

IN THE SUPREME COURT OF FLORIDA

THOMAS DAUGHERTY

Petitioner,

vs.

CASE NO. SC14-860

Lower Tribunal(s) No.: 4D-08-4624

06-878 CF10B

STATE OF FLORIDA,

Respondent.

**ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
4TH DISTRICT STATE OF FLORIDA**

BRIEF OF PETITIONER ON JURISDICTION

DONNA DUNCAN
Florida Bar #63869
STEVEN SELIGER
Florida Bar # 244597
Sanders and Duncan, P.A.
Attorneys for Appellant
80 Market Street
P.O. Box 157
Apalachicola, Florida 32329
(850) 653-8976
Attorneys for Petitioner

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ISSUE II: The Fourth District Court of Appeal certified conflict with other districts based on their decision in *Williams v. State*, 123 So.3d 23 (Fla. 2013) which this Court reversed.

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PRELIMINARY STATEMENT

Thomas Daugherty was the Defendant in the trial court and the Appellant in the District Court.

The opinion of the Fourth District is *Daugherty v. State*, 96 So.3d 1076 (Fla. 3d 2012). The Appendix will be referred to as "A".

STATEMENT OF THE CASE AND FACTS

In this case, Petitioner was charged with first-degree murder and two counts of attempted first-degree murder. The jury convicted Petitioner of the lesser-included offenses of second-degree murder and two counts of attempted second-degree murder. On appeal Petitioner challenged the jury instruction as to manslaughter and attempted manslaughter.

The District Court concluded that the trial court did not commit fundamental error in instructing the jury on manslaughter as a lesser included offense of Count I. *Daugherty v. State*, 96 So.3d 1076 (Fla. 3d 2012). (A). The court concluded that the trial court did not commit fundamental error in instructing the jury on attempted voluntary manslaughter as a lesser included offense of Counts II and III. *Daugherty v. State*, 96 So.3d 1076 (Fla. 3d 2012). (A).

This Court has granted the Petitioner belated review of the Fourth District decision on September 5, 2012. (A)

SUMMARY OF THE ARGUMENT

This Court should exercise its jurisdiction because the Fourth District Court's decision that no fundamental error occurred in instructing the jury on manslaughter as a lesser included offense of Count I involves a question which this Court has decided in *Haygood v. State*, 109 So.3d 735 (Fla. 2013).

Additionally, the Fourth District Court certified conflict with other districts because this case was affirmed based on its decision in a case which was pending before this Court at the time of its order. The case has since been reversed by this Court in *Williams v. State*, 123 So.3d 23 (Fla. 2013).

ARGUMENT

This Court has discretionary jurisdiction to review a decision which cites cases that have been reversed by this Court. *Jollie v. State*, 405 S.2d 418 (Fla. 1981). The District Court cites in its decision in Issue I *Haygood v. State*, 109 So.3d 735 (Fla. 2013) which this Court reversed. The District court cites in its decision in Issue II *Williams v. State*, 123 So.3d 23 (Fla. 2013) which this Court reversed.

CONCLUSION

In light of the following reasons, Petitioner asks this

Court to grant discretionary review in this case.

Respectfully submitted,

/s/ Donna Duncan
DONNA DUNCAN
Florida Bar #63869
STEVEN SELIGER
Florida Bar # 244597
Sanders and Duncan, P.A.
P.O. Box 157
Apalachicola, Florida 32329
(850) 653-8976
ddduncan@fairpoint.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered by U.S. mail/Email to:, Jeanine Germanowicz, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401-3432, CrimAppWPB@myfloridalegal.com dated this 9th day of May, 2014.

CERTIFICATION OF FONT SIZE

I HEREBY CERTIFY that this document was generated by computer using Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

/s/ Donna Duncan
DONNA DUNCAN
Florida Bar #63869
STEVEN SELIGER
Florida Bar # 244597
Sanders and Duncan, P.A.
P.O. Box 157
Apalachicola, Florida 32329
(850) 653-8976
ddduncan@fairpoint.net