

Supreme Court of Florida

COPY

STATE OF FLORIDA,
Petitioner,

vs.

RICHARD VARIANCE,
Respondent.

No. 87,916

[December 26, 1996]

SHAW, J.

We have for review Variance v. State, 21 Fla. L. Weekly D79 (Fla. 4th DCA Jan. 3), on motion for certification, 21 Fla. L. Weekly D1052 (Fla. 4th DCA May 1, 1996), wherein the district court certified two questions.¹ We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We quash Variance based on State v. Wilson, No. 87,575 (Fla. Dec. 26, 1996), wherein we held that the giving of a nearly identical instruction did not constitute fundamental error and required a contemporaneous objection to be preserved for review.

It is so ordered.

KOGAN, C.J., and OVERTON, GRIMES,
HARDING, WELLS and ANSTEAD, JJ.,
concur.

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
Fourth District - Case No. 94-3019

(Broward County)

Robert A. Butterworth, Attorney General; and
Georgina Jimenez-Orosa, Senior Assistant
Attorney General and James J. Carney,
Assistant Attorney General, West Palm Beach,
Florida,

for Petitioner

Richard L. Jorandby, Public Defender and
Allen J. DeWeese, Assistant Public Defender,
Fifteenth Judicial Circuit, West Palm Beach,
Florida,

for Respondent

¹ The court certified:

1) Does the jury instruction given in this case impermissibly reduce the reasonable doubt standard below the protections of the due process clause?

2) If so, is such an instruction fundamental error?