IN THE SUPREME COURT OF FLORIDA

CASE NO. _____
District Court Case No. **3D10-722**

WILLIAM GARRIDO,
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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January 11, 2012

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INTRODUCTION

This is a petition for discretionary review on the grounds of certification of direct conflict with decisions of another district court of appeal.[1] In this brief, "A." refers to the slip opinion in the attached appendix.

STATEMENT OF THE CASE AND FACTS[2]

The Petitioner, William Garrido, was convicted of second degree murder.[3] On appeal, he argued that the trial court erred in the manslaughter instruction given to the jury.[4] The Third District Court of Appeal affirmed based on its own decision in *Figueroa*,[5] but certified conflict with the First District's opinions in *Noack*,[6] *Pryor*,[7] and *Riesel*.[8] The Third District also certified a question of great public importance.[9]

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[1] *See* Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi); 9.120.

[2] The district court issued its decision on December 28, 2011. A notice to invoke discretionary jurisdiction of the supreme court was filed on January 6, 2012.

[3] A. 1.

[4] A. 1-2.

[5] *Figueroa v. State*, Case No. 3D10-27, 36 Fla. L. Weekly D2466 (Fla. 3d DCA Nov. 16, 2011).

[6] *Noack v. State*, 61 So. 3d 1208 (Fla. 1st DCA 2011).

[7] *Pryor v. State*, 48 So. 3d 159 (Fla. 1st DCA 2010) *rev. voluntarily dismissed*, 66 So. 3d 304 (Fla. 2011).

[8] *Riesel v. State*, 48 So. 3d 885 (Fla. 1st DCA 2010), *rev. denied*, 66 So. 3d 304 (Fla. 2011). A. 2.

[9] A. 2. The certified question is identical to that certified by the Second District in *Haygood v. State*, 54 So. 3d 1035, 1038 (Fla. 2d DCA 2011), which is currently pending in this Court (SC11-294).

SUMMARY OF THE ARGUMENT

The Third District certified conflict with the First District on the issue of whether the 2008 revision of the manslaughter instruction cures the defects which this Court noted in *Montgomery*. Because the 2008 instruction does *not* cure those defects and because Florida district courts interpret the law differently, we ask this Court to accept jurisdiction to resolve the matter.

ARGUMENT

This Court should accept jurisdiction in this case because, as the Third District has certified, Florida district courts are currently in conflict on the question of whether the 2008 manslaughter instruction cures the defects this Court noted in *Montgomery*.

As a preliminary matter, Petitioner recognizes that jurisdictional briefs are not permitted where a district court has certified a question of great public importance,[10] as the Third District has done in this case.[11] But as the Third District *also* certified conflict with another district court, we address only the conflict issue because this Court has held that such briefing is beneficial to the Court.[12] Should this Court decline jurisdiction based on the certified question, it may still choose to accept jurisdiction based on the certified conflict.

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[10] Fla. R. App. P. 9.120(d).
[11] A. 2.
[12] *In re Amendments to the Fla. Rules of Appellate Procedure*, 941 So. 2d 352, 353 (Fla. 2006).

Regarding the conflict issue, Mr. Garrido received the amended 2008 instruction on manslaughter, which states that in order to prove manslaughter, the State must prove that a defendant "**intentionally caused the death of** (victim)."[13] The 2008 instruction also states that in order to convict of manslaughter by intentional act, "**it is not necessary for the State to prove that the defendant had a premeditated intent to cause death, only an intent to commit an act which caused death**."[14]

The First District held in *Riesel* that the 2008 instruction was not materially different from the instruction that this Court found to be fundamentally erroneous in *Montgomery* because the instruction wrongly stated that intent to kill was an element of manslaughter.[15] The First District followed *Riesel* in *Pryor*,[16] *Williams*,[17] and *Noack*,[18] explicitly holding that the revised language, "it is not necessary for the State to prove that the defendant had a premeditated intent to cause death, only an intent to commit an act which caused death," was not sufficient to cure the defects in the

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[13] *In Re Std. Jury Instrs. In Crim. Cases – Report No. 2007-10*, 997 So. 2d 403, 404 (Fla. 2008).
[14] *Id.* at 404-05.
[15] *Riesel*, 48 So. 3d at 886 (citing *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010)).
[16] *Pryor v. State*, 48 So. 3d 159 (Fla. 1st DCA 2010).
[17] *Williams v. State*, 50 So. 3d 1207, 1208 (Fla. 1st DCA 2010).
[18] *Noack v. State*, 61 So. 3d 1208 (Fla. 1st DCA 2011).

manslaughter instruction.[19] We submit that the First District's conclusion is correct because a jury will most likely interpret the phrase, "defendant intentionally caused the death of (victim)," as meaning that the defendant intended to kill the victim.

Additionally, the First District's analysis makes sense because the phrase, "intent to commit an act which caused death," is ambiguous. If read as intended, it means "intent to commit an act that happened to cause death, although the defendant did not necessarily intend that result." But it could also reasonably be read to mean, "intent to commit a death-causing act." The language does not clarify whether it is only the act that has to be intended or the end result. Since, under the 2008 instruction, the jury has already been told that in manslaughter the defendant must have intentionally caused the victim's death, the jury is quite likely to assume that the second reading applies.

Finally, the language, "it is not necessary for the State to prove that the defendant had a premeditated intent to cause death," does not solve the problem because, as this Court held in *Montgomery*: "[W]e agree . . . that '[t]he subsequent instruction that manslaughter does not require a premeditated design does not cure its defect, as both the court system and

[19] *Williams*, 50 So. 3d at 1208.

the average reasonable person recognize a distinction between a premeditated design and an instantaneous formation of intent.'"[20]

For the foregoing reasons, this Court again revised the manslaughter instruction in 2010, removing references to intention and premeditation, to address these ambiguities.[21]

Nevertheless, the Second District in *Daniels*,[22] the Third District, in *Figueroa*, and the Fourth District in *Morgan*[23] and *Williams*,[24] have held that the 2008 instruction cures the defects found in *Montgomery*.[25] In doing so, the Third District in *Figueroa* quotes this Court's analysis in *Montgomery* of the 2008 instruction, which ends with the words, "Thus, the relevant intent is the intent to commit an act which caused death, and the State is not required to prove that the defendant intended to kill the victim."[26] The Third District then goes on to say that this Court had thereby "clearly and unequivocally found that the 2008 amendment to the instruction satisfied the concerns they

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[20] *Montgomery*, 39 So. 3d at 257 (referring to pre-2008 instruction).
[21] *See In re Amendments to Std. Jury Instrs. In Crim. Cases—Instr. 7.7*, 41 So. 3d 853, 854 (Fla. 2010).
[22] *Daniels v. State*, 72 So. 3d 227 (Fla. 2d DCA 2011).
[23] *Morgan v. State*, 42 So. 3d 862 (Fla. 4th DCA 2010), *rev. granted*, 53 So. 3d 1021 (Fla. 2011).
[24] *Williams v. State*, 40 So. 3d 72 (Fla. 4th DCA 2010), *rev. granted*, 64 So. 3d 1262 (Fla. 2011).
[25] Both *Morgan* (SC11-137) and *Williams* (SC10-1458) are currently pending in this Court.
[26] *Figueroa*, 36 Fla. L. Weekly D2466 (quoting *Montgomery*, 39 So. 3d at 257).

raised in the *Montgomery* opinion."[27] We submit, however, that the quoted passage in *Montgomery* merely states this Court's expression of the *purpose* of the 2008 instruction, not whether it satisfied the concerns raised in *Montgomery*. If it had truly satisfied those concerns, the 2010 revision, removing references to intention and premeditation, would not have been necessary. This Court expressly stated that the 2010 revision was authorized on an interim basis in light of *Montgomery*.[28]

Because this case involves an unsettled area of Florida law, and because we believe that the First District's interpretation of the law is the correct one, we ask this Court to grant discretionary review so that Mr. Garrido may have a proper hearing on these legal issues.

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[27] *Id.*

[28] *In re Amendments*, 41 So. 3d at 853. Although this Court later re-inserted a reference to intention in the manslaughter by act instruction, *In re Amendments to Std. Jury Instrs. In Crim. Cases—Instr. 7.7*, 36 Fla. L. Weekly S 591 (Fla. Oct. 13, 2011) ("(Defendant) intentionally committed an act or acts that caused the death of (victim)."), it did not, in doing so, return to the faulty language of the 2008 instruction, *In Re Std. Jury Instrs.*, 997 So. 2d at 404 ("(Defendant) intentionally caused the death of (victim).").

CONCLUSION

For the foregoing reasons, we respectfully request this Court to grant discretionary review based on certification of conflict among district court decisions.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by hand to Douglas Glaid, Office of the Attorney General, Counsel for the State of Florida, 444 Brickell Avenue, Suite 650, Miami, FL 33131, on January 11, 2012.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in Times New Roman 14-point font in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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