

# ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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CASE NO. 87,505

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DARYL THOMPSON,  
Petitioner,

-vs.-

STATE OF FLORIDA,  
Respondent.

**FILED**

SID J. WHITE

MAR 14 1986

CLERK, SUPREME COURT

By 

Chief Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT  
COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

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**JURISDICTIONAL BRIEF OF PETITIONER**

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STATEMENT OF THE CASE AND OF THE FACTS

This is a proceeding for discretionary review from a decision of the Third District Court of Appeal, which--expressly and directly contrary to a decision from the Fifth DCA--held that it is not an element of the crime of attempted murder of a law enforcement officer that the Defendant know that the victim is a police officer. The Petitioner, Daryl Thompson, was charged with and convicted of one count of attempted first degree murder of a law enforcement officer' which conviction was reversed by the Third District Court of Appeal because the jury was erroneously instructed that it could return a verdict of guilty under the State's alternative theory of attempted felony murder. Thompson v. State of Florida, 21 Fla. L. Weekly D286 (Fla. 3d DCA 1996). The Third District noted that this Court's decision in State v. Gray, 654 So. 2d 552 (Fla. 1995) required reversal because the crime of attempted felony murder no longer exists in the State of Florida.

In reversing Defendant's conviction on the attempted murder charge, the Third District noted that there was evidence from which the jury could have convicted the Defendant under the alternative theory of attempted premeditated murder, and held: "We see no impediment to reversing and remanding for a new trial on the charge of attempted premeditated murder where the facts of the case could support a guilty verdict on that charge." Id.

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<sup>1</sup> Defendant was acquitted at trial of four other similar counts.

The Third DCA in its decision observed that Mr. Thompson "contends that the trial court erroneously denied his requested jury instruction that it is an element of the crime of attempted murder of a law enforcement officer that the defendant know that the victim is a police officer." Id. The court held: "[W]e agree with the First District in Carpentier v. State, 587 So. 2d 1355 (Fla. 1st DCA 1991), review denied 599 So. 2d 654 (Fla. 1992) and the cases that follow, Isaac v. State, 626 So. 2d 1082 (Fla. 1st DCA 1993), review denied 634 So. 2d 624 (Fla. 1994) and Evans v. State, 625 So. 2d 915 (Fla. 1st DCA 1993), that the 'statute simply **does** not require that the offender have knowledge that the victim was a law enforcement officer.!" 21 Fla. L. Weekly at D286 (quoting Carpentier, supra, at 1357).

In its decision, the Third District noted Thompson's reliance "on Grinage v. State, 641 So. 2d 1362 (Fla. 5th DCA 1994) for the proposition that the state must allege and prove that the defendant knew that his victim was a police officer for a conviction under section 784.07(3), Florida Statutes (1993)." This proceeding ensued based upon the express and direct conflict between the Third DCA's decision in this case and the Fifth District's decision in Grinage .

SUMMARY OF THE ARGUMENT

This Court should exercise its discretionary jurisdiction and accept this case for briefing on the merits to decide the important question whether the Defendant's knowledge of the status of his alleged victim as a police officer is an element of the crime of attempted murder of a law enforcement officer. There is a split in the District Courts of Appeal on that issue which is resulting in inconsistent adjudications, depending upon where the crime occurs, which should be resolved by this Court.

ARGUMENT

**THIS COURT SHOULD ACCEPT JURISDICTION  
BASED ON THE EXPRESS AND DIRECT  
CONFLICT WITH GRINAGE V. STATE**

This case is factually and legally indistinguishable from the Fifth DCA's decision in Grinage v. State, 641 So. 2d 1362 (Fla. 5th DCA 1994). In Grinage, as in this case, the Defendant was charged with attempted murder of a law enforcement officer arising out of a reverse sting operation gone sour in a shopping center parking lot. In reversing the Defendant's conviction and remanding for retrial, the Court in Grinage held that the Defendant's knowledge of the status of the victim as a law enforcement officer was an element of the crime of attempted murder under section 784.07(3), Fla. Stat. The Court held:

We further hold that upon retrial, merely giving the newly approved instructions (instructions that still omit the requirement of intent and the requirement of knowledge of the status of the victim) will not be sufficient to justify the conviction for knowingly attempting to murder a police officer engaged in the performance of his duty.

Grinage urges, and we agree, that before he can be convicted of attempting to murder a police officer engaged in the lawful performance of his duty, the State must allege and prove that he knew his victim was a police officer.

Id. at 1364 (emphasis added).

Petitioner submits that the conflict is so clear and the issue so important that this **case** should accept jurisdiction outright. Petitioner notes in closing that one sentence of the Third

District's decision below deserves mention, lest this Court misconstrue that sentence as indicating that the Third District **does** not believe that **it is** in conflict with the Fifth DCA's decision in State v. Grinage.

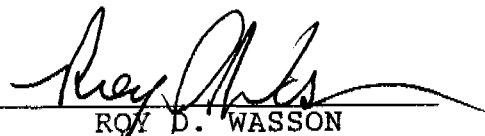
Referring to this Court's decision in Grinage, the Third District held: "However, we do not read that case as deciding the question of whether or not knowledge of the victim's **status** as a law enforcement officer is a necessary element of the offense of attempted murder when a conviction is enhanced under Florida Statute section 784.07(3)(1993)." 21 Fla. L. Weekly D286. The Third District is not denying the existence of conflict with the Fifth District in that sentence, **because** the Third District in that sentence is referring to this Court's decision in State v. Grinage, 656 So. 2d 457 (Fla. 1995), which did not reach the question whether an element of the crime of attempted murder **of** a law enforcement officer is that the Defendant know **his** victim **to be** a police officer. There is conflict between the District Courts of **Appeal**, and that is all that is necessary to support **the** exercise of this Court's conflict jurisdiction.



CONCLUSION

WHEREFORE, the decision below being expressly and directly in conflict with a decision of the Fifth District Court of Appeal on the same important point of law, and the issue doubtless to arise in numerous cases throughout the state, this Court should exercise its discretionary jurisdiction and accept this case for briefing on the merits.

Respectfully submitted

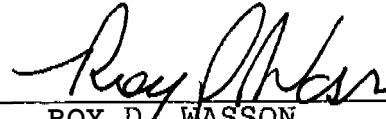


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy hereof was served by mail, upon Consuelo Maingot, Esq., Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, P.O. Box 013241, Miami, FL 33101 , on this, the 11th day of March, 1996.



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