

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-1083

LT. NO. 3D18-2403

WILEME BAPTISTE,

Petitioner,

-vs.-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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TABLE OF CONTENTS

INTRODUCTION1
STATEMENT OF THE CASE AND FACTS1
SUMMARY OF THE ARGUMENT3
ARGUMENT4

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOURTH DISTRICT’S DECISION IN *RUBI V. STATE*, 952 So. 2d 630 (FLA. 4TH DCA 2007), HOLDING THAT WHERE THE TOTALITY OF CIRCUMSTANCES INDICATE THAT AN IMPROPER SECOND ALLEN CHARGE RESULTED IN A COERCED VERDICT THE ERROR IS FUNDAMENTAL, PER SE REVERSIBLE, AND NOT WAIVED BY COUNSEL’S AGREEMENT TO THE INSTRUCTION.

CONCLUSION7
CERTIFICATE OF SERVICE AND CERTIFICATE OF FONT7

TABLE OF CITATIONS

| <u>Cases</u> | <u>Page(s)</u> |
|---|-----------------------|
| <i>Allen v. United States</i> , 164 U.S. 492 (1896)..... | 1 |
| <i>Nelson v. State</i> , 438 So.2d 1060 (Fla. 4th DCA 1983)..... | 5 |
| <i>Rubi v. State</i> , 952 So. 2d 630 (Fla. 4th DCA 2007)..... | 1, 3-6 |
| <i>Thomas v. State</i> , 748 So.2d 970 (Fla. 1999)..... | 6 |
| <i>Webb v. State</i> , 519 So.2d 748 (Fla. 4th DCA 1988)..... | 5 |
| <u>Florida Constitution</u> | |
| Art. V, § 3(b)(3), Fla. Const..... | 3 |
| <u>Rules</u> | |
| Florida Rule of Appellate Procedure 9.330(a)(2)(C)..... | 3 |

INTRODUCTION

Petitioner Wileme Baptiste seeks this Court's discretionary review on the ground that the Third District's decision expressly and directly conflicts with the Fourth District's decision in [Rubi v. State, 952 So. 2d 630 \(Fla. 4th DCA 2007\)](#). All citations in this brief are to the attached appendix, which is the opinion in *Baptiste v. State.*, No. 3D18-2403 (Fla. 3d DCA June 24, 2020), paginated separately and identified as "A" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Wileme Baptiste was charged with second degree murder, attempted second degree murder (two counts), and unlawful possession of a firearm by a minor. (A. 3-4). During the deliberations the jury expressed that they were deadlocked a total of three to four times (A. 5). At one point the judge read the standard jury deadlock instruction, known as an "Allen charge," pursuant to [Allen v. United States, 164 U.S. 492 \(1896\)](#) (A. 3, 5).

The jury later indicated that they had reached a verdict (A. 3). But when the verdict was read, and the jury was polled, one juror stated that he did not agree with the verdict (A. 3). After a recess defense counsel suggested that the jury be given a new verdict form and told to continue deliberating (A.3- 4). The court declined to instruct the jury to continue deliberating in light of the previous *Allen* charge (A. 4). The court nevertheless determined to instruct the jury "solely to memorialize on a

new form what their verdict was, if they had one.” (A. 4). Counsel for both parties agreed, and the jury was instructed as follows: “If you have a unanimous verdict, please fill out the verdict accordingly. If you do not have a unanimous verdict, please knock on the door . . . and we’ll bring you back out here.” The jury subsequently returned a unanimous guilty verdict for the lesser offense of manslaughter with a deadly weapon, two counts of attempted manslaughter, and possession of a firearm by a minor (A. 3-4).

On appeal, Mr. Baptiste asserted that the trial court’s final instruction to the jury constituted a second improper modified *Allen* charge, resulting in a coerced verdict and requiring a new trial (A. 3-4). The Third District Court of Appeal agreed that “it is clear that under a totality of the circumstances analysis, two or more consecutive *Allen* (or modified) charges provide sufficient indicia of coercion, particularly where the jury has repeatedly indicated its division with a sole holdout.” (A. 5). The Third District thus held that given the initial *Allen* charge, the jury’s repeated indications of deadlock, and the sole hold-out juror, the court’s final instruction to the jury in this case was erroneous (A. 5). But the Third District nevertheless affirmed Mr. Baptiste’s convictions, on the ground that defense counsel waived the error in the instruction (A. 5). The Third District noted that “even if [the court] were to consider this error to be fundamental, Baptiste waived it by agreeing to the modified charge” (A. 5).

Mr. Baptiste filed a timely motion for certification of conflict pursuant to [Florida Rule of Appellate Procedure 9.330\(a\)\(2\)\(C\)](#). The Third District denied the motion on July 9, 2020. A notice to invoke this Court’s jurisdiction was filed on July 23, 2020, and this jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review a district court of appeal decision that “expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” [Art. V, § 3\(b\)\(3\), Fla. Const.](#). Here the Third District Court of Appeal held that although the second modified *Allen* charge was erroneous and coercive, a new trial was not required because Mr. Baptiste’s counsel waived the issue by agreeing to the instruction. Under the same circumstances, the Fourth District Court of Appeal held to the contrary. In [Rubi v. State, 952 So. 2d 630 \(Fla. 4th DCA 2007\)](#), the court held that a coerced verdict following an improper second *Allen* charge is unconstitutional and per se reversible error, regardless of defense counsel’s agreement to the instruction. This Court should exercise its discretion to resolve the conflict between the districts on whether error that results in a coerced verdict is waivable by counsel.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOURTH DISTRICT'S DECISION IN *RUBI V. STATE*, 952 SO. 2D 630 (FLA. 4TH DCA 2007), HOLDING THAT WHERE THE TOTALITY OF CIRCUMSTANCES INDICATE THAT AN IMPROPER SECOND ALLEN CHARGE RESULTED IN A COERCED VERDICT THE ERROR IS FUNDAMENTAL, PER SE REVERSIBLE, AND NOT WAIVED BY COUNSEL'S AGREEMENT TO THE INSTRUCTION.

The jury that decided Mr. Baptiste's case finally rendered a verdict after receiving a second modified *Allen* instruction (A. 4). The second *Allen* charge was given despite the fact that a full *Allen* charge had already been read, the jury had indicated that it was deadlocked three to four times prior, and a single "hold-out" juror disagreed with the initial verdict (A. 3, 5). The Third District Court of Appeal found, under the totality of these circumstances, that the final *Allen* instruction was coercive and erroneous (A. 5). Nevertheless, the Third District held that a new trial was not warranted because counsel for Mr. Batiste invited the error by agreeing to the instruction (A. 6). The Third District noted that "[e]ven if [the court] were to consider this error to be fundamental, Baptiste waived it by agreeing to the modified charge" (A. 6).

The Third District's holding in this case expressly and directly conflicts with *Rubi v. State*, 952 So. 2d 630 (Fla. 4th DCA 2007). In *Rubi*, the Fourth District

Court of Appeal reached the opposite conclusion under the same circumstances. Just as in this case, the *Rubi* court found that the trial court erred in giving a coercive second modified *Allen* charge, where the jury had indicated that there was a sole hold-out juror. As in this case, defense counsel in *Rubi* affirmatively requested a modified *Allen* charge, and “the trial court agreed with the defense's suggestions.” *Rubi*, 952 So. 2d at 633. But contrary to this case, the *Rubi* court reversed, finding that constitutional error of this type resulting in a coerced verdict is both fundamental and per se reversible, regardless of defense counsel’s agreement to the coercive jury instruction. The *Rubi* court reasoned as follows:

A coerced verdict in a criminal case deprives the accused of a fair trial and is contrary to the mandate of the Declaration of Rights of the Constitution of the State of Florida. *Webb v. State*, 519 So.2d 748, 749 (Fla. 4th DCA 1988). A trial court should not couch an instruction to a jury or otherwise act in any way that would appear to coerce any juror to reach a hasty decision or to abandon a conscientious belief in order to achieve a unanimous position.

* * *

In *Nelson v. State*, 438 So.2d 1060, 1062 (Fla. 4th DCA 1983), Judge Glickstein succinctly observed:

It is the genius of our jury system that twelve impartial persons, individually, applying a subjective standard, come to a common conclusion of a defendant's guilt beyond a reasonable doubt. This fundamental principle becomes subverted if a jury member is pressured to defer to the opinion of his peers, for unanimity is made a sham thereby.

* * *

In reviewing the second note and the court's instruction, we conclude that not only was the note an announcement of a second deadlock but the court's subsequent charge amounted to coercion. The court's instruction pressured a holdout juror to conform to the views of his peers.

* * *

This pressure on the holdout juror satisfies the test of coercion, and a coerced verdict is constitutionally impermissible. See *Thomas*, 748 So.2d at 980. Even though defense counsel agreed with the charge, we still conclude that it constitutes fundamental error. As we said in *Scoggins*: When confronting a claim that the jury's verdict was unconstitutionally coerced, our fundamental error analysis depends on the constitutional analysis. **If the totality of the circumstances supports the finding of improper coercion of the jury, then there has been a type of constitutional violation which is fundamental error, and per se reversible. 691 So.2d at 1189.** In this case, we conclude that because the totality of the circumstances indicate juror coercion, the verdict is fundamentally and constitutionally defective, regardless of defense counsel's failure to object.

Rubi, 952 So.2d at 634-35.

The facts in *Rubi* are indistinguishable from this case, and its holding directly conflicts with the Third District's decision. The conflict at issue involving waiver of juror coercion goes to the heart of our adjudicatory system, and the defendant's fundamental constitutional rights to a fair trial and an impartial jury. This Court should accept jurisdiction to resolve the important question of whether error that results in a constitutionally impermissible coerced verdict is waivable by counsel's agreement to the erroneous instruction.

CONCLUSION

The petitioner respectfully requests that this Court exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FONT

I CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General, Criminal Division, One SE 3rd Ave, Suite 900, Miami, Fl 33131 at CrimAppMIA@MyFloridaLegal.com this 31st day of July, 2020, and that the type used in this brief is 14 point proportionately spaced Times New Roman. Counsel designates the following email addresses for the purpose of service of all documents in this proceeding: AppellateDefender@pdmiami.com (primary email address); Mlauredo@pdmiami.com (secondary email address).

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