IN THE SUPREME COURT OF FLORIDA

CASE NO. 91,488

DANIEL McLAUGHLIN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

Petitioner, Daniel McLaughlin, was the defendant in the trial court and the appellant in the Third District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court, and the appellee in the Third District Court of Appeal. The parties are referred to in this brief as Petitioner and Respondent or by proper name. References to the appendix to this brief are demarcated by an "A.".

STATEMENT OF THE CASE AND FACTS

The State of Florida filed an information charging defendant with numerous felonies including two counts of aggravated assault on a law enforcement officer. The two victims of the aggravated assault were United States Federal Protective Services Officers. At the conclusion of the state's case defendant moved for a judgement of acquittal as to the two counts of aggravated assault on a law enforcement since federal officers were not included within the definition of a law enforcement officer as defined by Florida Statute 784.07. The trial court denied the motion.

On direct appeal to the Third District Court of Appeal defendant argued that the trial judge erred in denying defendant's motion for judgement of acquittal. The Third District Court of Appeal recognized that federal officers were not listed in the group of officers that were defined as law enforcement officers in Florida Statute 784.07 and 943.10. However, the court relying on the doctrine of ejusdem generis and this court's opinion in *Soverino v. State* 356 So.2d 269 (Fla. 1978) concluded that a federal officer is included in the definition of law enforcement as defined in Florida Statute 784.07. (See Appendix A.) Defendant's motion for rehearing was denied. (See Appendix B). A notice to invoke discretionary review was filed.

QUESTION PRESENTED

THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL WHICH HOLDS THAT FEDERAL OFFICERS ARE INCLUDED WITHIN THE DEFINITION OF A LAW ENFORCEMENT OFFICER CONTAINED IN FLORIDA STATUTE 784.07 DIRECTLY CONFLICTS WITH NUMEROUS OPINIONS FROM OTHER DISTRICT COURT OF APPEALS AND THIS COURT'S DECISION IN *SOVERINO V. STATE, 356* So.2d 269 (Fla. 1978).

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal's decision which relied upon the doctrine of ejusdem generis to conclude that federal officers are included in the definition of law enforcement officers contained in Florida Statute 784.07 directly conflicts with this court's decision in Green v. *State, 604* So.2d 471 (Fla. 1978) and the First District Court of Appeal's decision in *Hunter v. State, 376* So.2d 438 (Fla. 1st DCA 1979). Furthermore, the Third District's decision which relied upon the definition of a law enforcement officer contained in Florida statute 790.001(8) rather than the definition contained in Florida Statute 943.10 directly conflicts with the Fourth District Court of Appeal's decision in *C.L.* v. *State,* 22 Fla. L. Weekly 1322 (Fla, 4th DCA 1997) and this court's decision in *Soverino v. State,* 356 So. 2d 269 (Fla. 1978). Therefore, this Court should accept jurisdiction of this case and resolve the conflicts that now exists,

ARGUMENT

THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL WHICH HOLDS THAT FEDERAL OFFICERS ARE INCLUDED WITHIN THE DEFINITION OF A LAW ENFORCEMENT OFFICER CONTAINED IN FLORIDA STATUTE 784.07 DIRECTLY CONFLICTS WITH NUMEROUS OPINIONS FROM OTHER DISTRICT COURT OF APPEALS AND THIS COURT'S DECISION IN *SOVERINO V. STATE*, *356* So.2d 269 (Fla. 1978).

Petitioner was charged with two counts of aggravated assault on a law enforcement officer. The two victims were officers employed by the United States Government as Federal Protective Service Officers.

Florida Statute 784.07 increases the severity of an aggravated assault if the aggravated assault is committed against a law enforcement officer. The statute specifically defines who is to be considered a law enforcement officer for the purposes of this statute:

> (l)(a) As used in this section, the term "law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, **as those terms are respectively defined in** s. **943.10,** and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Game and Fresh Water Fish Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

Florida Statute 943.10 defines a law enforcement officer as follows:

> (1) "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state, This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement

> officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

Therefore, in order for the reclassification or minimum mandatory sections of Florida Statute 784.07 to apply, an officer who is the victim of an assault or battery must be the officer employed by either the State of Florida or any municipality or political subdivision of the State of Florida.

The Third District Court of Appeal concluded that even though Florida Statute 784.07 refers to section 943.10 for the definition of a law enforcement officer and even though federal officers are not included in this definition, a federal officer still can be considered a law enforcement officer under section 784.07. In reaching this conclusion the court held relied upon the doctrine of ejusdem generis and this Court's decision in *Soverino v. State,* 356 So. 2d 269 (Fla. 1978).

A. THE PORTIONOFTHE OPINION OF THE THIRD DISTRICT COURT OF APPEAL WHICH RELIES UPON THE DOCTRINE OF EJUSDEM JURIS TO JUSTIFY THE INCLUSION OF FEDERAL OFFICERS IN THE DEFINITION OF LAW ENFORCEMENT OFFICER CONTAINED IN SECTIONS 784.07 AND 943.10 DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *GREEN V. STATE*, 604 SO.2D 471 (FLA. 1992) AND THE FIRST DISTRICT'S OPINION IN *HUNTER V. STATE*, 376 SO. 2D 438 (FLA. 1ST DCA 1979) AND MISAPPREHENDED THE DOCTRINE OF EJUSDEM GENERIS.

In concluding that federal officers are law enforcement officers within the meaning of Florida Statute 784.07 the Third District Court of Appeal initially relied upon the doctrine of ejusdem generis. A review of this court's decision in *Green v. State,* 604 So. 2d 471 (Fla. 1992), which defined and explained the doctrine of ejusdem generis will establish that the Third District's decision directly conflicts with *Green* and misapplied the doctrine of ejusdem generis to this case.

In *Green, supra,* this Court was asked to decide whether items of personal apparel, such as common gloves were included under the terms "tool, machine, or implement" as used in section 8 10.06, Florida Statutes. Tn rejecting the state's argument that gloves were meant to be included in

810.06 the court relied upon the doctrine of ejusdem generis, The court defined this rule of statutory construction as follows:

> Another maxim of statutory construction, ejusdem generis, is applicable to our interpretation of the phrase "tool, machine or implement." **Under the doctrine of ejusdem generis, where an enumeration of specific things is followed by some more general word, the general word will usually be construed to refer to things of the same kind or species as those specifically enumerated.** *State ex rel. Wedgworth Farms, Inc. v. Thompson,* 101 So.2d 381, 385 (Fla.1958). With respect to the language in section 8 10.06, the word "implement" should be interpreted to refer to objects similar in nature to "tools" or "machines." Because gloves are not included in the definitions of "tool" or "machine," the doctrine of ejusdem generis limits the word "implement" to a definition that does not include gloves.

Therefore, this court recognized that the doctrine of ejusdem generis only applies where an **enumeration of specific things is followed by some more general word.** When a statute contains this pattern, then the general words must be construed to refer to things of the same kind or species as those specifically enumerated.

Florida Statute 784.07 lists a group of officers who are meant to be included in the definition of a law enforcement officer. Following this enumerated list, the statute then specifically states that in order to determine if an individual fits within this list one must look to the definitions contained in Florida Statute 943.10. Therefore, Florida Statute 784.07 is not a statute that contains a list of individuals followed by a more general term but instead it is a statute that contains a list of officers followed by a reference to another statute which defines specifically who shall be included in the statute. Therefore, the Third District's reliance on the doctrine of ejusdem generis was misplaced and directly conflicts with this court's decision in Green.

The opinion of the Third District Court of Appeal also directly conflicts with the decision of the First District Court of Appeal in *Hunter v. State,* 376 So. 2d 438 (Fla. 1st DCA 1979). In

Hunter the defendant was charged with aggravated assault on a law enforcement officer. The alleged law enforcement officer was a county correctional officer. The issue the court had to decide was whether county correctional officers were included in the Section 784.07, Florida Statutes (1977). Florida Statute 784.07 (1977) listed a group of law enforcement officers who were meant to be protected by the statute, The statute specifically stated that the term law enforcement officer was not limited to the group of officers that were listed in the statute. In concluding that a county correctional officer was not included in section 784.07 the, court pursuant to this court's decision in *Soverino v. State,* 356 So.2d 269 (Fla. 1978), looked to the definition of a law enforcement officer which was contained in section 790.001(8). The First District concluded that since county correctional officers were not included in the definition in 790.001(8) they were not a law enforcement officer within the meaning of section 784.07, Florida Statute (1995) even though they would appear to be in the same class as state correctional officers.

In 1995, the legislature amended Florida Statute 784.07(1995) and specifically stated that the definition that should be used in determining who is a law enforcement officer under this statute was contained in Florida Statute 943.10. Therefore, the only difference between this case and the *Hunter* case is that in *Hunter* the court was required to use the definition contained in 790.001(8) to determine who was a law enforcement officer and in this case the court was required to look at 943.10 for the definition of a law enforcement officer. Just like Section 790.00 1(8) does not include county correctional officers, 943.10 does not include federal officers. In *Hunter, supra,* the court aptly stated "Had the legislature intended that county correctional officers be classed as law enforcement officers, it could have so stated in either of the statutes." 376 So.2d at 439.

Therefore, the Third District's decision which relies upon the doctrine of ejusdem generis

to justify its holding that federal officers are included in the definition of law enforcement officer as contained in section 784.07 and 943.10 directly conflicts with this court's decision in Green and the First District Court of Appeal's decision in *Hunter*.

B. THE THIRD DISTRICT COURT OF APPEAL'S DECISION CONFLICTS WITH AND MISAPPLIED THIS COURT DECISION *IN SOVERINO V. STATE*, 356 So. 2D 269 (FLA. 1978).

In concluding that federal officers were law enforcement officers within the meaning of section 784.07 the Third District Court of Appeal, similar to the *court* in *Hunter,* relied upon the language of *Soverino* v. *State,* 356 So.2d 269 (Fla. 1978), which held that since the old version of 784.07 did not contain a definition of a law enforcement officer the state attorney can use the definition of law enforcement contained in section 790.001(8) to determine who is a law enforcement officer under section 784.07 (1977).

In *Soverino v. State,* 356 So.2d 269 (Fla. 1978) this court was asked to decide whether Florida Statute 784.07 (1977) was over broad since the prosecutor had the authority to decide who was a law enforcement officer because the statute stated that the term law enforcement officer was not limited to the groups mentioned in the statute. The 1977 version of Florida Statute 784.07 stated the following:

> **"Assault or battery of law enforcement officers or fire fighters; reclassification of offenses.**
> "(l)(a) As used in this section, the term 'law enforcement officer' includes, **but shall not be limited to,** any sheriff, deputy sheriff, municipal police officer, highway patrol officer, beverage enforcement agent, county probation officer, officer of the Parole and Probation Commission, and law enforcement personnel of the Game and Fresh Water Fish Commission and the Departments of Natural Resources and Criminal Law Enforcement.

In concluding that this statute was not over broad, this Court relied upon the doctrine of ejusdem generis and concluded that the prosecutor could only consider someone a law enforcement

Officers if they were in a similar class to the individuals listed in the statute. The court in a footnote 4 recognized that since the statute did not contain a definition of law enforcement officer the prosecutor could look to the definition in 790.001(8) for guidance.

Subsequent to the opinion in *Soverino, supra*, the Florida Legislature amended section 784.07. In 1995 the amended version of 784.07 specifically stated that the definition of the term law enforcement officer was contained in section 943.10. Therefore, whereas in the old version of the statute it was necessary to rely on the doctrine of ejusdem generis to determine who was meant to be included in the statute the same is not true under the new statute. Under the new statute the legislature in attempt to clarify the vagueness that existed in the old statute specifically listed all of the officer who were meant to be included under section 784.07. Not only did the legislature eliminate the language "includes but shall not be limited to" but more importantly the legislature went one step further and specifically included the language that the terms contained in the statute were defined in section 943.10. Therefore, since Florida Statute 784.07 (1995) specifically states who is meant to be included in the definition of a law enforcement officer the use of the doctrine of ejusdem generis is inappropriate when interpreting this statute.

Furthermore, the language in *Soverino* which stated that prosecutors could rely on section 790.001(8) for the definition of a law enforcement officer was invalidated by the legislature in the new statute. The new statute specifically states that the definition to be used in determining who is a law enforcement officer within the meaning of 784.07 is contained in section 943.10 rather than the definition contained in 790.001(8). Therefore, the Third District Court of Appeal decision not only directly conflicts with this court's decision in *Soverino* but it also completely misapplies the holding in that case. Therefore this court should accept jurisdiction to clarify the conflict that now

exists between *Soverino* and the Third District's opinion in this case.

C. The Third District Court of Appeal's Decision Which Relies Upon The Definition In Section 790.001(8) To Support Its Conclusion That Federal Officers Are Law Enforcement Officers Within The Meaning Of Section 784.07 Directly Conflicts With The Fourth District Court Of Appeal's Decision In *C.L. v. State*, 22 Fla. L. Weekly 1322 (Fla. 4th DCA 1997).

In *C.L.* v. State, 22 Fla. L. Weekly D1322 (Fla. 4th DCA 1997), the Fourth District Court of Appeal was asked to decide whether a Palm Beach County school board police officer was a law enforcement officer within the meaning of section 784.07, Florida Statute (1995). In concluding that a school board police officer was included in the definition of a law enforcement officer as defined by Florida Statute 784.07, the court held that in determining who is a law enforcement officer under section 784.07 it is necessary to rely on the definition of law enforcement officer as defined in Florida Statute 943.10(1). The court concluded that a school board police officer was included in the definition of a law enforcement contained in Florida Statute 943.10(1 1), therefore he was a law enforcement officer within the meaning of section 784.07,

Since the Third District Court of Appeal's decision to use the definition of a law enforcement officer contained in 790.001(8) rather than the definition in 943.10(1) directly conflicts with the precise language of the statute and with the case of *C.L.* v. State, *supra,* this court should accept jurisdiction to resolve the conflict which now exists between the Fourth District's decision in C.S. and the decision in this case.

CONCLUSION

Since the Third District Court of Appeal's decision directly conflicts with numerous cases from both this Court and several District Court of Appeals, this Court should accept jurisdiction.

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to Sandra S. Jaggard, Assistant Attorney General, Rivergate Plaza Suite #950, 444 Brickell Avenue, Miami, Florida 33 13 1 this 14th day of October, 1997.

Respectfully submitted,

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APPENDIX

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1997

DANIEL MARCUS MCLAUGHLIN, **

Appellant, **

vs. ** CASE NO. 96-1942
LOWER TRIBUNAL NO. 95-38366
**
THE STATE OF FLORIDA,

Appellee. **

Opinion filed July 23, 1997

An appeal from the Circuit Court for Dade County, Leslie B. Rothenberg, Judge.

Bennett H. Brummer, Public Defender, and Robert Kalter, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Sandra S. Jaggard, Assistant Attorney General, for appellee.

Before NESBITT, LEVY, and GODERICH, JJ.

NESBITT, J.

I United States Federal Protection Service officers Heriberto Martinez and Jack Aho were in downtown Miami when they heard shots

fired. They investigated the source of the gunfire. Martinez saw the defendant, Daniel McLaughlin, with what looked like a gun sticking out of his waistband. When Martinez asked McLaughlin if he could talk to him, McLaughlin pulled out a gun, pointed it at the officer, and told him that he didn't want to talk to him. McLaughlin eventually fled, but was captured by the officers. The officers turned McLaughlin over to the City of Miami police department. Thereafter, they returned to the area where the shots were fired and recovered shell casings, which they also turned over to the Miami police.

Pursuant to a jury verdict, the trial court entered a judgment adjudicating McLaughlin guilty of: (1) two counts of aggravated assault on a law enforcement officer with a semiautomatic firearm and a high-capacity detachable box magazine;[1] (2) unlawfully discharging a firearm in public;[2] and (3) resisting an officer without violence.[3] At sentencing, McLaughlin pleaded nolo contendere to unlawful possession of a firearm by a convicted

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[1] §§ 784.021, 784.07, Fla. Stat. (1995).

[2] § 790.15, Fla. Stat. (1995). It is 'clear that the listing of this count on the judgment of conviction was a clerical error. The jury found McLaughlin not guilty of this charge. In accord with that finding, the trial court orally acquitted McLaughlin of that charge. Additionally, no sentence was imposed for that count and it was not included in the sentencing guidelines scoresheet. Thus, we strike this count from the judgment of conviction but affirm it in all other respects. See Samudio v. State, 460 So. 2d 418 (Fla. 2d DCA 1984).

[3] § 843.02, Fla. Stat. (1995).

felon.[4] The trial court sentenced McLaughlin to one year and a day in state prison on that charge, and credit for time served on the resisting charge. With respect to the aggravated assaults, the trial court sentenced McLaughlin to two eight-year minimum mandatory terms pursuant to section 775.087(2), Florida Statutes (1993). The court ordered that all sentences were to be served concurrently.

McLaughlin argues on appeal that United States Federal Protection Service officers do not fall under the definition of a "law enforcement officer" for purposes of section 784.07, Florida Statutes (1995). That provision provides, among other things, that when a person is charged with knowingly committing an aggravated assault on a law enforcement officer, the offense is to be reclassified from a third degree felony to a second degree felony. § 784.07(2)(c), Fla. Stat. (1995). It further provides:

> As used in this section, the term "law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in Sec. 943.10, and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Game and Fresh Water Fish Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

§ 784.07(1)(b), Fla. Stat. (1995).

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[4] § 790.23, Fla. Stat. (1995).

Section 943.10(1), in turn, reads:

> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the stat-e or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

McLaughlin maintains that because Federal Protection Service officers do not fall under the definition of "law enforcement officer" found in section 943.10, it was error to subject him to the enhancement provisions of section 784.07.

For two reasons, we are convinced that the legislature did not intend to exclude federal law enforcement personnel from the statute's ambit. First, section 784.07(1)(a) states that "the term 'law enforcement officer' includes a law enforcement officer . . . ." (emphasis added). "Includes" is a term of enlargement, not limitation. See Yon v. Flemins, 595 So. 2d 573, 577 (Fla. 4th DCA), rev. denied, 599 So. 2d (Fla. 1992). To "include" means 'to place, list, or rate as a part or component of a whole or of a larger group, class, or aggregate . . . .' Webster's Third New International Dictionary 1143 (1986). Thus, by using the term "includes" the legislature expressed its intent that what followed that term was meant to be a list of individuals protected by the

statute who were but a part of a larger class of people called "law enforcement officers." Obviously, applying the principle of ejusdem generis, that larger class or group would have to be construed to refer to persons of the same kind or nature as those specifically mentioned in the statute. We believe Federal Protection Service police officers fall into that class.

Second, in Soverino v. State, 356 So. 2d 269 (Fla. 1978), our supreme court interpreted the substantially similar predecessor to the current statute.[5] Applying the same principle of statutory construction we referred to earlier, the court held that section 784.07 covers those officers specifically enumerated in the statute and those persons falling within the general class of "law enforcement officers." Id. at 273. The court specifically noted that prosecutors may look to section 790.001(8) for guidance as to what individuals fall within the class of 'law enforcement officers." Id. at 273 n.4. That subsection specifically provides that officers of the United States with authority to make arrests are "law enforcement officers." § 790.001(8), Fla. Stat. (1995). Thus, in this case, the trial judge correctly ruled that United States Protection officers were "law enforcement officers" for

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[5] That statute provided that the term "'law enforcement officer' includes, but shall not be limited to . . ." Soverino, 356 So. 2d at 271 n.1 (emphasis added). We do not believe the elimination of the phrase 'but shall not be limited to" from the statute changes our analysis given the definition of the term "includes" standing alone. In our view, the dropping of that phrase simply eliminated a redundancy.

purposes of section 784.07, Florida Statutes.

We find the remaining points raised by McLaughlin to be without merit and do not discuss them. Thus, in accord with our discussion in footnote two, supra, we strike Count 4, unlawfully discharging a firearm in public, from the judgment of conviction. We affirm the judgment, as modified, and the sentences entered thereon.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1997

WEDNESDAY', SEPTEMBER 10, 1997

DANIEL MARCUS MCLAUGHLIN, **

Appellant, **

vs. ** CASE NO. 96-1942

THE STATE OF FLORIDA, ** LOWER TRIBUNAL NO. 95-38366

Appellee. **

**

Upon consideration, appellant's motion for rehearing or in the alternative motion to certify conflict is hereby denied.

NESBITT, LEVY and GODERICH, JJ., concur.

A True Copy

ATTEST:

I

LOUIS J. SPALLONE

Clerk, District Court of Appeal, Third District

By _____ Deputy Clerk

cc: Robert Kalter Sandre S. Jaggard

/NB