

IN THE SUPREME COURT OF FLORIDA

ON POWER TO APALACHEE CI
DATE: 7/20/13
FOR MAILING
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WILLIE THOMAS,
Petitioner

FILED
THOMAS D. HALL
2013 JUL 30 PM 1:52
CLERK, SUPREME COURT
BY

Vs.

Case # 8C13-1299

STATE OF FLORIDA,
Respondent

FILED
THOMAS D. HALL
2013 JUL 30 PM 1:53
CLERK, SUPREME COURT
BY

PETITIONER'S JURISDICTIONAL BRIEF

On review from the Fourth District Court of Appeal, State of Florida.

Willie Thomas
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Sneads Florida 32460

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STATEMENT OF THE CASE AND FACTS

Petitioner, Willie Thomas, following a jury trial was found guilty of Armed Burglary of a Dwelling and Aggravated Battery with a deadly weapon.¹ The key evidentiary concern at trial was the victim's purported statement.

Over objection, the trial court permitted a witness to testify that she heard a loud noise late at night. She rushed outside to find a stranger fighting with the victim. During the altercation, the victim explained, "He has a knife, He has a knife."

The court in response to an objection allowed this testimony in under an *excited utterance* exception.

An appeal was taken to the Fourth District Court of Appeal and this ruling was challenged. The District Court upheld the lower court's ruling in a reasoned decision. The District Court held that this testimony was sufficient by itself to establish all the requirements for an *excited utterance* exception.

A timely motion for rehearing was filed on June 3, 2013 and denied on June 24, 2013. Petitioner's notice to invoke discretionary review was filed

¹ Petitioner Thomas also plead guilty to possession of cocaine.

within 30 days of the denial as is required. This present brief is being submitted within the time allowed.

SUMMARY OF ARGUMENT

The circuit court permitted a witness to testify that the victim stated, "He's got a knife, He's got a knife."; this, despite the lack of any record to indicate the declarant's demeanor, tone of voice or any action taken by him that would indicate that he was under the stress or excitement caused by the confrontation.

The District Court's action in upholding this ruling on appeal without record support for the required state of mind finding, is in direct and express conflict with the Third District Court's decision in *Phillips Vs. State*, 816 So.2d 161 (Fla. 3rd D.C.A. 2002).

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with a decision of the Supreme Court or another District Court of appeal on the same point of law. *Article V, section 3(b)(3) Fla. Const. (1980) ; Fla. R. App. P. 9.030(a)(2)(A)(iv).*

ARGUMENT

The decision of the District Court of Appeal in this case expressly and directly conflicts with the decision of the third district Court of Appeal in *Phillips vs. State*, 816 So.2d 161 (Fla. 3rd D.C.A. 2002).

In Petitioner's Thomas' case, the Florida Fourth District Court of Appeal has interpreted F.S. 90.803(2) to permit a hearsay exception under "excited utterance" without enforcing the established requirement that the necessary state of mind² must be established by record evidence. As explained below, the decision of the district court conflicts with the Third District courts decision in *Phillips vs. State*, 816 So.2d 161 (Fla. 3rd DCA 2002).

The petitioner respectfully submits that this court should grant discretionary review and resolve the conflict by quashing the decision of the Fourth District Court.

In its reasoned opinion, (Appendix A), the District Court upheld the trial court's ruling that the statement of a witness was admissible under an excited utterance exception to the hearsay rule.

The District Court allowed this exception without anything in the record to describe victim Rivera's demeanor, tone of voice or any actions

² In, *Montano vs. State*, 846 So.2d 677, 683 (Fla. 4th DCA 2003), the court acknowledged the requisites for proper admission.

that he took that would indicate that he was under the stress of the excitement caused by the confrontation. The District court's decision is in direct conflict with the Third District Court's decision in *Phillips vs. State*, 816 So.2d 161 (Fla. 3rd DCA 2002).

There the court specifically held that the record must contain evidence demonstrating this state of mind:

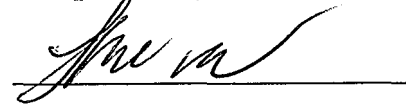
“ It was error to admit the statements attributed to the unidentified bystander as excited utterances because there was no evidence proffered regarding their state of mind. Thus, it is impossible to tell whether the declarant's were still under the stress of excitement caused by the shooting.”

The *Phillips* court was coerced in requiring that the record evidence demonstrates the required state of mind. This court should grant review to affirm that the *Phillips* court approach was to correct one, as it is the only approach that comports with the *Sixth Amendment*.

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and this court should exercise that jurisdiction to consider the merits of the petitioner's argument.


Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'Willie Thomas', is written over a horizontal line.

Willie Thomas # 654663

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY, that this document complies with the font requirements of Rule 9.210 (A)(2) of the Florida Rules of Appellate Procedure.

/s/ 

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By entrusting it to prison officials for mailing on this ____ day of ____ 2013

Respectfully Submitted



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