

SUPREME COURT OF FLORIDA

DARRYL WAYNE RIDGEWAY,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

_____ /

LEGAL MAIL

S.Ct. No.: SC14-1205
DCA No.: 1D12-3523
Lt. No.: 2011-2504 CFA

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PETITIONER'S BRIEF ON JURISDICTION

Darryl Ridgeway #D24059
Blackwater River Corr. Facility
5914 Jeff Ates Road
Milton, FL 32583
Petitioner

Pamela Jo Bondi
The Capitol, PL-01
Tallahassee, FL 32399
Respondent

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STATEMENT OF CASE AND FACTS

Darryl Wayne Ridgeway (hereafter “Petitioner”) was charged in the First Circuit Court of Okaloosa County by information with one (1) count robbery with a deadly weapon. The case proceeded to jury trial and Petitioner was found guilty as charged. A timely Notice of Appeal was filed. The Office of the Public Defender was appointed to represent Petitioner on appeal. Though Counsel, Petitioner argued that the trial court erred in failing to grant a post trial motion for judgment of acquittal. On December 26, 2013 the First District Court of Appeal affirmed the trial court’s denial with a written opinion. See Ridgeway v. State, 2013 Fla. App. LEXIS 20376, 39 Fla. L. Weekly D37 (Fla. 1st DCA 2013) (1st DCA No.: 1D12-3523) Petitioner, in proper person sought belated discretionary review in this Court which was granted by order dated June 20th, 2014. (See S.Ct. No.: SC14-489) Pursuant to this Court’s June 26th, 2014 order this brief on Jurisdiction now follow. (See S.Ct. No.: SC14-1205)

ISSUE PRESENTED

THIS COURT SHOULD EXERCISE ITS JURISDICTION IN THIS CASE WHERE THE DISTRICT COURT OF APPEALS WRITTEN OPINION EXPRESSLY CONFLICTS WITH OTHER DISTRICT DECISIONS AND DECISIONS OF THIS COURT

This court has jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal. See Article V, Section 3(b) (3) of the Florida Constitution. While the First District Court of Appeals did not directly certify conflict in this case, this court may still exercise jurisdiction if the conflict is expressed in the written opinion by the district court's addressing the legal principles that were applied by the Appellate Court in reaching its decision. See *Jenkins v. State*, 385 So.2d 1356 (Fla. 1988); *Ford Motor Company v. Kikis*, 401 So.2d 1341 (Fla. 1981) (Holding: "*a discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review. It is not necessary that a district court explicitly identify conflicting district court decisions in its opinion in order to create an express conflict under Section § 3(b)(3)...*")

The issue(s) presented in this case are whether the state presented sufficient evidence to establish a robbery occurred and whether trial court erred in denying the pre verdict motion for judgment of acquittal. Such a motion presents the

question of whether, in light most favorable to the State, the evidence presented is legally adequate to support the charged offense. Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002)

Because Petitioner asserts that the Motion for JOA should have been granted he maintains that the First District's decision is contrary and conflicts with Pagan. The District Court also determined that the absence of any error precluded a finding of fundamental error. Petitioner asserts that this is contrary to and conflicts with Moreover, Petitioner asserts that the evidence presented for the charged offense of Robbery with a weapon was not legally sufficient. That it was lacking any *prima facie* showing of the essential elements of taking, and the intent to take, resulting in fundamental error. See F.B. v. State, 852 So.2d 226 (Fla. 2003) (*finding fundamental error in conviction where there is a complete absence of a prima facie showing of an essential element of a crime.*)

To prove the crime of Robbery and overcome a motion for judgment of acquittal, the State was required to prove that Petitioner *took* the knife from the victim in this case. Another element the State must prove is that it was *taken* with the *specific intent* to temporarily or permanently deprive the victim of the property. The evidence presented at trial clearly established that it was never Petitioner's "intent" to steal the knife. Trial testimony showed that Petitioner asked for money and cigarettes. Petitioner never asked for the knife. The knife was essentially given

to the Petitioner forcefully when he was stabbed with it. Petitioner did not ask for the knife, he did not intend to take the knife, nor did he take the knife by force, violence, assault, or putting in fear. See F.S. 812.13 (2013)("*Robbery means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.*")(emphasis added).

As the evidence at trial established, the cigarettes and money were never taken by Appellant. At most, the unsuccessful attempt to take the cigarettes and/or money may be used to establish that Petitioner committed an attempted robbery, not robbery which is the completed act. When Petitioner, unarmed, jumped over the counter the victim already armed swung the knife. Petitioner then turned around and jumped back over the counter. At that time, Petitioner was stabbed in the back. Certainly Petitioner did not request the knife be plunged in his back, nor did he consent to receive it in that manner. It was forced upon him and into him. The events could be viewed most favorably to the State in a myriad of ways, none of which involve a "taking": either the victim abandoned the knife in the Petitioner's back, or the victim freely gave it to the Petitioner, or the victim gave it to the Petitioner against his will, or the victims consent for Petitioner to have it was

implied by the manner in which it was discarded in Petitioner's back. In this case not only did Petitioner not take the knife, but the State did not establish that he had the specific intent to commit robbery of the knife. Because robbery is a specific intent crime, the Petitioner had to have the specific intent to commit the crime. See Daniels v. State, 587 So.2d 460 (Fla. 1991) The intent to commit robbery includes the specific intent to steal; that is, to deprive the owner or custodian of property either permanently or temporarily. The intention to steal must exist at the time of the taking. See Stevens v. State, 265 So.2d 540 (Fla. 2nd DCA 1972) Thus, to prove robbery, the State had to prove that at the time Petitioner was stabbed by the victim, the Petitioner intended to permanently or temporarily deprive the victim of his knife. This was not established. This Court should accept Jurisdiction.

CONCLUSION

Because Petitioner has shown that this opinion issued by the First District Court of Appeal conflicts with multiple decisions issued by this Court, Petitioner requests this Court to accept Jurisdiction of this case and resolve the conflict.

Respectfully submitted,

/s/ Darryl Ridgeway
Darryl Ridgeway, Petitioner, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been placed into the hands of prison officials at Blackwater River Correctional Facility for pre-paid First Class U.S. mailing to Attorney General Pl-01, The Capitol Tallahassee, The Office of The State Attorney at 101 E. James Lee Blvd .Crestview, Fla. 32536 Florida 32399 on this 10 day of July, 2014.

/s/ Darryl Ridgeway
Darryl Ridgeway, Petitioner, *pro se*
DC# D24059
Blackwater River Corr. Facility
5914 Jeff Ates Road
Milton, Florida 32583

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, that this document is in compliance with the typeface and font, Times New Roman 14 Point, stipulated by the appropriate Rule of Florida Rules of Court.

/s/ Darryl Ridgeway
Darryl Ridgeway, Petitioner, *pro se*