

**IN THE SUPREME COURT OF FLORIDA**

**JARVIS RAMON HAYNES,**

Petitioner,

v.

**CASE NO. SC07-432**

**STATE OF FLORIDA,**

Respondent.

\_\_\_\_\_ /

On Notice To Invoke Discretionary  
Jurisdiction To Review A Decision Of The  
Fifth District Court of Appeal

**MR. HAYNES' BRIEF ON JURISDICTION**

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## **PRELIMINARY STATEMENT**

In this brief, the Petitioner, **JARVIS RAMON HAYNES**, will be referred to as "Mr. Haynes." The Respondent, **STATE OF FLORIDA**, will be referred to as the "state." The Appendix attached to this brief will be referred to as "App.," followed by the appropriate page number. The record on appeal will be referred to by the volume number, followed by the appropriate page number.

## **STATEMENT OF THE CASE AND OF THE FACTS**

This petition seeks review of a decision by the Fifth District Court of Appeal in a final appeal from a judgment and sentence entered in the Circuit Court, Ninth Judicial Circuit, Orange County, Florida ("trial court").

On May 10, 2005, the state filed an indictment against Mr. Haynes, Charlie Hamilton, and Taveress Webster, charging each with three counts (2/13-14). Count One alleged felony murder in the first degree of Roy Deering, in violation of §§ 775.087(1), (2). Count Two alleged that the three men committed robbery with a firearm on Deering or Jessica Alers, in violation of §§ 812.13(2)(a), 775.08(1),(2). Count Two also alleged that during the commission of the offense, Hamilton actually possessed and carried a firearm, and Webster possessed, carried, and discharged a firearm, resulting in Deering's death. Count Three charged the three men with dealing in stolen property, in violation of § 812.019(1). Another accomplice, Joshua Redd, testified for the state at trial in a plea deal (T2/112-208).

Following a jury trial involving only Mr. Haynes, the jury returned verdicts of guilty as charged on Counts Two and Three, and a verdict of guilty of the lesser included offense of third degree felony murder on Count One (T3/435). Mr. Haynes was sentenced to life on Count Two, and concurrent sentences of five years in prison on Count One and fifteen years in prison on Count Three (R1/29-31).

Mr. Haynes timely appealed his convictions to the Fifth District. That court affirmed the conviction and sentence (except for some costs) in an opinion issued December 8, 2006. Haynes v. State, \_\_\_So.2d \_\_\_ (Fla. 5th DCA 12/8/06)[31 Fla. L. Weekly D3093]. In pertinent part, the court stated:

Haynes's remaining claims of error require us to find the claimed error to be fundamental because no objection was raised below.

\* \* \*

Finally, Haynes complains of the insertion of the words "or a principal" into the robbery charge, i.e., "Jarvis Haynes *or a principal* took the electronic equipment . . . ." (Emphasis added). The standard instruction on "Principal" was also given. The only objection raised below was that this instruction varied from the standard instruction, but counsel for Haynes acknowledged:

I can't argue it is prejudicial because it is the law and I understand it is the law. I understand why Mr. Green is inserting it in there, but for the record, I would object to anything other than the standard language that is in these jury instructions.

We agree that the amendment to the instruction is redundant, but notwithstanding Haynes's protestations on appeal, in the context of the conduct of the entire trial, did not deprive Haynes of a fair trial or invalidate his conviction.<sup>2</sup>

\* \* \*

<sup>2</sup> Haynes relies on *Concepcion v. State*, 857 So.2d 299 (Fla. 5th DCA 2003), but that case involved identifying different defendants on a "trafficking" charge. This case is more like *Carpenter v. State*, 785 So.2d 1182 (Fla. 2001).

(App. A).

Mr. Haynes filed a timely motion for rehearing, rehearing en banc, or certification to the Supreme Court. The Fifth District then issued a corrected opinion (App. A). It denied the motion for rehearing by order dated January 30, 2007 (App. B).

On February 28, 2007, Mr. Haynes filed a timely notice to invoke this Court's jurisdiction<sup>1</sup>.

### **SUMMARY OF THE ARGUMENT**

#### **THE FIFTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL AS TO THE SUFFICIENCY OF AN OBJECTION TO A JURY INSTRUCTION, AND AS TO THE APPROPRIATE REMEDY FOR MATERIALLY INCORRECT ROBBERY INSTRUCTION**

This Court has jurisdiction pursuant to Art. V, § 3(b)(3) to review cases which directly and expressly conflict with opinions of this Court or other district courts of appeal on the same question of law. This Court must exercise its jurisdiction and accept Mr. Haynes's case for review because the Fifth District's opinion expressly and directly conflicts with various courts on 1) the sufficiency of an objection to preserve a jury instruction issue and 2) the appropriate remedy for a materially erroneous instruction on robbery.

### **ARGUMENT**

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<sup>1</sup> Mr. Haynes was found adjudicated guilty of and sentenced for direct contempt for failing to testify at the trial of his co-defendants. A petition for review of that matter is pending before the Court in Haynes v. State, SC07-123.

**THE FIFTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL AS TO THE SUFFICIENCY OF AN OBJECTION TO A JURY INSTRUCTION, AND AS TO THE APPROPRIATE REMEDY FOR MATERIALLY INCORRECT ROBBERY INSTRUCTION**

**A. Instruction**

This Court should exercise jurisdiction over this case because the decision of the Fifth District expressly addresses and wrongly resolves important jury instruction issues in a manner contrary to decisions of the Court and other district courts of appeal.

**B. Express and Direct Conflict**

**1. Sufficiency of Objection To Preserve Issue**

The Fifth District stated “Haynes’s remaining claims of error require us to find the claimed error to be fundamental because no objection was raised below.” App. A, at 1. As to the “or a principal” instruction issue, this statement is incorrect. As that court later acknowledged, App. A, at 2, Mr. Haynes’ attorney did object below, on the ground that the proposed robbery instruction varied from the standard instruction because of the insertion of the “or a principal” language.

The objection in Mr. Haynes’ case is legally indistinguishable from that found by this Court to be sufficient to address a similar claim in Carpenter v. State, 785 So.2d 1182 (Fla. 2001).

In Carpenter, this Court considered - on the merits - a defendant’s claim of an improper jury felony murder instruction which incorporated a “principals” instruction into certain elements, i.e., “Carpenter or his principal was engaged. . .”. Id. at 1197-1201. The Court expressly rejected the state’s argument that the objection - “. . . that there was no case law supporting a deviation from the

standard instruction” - was insufficient to preserve the issue for appellate review on the merits. Id. at 1199. As the objection in Mr. Haynes’ case is virtually identical to that in Carpenter, the Fifth District, just as this Court did in Carpenter, was required to address the issue on the merits, and not under the fundamental error standard.

This issue is critically important to Mr. Haynes’ appeal. In choosing to determine the correctness of the instruction under the fundamental error standard, rather than under the preserved error standard, the Fifth District improperly raised the bar which Mr. Haynes needed to overcome to demonstrate reversible error. In so doing, the Fifth District’s opinion expressly and directly conflicts with Carpenter on the preservation issue.

## **2. Materially Erroneous Instruction on Robbery**

However, if the fundamental error rule is properly applied, Mr. Haynes is entitled to have his conviction on Count Two vacated. In the jury instruction context the Florida Supreme Court has consistently held that to be fundamental error a jury instruction error must 1) involve an element that is in dispute, and 2) be pertinent or material to what the jury must consider in order to convict. Cardenas v. State, 867 So.2d 384, 390-91 (Fla. 2004); Reed v. State, 837 So.2d 366, 368-70 (Fla. 2002); State v. Delva, 575 So.2d 643, 645 (Fla. 1991). That is the specific standard that was required to be applied in Mr. Haynes’ case, not the more general standard of whether Mr. Haynes was deprived of a fair trial, as recited by the Fifth District, App. A, at 2.

Because it applied the wrong fundamental error standard, the Fifth District’s decision on the jury instruction issue expressly and directly conflicts with the three cases cited above.

Applying the correct standard must result in vacation of the conviction on Count Two. The record demonstrates that the principal issue was the critical issue

in the case. The state, in closing, argued “Now, the issue really in this whole case is was the Defendant himself a principal in the robbery” (T3/381-82). The jury asked four questions, all of which involved principal issues.

At oral argument, the problem of the instruction “Haynes or a principal” was discussed in detail. The Fifth District’s opinion picks up on one possible construction of the instruction, that when Haynes is considered “a principal” the instruction becomes redundant<sup>2</sup>. But the other problem is when one of the other people - Hamilton, Webster, or Redd - involved in the robbery is considered “a principal.” This was, in fact, the theory of the state’s case at trial: that Mr. Haynes did not actually rob or shoot anyone, but because others did so, and they were principals in the crimes with Mr. Haynes, Mr. Haynes must be found guilty. So this construction places the names of Mr. Haynes’ alleged cohorts in crime - Redd, Webster, and Hamilton - in the “a principal” spot in the instruction. When this is done, it is clear that the instruction “Mr. Haynes or Mr. Redd” (or Mr. Webster or Mr. Hamilton) permitted the jury to convict Mr. Haynes based on a finding that Mr. Redd (or Mr. Webster or Mr. Hamilton) committed the element, and did not require a finding that Mr. Haynes committed it. That is exactly the harm found by every district court in finding such instructions to be fundamental error. See Davis v. State, 922 So.2d 279 (Fla. 1st DCA 2006); Zeno v. State, 910 So.2d 394 (Fla. 2d DCA 2005); Dorsett v. McCray, 901 So.2d 225 (Fla. 3d DCA 2005)(robbery instruction); Cabrera v. State, 890 So.2d 506 (Fla. 2d DCA 2005); Williams v. State, 774 So.2d 841 (Fla. 4th DCA 2000). See also, Concepcion v. State, 857 So.2d 299 (Fla. 5th DCA 2003). Mr. Haynes, like these other appellants, is entitled

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<sup>2</sup> This is because the “principals” instruction is worded so that a jury is to decide if the defendant is a principal to someone else, not if someone else is a principal to the defendant.

to a reversal of his conviction because this “or a principal” instruction did not require the jury to make an individualized determination as to his guilt on Count Two.

Contrary to the Fifth District’s opinion, stated in footnote 2, this Court’s opinion in Carpenter, supra, does not support the Fifth District’s opinion, and instead conflicts with it. In Carpenter, the Court considered a felony murder instruction where the trial court had instructed the jury that one element was whether “the defendant or his principal” had committed the robbery. 785 So.2d at 1198. This Court noted that this instruction deviated from the standard felony murder instruction, but upheld the instruction in large part because the trial court had also given the “independent act” instruction which required the jury to decide whether the acts of the others were totally independent from the acts of Carpenter. The trial court in Mr. Haynes’ case did not give an “independent act” instruction<sup>3</sup>. The instruction in Carpenter at least required the jury to find that Carpenter’s principal (“his principal”) did the required act. The same element Mr. Haynes’ case allowed the jury to find any principal (“a principal”), i.e., any of the other alleged accomplices, did the act, and thereby convict Mr. Haynes. This denied Mr. Haynes the individualized consideration due to all criminal defendants.

### **CONCLUSION**

Based on the arguments and authorities set forth in this brief, this Court must grant Mr. Haynes' petition for review, and order briefing on the merits.

RESPECTFULLY SUBMITTED this 12th day of March, 2007, at Orlando, Orange County, Florida.

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<sup>3</sup> Neither side requested one.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of March, 2007, a true and correct copy of this brief and Appendix have been furnished by United States mail, first class postage prepaid, to counsel for the Respondent: Mary G. Jolley, Assistant Attorney General, 444 Seabreeze Boulevard, Suite 500, Daytona Beach, Florida 32118.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the brief is typed in Times New Roman 14 point font.

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