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IN THE SUPREME COURT OF FLORIDA

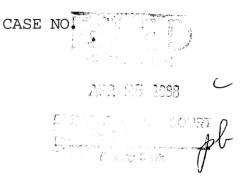
COREY LYNN COLBERT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.



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

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

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COUNSEL FOR RESPONDENT

/jmw

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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.	
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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 <u>Bradley</u>.

ARGUMENT

ISSUE

WHETHER THE DECISION IN THIS CASE CONFLICTS WITH FLORIDA SUPREME COURT CASE LAW AS TO WHETHER THE GIVING OF A MODIFIED <u>ALLEN</u> 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 <u>Bradley v. State</u>, 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 <u>Bradley</u>, supra, at 112.

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CONCLUSION

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

Respectfully submitted,

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

And and

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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 2/2 day of April, 1988.

APPELL FOR