

IN THE SUPREME COURT OF FLORIDA

DAVID WILLIAM TRAPPMAN

Petitioner,

vs.

CASE NO. SC21-1479  
DCA CASE ID19-1883  
LT NO. 57-2017-CF-2011

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW  
FROM THE FIRST DISTRICT COURT OF APPEAL

**JURISDICTIONAL BRIEF OF PETITIONER**

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SECOND JUDICIAL CIRCUIT

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## **STATEMENT OF THE ISSUES**

Petitioner was charged and convicted of aggravated battery on a law enforcement officer, battery on a law enforcement officer, and resisting arrest without violence. The issue on appeal was the propriety of convicting the Petitioner of both aggravated battery on a law enforcement and battery on a law enforcement officer, both offenses occurring during the same criminal episode, upon the same victim and within seconds of each other. The district court below found that the two separate acts, a push to the officer, and the “sicking” the dog on the officer causing the pit bull to bite him, allowed separate convictions and sentences thus not implicating double jeopardy principles. The decision of the First District Court of Appeal below is in conflict with the opinion of the district court in **Olivard v. State**, 831 So.2d 823 (Fla. 4<sup>th</sup> DCA 2002), which held that double jeopardy is violated if the lesser offense is subsumed within the greater offense of aggravated battery. This Court should accept jurisdiction to dispel the conflict.

## **STATEMENT OF THE CASE AND THE FACTS**

This is an appeal from the decision of the First District Court of Appeal in **Trappman v. State**, \_\_\_ So.3d \_\_\_ 2021 WL 486590 (Fla. 1<sup>st</sup> DCA 2021), rendered on February 10, 2021, motion for rehearing and rehearing in banc denied September 29, 2021, but granting the request to certify a conflict to the Supreme Court that its decision conflicted with the district court's decision in **Olivard v. State**, 831 So.2d 823 (Fla. 4<sup>th</sup> DCA 2002). See Appendix A and B, and C.

The facts as summarized by the First District Court of Appeal stated that:

Appellant was arrested after an incident at his home, when police appeared to execute a warrant on his wife. Agitated with the police presence and their failure to immediately present a copy of the warrant, Appellant walked from his yard and entered his home while commenting that he hoped officers did not "get bitten by my dog."

Once officers entered the home, Appellant was instructed to proceed back outside with his two dogs while the warrant on his wife was executed. At trial, officers testified that Appellant initially complied; however, once outside, he began to rile up the dogs by banging their heads together and yelling at them. He eventually re-appeared in the doorway of the home holding both dogs by their collars and refused the officer's orders to go

back outside. Sergeant Bird – the victim of both batteries-testified that when he approached [actually showed Appellant], Appellant reached out and showed him with one hand. Sergeant Bird responded by driving Appellant towards the front door with both hands. Appellant then let go of the dog while exclaiming “dog up dog up.” The dog, a pit bull, leapt at Sergeant Bird and latched onto his leg, causing injury and subsequent scarring.

Appendix A, Slip opinion, page 2. The jury found Appellant guilty on the facts, and Appellant got sentenced to 10 years in prison with a minimum mandatory of 5 years for the Aggravated Battery on a Law Enforcement, and to 5 years in prison to be served concurrent to the sentence imposed on the aggravated battery. On appeal, Appellant argued that double jeopardy principals prohibited Appellant’s conviction for Battery on a Law Enforcement Officer and Aggravated Battery on a Law Enforcement Officer because the lower offense was subsumed into the greater one.

The District Court disagreed with Appellant’s argument and held that the evidence introduced at trial supported the jury’s finding that he had committed battery on the law enforcement by pushing the officer, and aggravated battery on the law enforcement because of the dog bite which had been prompted by Appellant’s statement of “dog up, dog up.” The district court denied rehearing

and rehearing en banc, but upon request, denied rehearing, but upon request, certified conflict with the Fourth District Court of Appeal in **Olivard v. State**, **supra**.

## ARGUMENT

### **THIS COURT SHOULD RESOLVE A CONFLICT BETWEEN THE FIRST DISTRICT COURT OF APPEAL AND THE FOURTH DISCTRICT AS TO WHETHER BATTERY OF A LAW ENFORCEMENT IS A CHARGE THAT IS SUBSUMED INTO THE GREATER CHARGE OF AGGRAVATED BATTERY ON A LAW ENFORCEMENT.**

This Court has jurisdiction to review the decision of the First District Court of Appeal under Article V, Section 3 (b) 3, of the Florida Constitution. In this case, the First District Court of Appeal certified conflict with the decision of **Olivard v. State**, **supra**, from the Fourth District Court of Appeal, for the proposition that battery if an offense that is subsumed into the greater offense of aggravated battery. The Fourth District Court held:

Here Appellant committed a battery and aggravated battery against the same victim, in the same location, within seconds of each offense. Appellant's actions were within the course of one continuous episode attacking [the victim]. As such only one conviction may stand.

**Id.** at 824. **See also Tuttle v. State**, 177 So.2d 1246 (Fla. 2015).

In **Tuttle**, the Florida Supreme Court held that in determining whether double jeopardy was violated, when the actions of the

defendant arose against the same victim and during the same criminal episode, the court had to decide whether pursuant to the exceptions contained in Section 775.021(4)(b)3., Florida Statutes, the lesser crime was subsumed in the greater offense. **Pizzo v. State**, 945 So. 2d 1203 (Fla. 2006). **See also**, e.g., **Rivera v. State**, 286 So.3d 930 (Fla. 5<sup>th</sup> DCA 2019) (separate acts committed during a criminal transaction or episode. The court held dual convictions for aggravated battery and battery violated double jeopardy because the offense of battery was subsumed within the aggravated battery); **Nunoz v. State**, 212 So.3d 1146, 1147-48 (Fla. 5<sup>th</sup> DCA 2017) (separate acts committed during a criminal transaction or episode. The court held dual convictions for aggravated battery and battery violated double jeopardy because the elements of simple battery are subsumed in the elements of aggravated battery); **Rosado v State**, 129 So.3d 1104 (Fla.5<sup>th</sup> DCA 2013).

The First District Court of Appeal held that even though Petitioner had demonstrated that the offenses had occurred during the same criminal episode, on the same person, and within seconds of each other, double jeopardy principals had not been violated because the state had introduced evidence within which the jury

could reach a verdict that the Petitioner committed a battery on a law enforcement when he pushed the officer in reaction to the officer first pushing him, and an aggravated battery when the officer grabbed Petitioner with both hands but Petitioner stated “dog up, dog up” which prompted the dog to bite the officer on the leg.

Petitioner disagrees and argues that the determination of whether double jeopardy principles are violated is not to review the evidence in the later more favorable to affirming the convictions, but the standard is to determine if the lesser of the offenses committed during the same criminal episode is subsumed within the greater of the offenses. **See Tuttle v. State, supra; Olivard v. State, supra;** and all the cases cited above.

This Court should exercise its discretionary jurisdiction to resolve the conflict and clarify the rule of law as whether double jeopardy exists when a defendant is convicted and charged with an offense which is a lesser of the great charge, the offenses occurring during the same criminal episode and against the same person.

## **CONCLUSION**

Petitioner requests that this Court accept this cause for review and order briefing on the merits.

## **CERTIFICATES**

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the applicable font and word-count-limit requirements. I hereby certify that this brief was served, via the Florida Courts E-Filing Portal, on David L. W. Welch, Assistant Attorney General, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com), on October 29, 2021.

Respectfully submitted,

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