

IN THE SUPREME COURT OF FLORIDA

72,244

COREY LYNN COLBERT,

Petitioner,

v.

CASE NO.

FILED
APR 25 1998

STATE OF FLORIDA,

APR 25 1998

Respondent.

RECEIVED
SUPREME COURT
TAMPA
APR 25 1998
pb

_____ /

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CANDANCE M. SUNDERLAND
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

/jmw

TABLE OF CONTENT

| | <u>PAGE NO.</u> |
|---|-----------------|
| SUMMARY OF THE ARGUMENT | 1 |
| ARGUMENT | 2 |
| ISSUE | 2 |
| WHETHER THE DECISION IN THIS CASE CONFLICTS WITH FLORIDA SUPREME COURT CASE LAW AS TO WHETHER THE GIVING OF A MODIFIED ALLEN CHARGE WITHOUT PRIOR NOTICE TO DEFENSE COUNSEL IS PER SE REVERSIBLE ERROR. | |
| (As stated by Appellant) | |
| CONCLUSION | 3 |
| CERTIFICATE OF SERVICE | 3 |

TABLE OF CITATIONS

PAGE NO.

Bradley v. State,
513 So.2d 112 (Fla. 1987)

2

SUMMARY OF THE ARGUMENT

This Court's has discretionary jurisdiction to review cases that conflict with decisions of another district court of appeal or of this Court. The conflict must be express and direct. Rule 9.03.0(2)(iv) Fla. R. App. P. the decision below does not expressly and directly conflict with Bradley.

ARGUMENT

ISSUE

WHETHER THE DECISION IN THIS CASE CONFLICTS WITH FLORIDA SUPREME COURT CASE LAW AS TO WHETHER THE GIVING OF A MODIFIED ALLEN CHARGE WITHOUT PRIOR NOTICE TO DEFENSE COUNSEL IS PER SE REVERSIBLE ERROR.

(As stated by Petitioner

Petitioner alleges that the courts decision below conflicts with this Court's decision in Bradley v. State, 513 So.2d 112 (Fla. 1987).

This Court's has discretionary jurisdiction to review cases that conflict with decisions of another district court of appeal or of this Court. The conflict must be express and direct. Rule 9.03.0(2)(iv) Fla. R. App. P. the decision below does not expressly and directly conflict with Bradley.

The Second District reviewed the facts in the instant case and determined that the trial court heard extensive arguments of counsel both before and after the jury's deliberation. As there was no violation of Rule 3.410 Fla. R. Crim. P. this facts in this case are readily distinguished from the facts in Bradley, supra, at 112.

CONCLUSION

As the decision below does not conflict with the decision in Bradley, as alleged by Petitioner, this Court should deny jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Candance M. Sunderland

CANDANCE M. SUNDERLAND
Assistant Attorney General
Florida Bar #0445071
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. mail to Deborah K. Brueckheimer, Assistant Public Defender, 455 North Broadway, P.O. Box 1640, Bartow, Florida 33830 on this 21 day of April, 1988.

C M Sunderland
OF COUNSEL FOR APPELLANT