision of the Third District Court of Appeal.

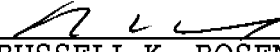
Respectfully submitted,

RUSSELL K. ROSENTHAL, ESQ.  
1925 Brickell Avenue  
Suite D207  
Miami, Florida 33129  
(305) 857-9220

BY:   
RUSSELL K. ROSENTHAL, ESQ.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a true and correct copy of the foregoing was mailed to Attorney General's Office, 401 N.W. 2nd Avenue, Miami, Florida, 33101, this 23 day of May 1995.

BY:   
RUSSELL K. ROSENTHAL, ESQ.