IN THE SUPREME COURT OF FLORIDA

AMOS AUGUSTUS WILLIAMS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC10-1458
	)	DCA Case No. 4D09-2159
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
______________________________	)	

PETITIONER'S BRIEF ON JURISDICTION

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

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PRELIMINARY STATEMENT

Petitioner, Amos Augustus Williams, was the Defendant in the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County. He was the Appellant in the Fourth District Court of Appeal. The District Court decision is reported as: *Amos Augustus Williams v. State*, 40 So. 3d 72 (Fla. 4th DCA 2010). A timely notice to invoke this Court's jurisdiction was filed with the District Court on July 23, 2010. A copy of the District Court's decision is included as Appendix A.

STATEMENT OF THE CASE

Petitioner was charged with the attempted first degree murder, residential burglary with a weapon, and armed false imprisonment. The trial court instructed the jury, using the standard criminal jury instruction, **[7.71]** for attempted manslaughter. fThat instruction included an element that Petitioner **"committed an act which was intended to cause the death** of Ms. Lindsay . . ." On appeal to the Fourth District, Petitioner argued that the instruction was fundamental error under *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb.12, 2009).

The Fourth District held that giving the defective attempted manslaughter by act instruction was not fundamental error, but certified two questions of great public importance:

(1) Does the standard jury instruction on attempted manslaughter constitute fundamental error?

(2) Is attempted manslaughter a viable offense in light of *Montgomery v. State*, 2010 WL 1372701 (Fla. Apr. 8, 2010)?

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[1] 7.7, Jury Instructions (Crimes): To prove the crime of [attempted] manslaughter, the State must prove the following two elements beyond a reasonable doubt: (1) (victim) [would have been] dead; (2) (defendant) intentionally [tried to cause] the death of (victim).

The Fourth District also certified direct conflict with *Lamb v. State*, 18 So. 3d 734 (Fla. 1st DCA 2009). Petitioner filed a timely Notice to Invoke Discretionary Review on July 23, 2010.

STATEMENT OF THE FACTS

In its opinion, the Fourth District Court of Appeal stated the facts of the case follows:

> The defendant's charges arise out of a brutal stabbing of his ex-girlfriend in her home while their ten-month-old daughter was present. The victim sustained multiple stab wounds to her face, stomach, chest, leg, and side. When the victim tried to flee from the defendant, he grabbed her by the neck of her clothes and continued to stab her. The defendant pulled the victim back into the house, locked the door, and stabbed her whenever she tried to move toward the door.
>
> The police apprehended the defendant later that night. The defendant told police that the victim tried to start a fight with him and wanted to cut him, he wrestled with the victim, and the victim fell on the knife. Later, he told the police that he did not know what happened because "the evil spirit just move upon me, evil."
>
> During the charge conference, the defendant requested instructions on attempted second degree murder, attempted voluntary manslaughter, and aggravated battery. The trial court instructed the jury on attempted voluntary manslaughter as follows:
>
>> To prove the crime of attempted voluntary manslaughter, the State must prove the following beyond a reasonable doubt: That Mr. Williams **committed an act which was intended to cause the death** of Ms. Lindsay and would have resulted in the death of Ms. Lindsay except that someone prevented Mr. Williams from killing Ms. Lindsay or he failed to do so, however, the Defendant cannot be guilty of attempted voluntary manslaughter if the attempted killing was either excusable or justifiable as I have previously explained those terms. It is not an attempt to commit manslaughter if the Defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his

> criminal purpose. **In order to convict of attempted voluntary manslaughter, it is not necessary for the State to prove that the Defendant had a premeditated intent to cause death.**

(Emphasis added). During the State's closing argument, a portion of the instruction was repeated. The defendant was convicted of the lesser included offense of attempted second degree murder.

Williams, 40 So. 3d at 73.

SUMMARY OF THE ARGUMENT

In its opinion, the Fourth District Court of Appeal certified two question of great public importance:

> (1) Does the standard jury instruction on attempted manslaughter constitute fundamental error?
>
> (2) Is attempted manslaughter a viable offense in light of *Montgomery v. State*, 2010 WL 1372701 (Fla. Apr. 8, 2010)?

Certified questions of great public importance can be a basis for this Court's discretionary jurisdiction. *See* Article V, Section 3(4), *Florida Constitution.*

The District Court of Appeal also certified direct and express conflict with *Lamb v. State*, 18 So. 3d 734 (Fla. 1st DCA 2009). Certified conflict is another basis for this Court to exercise its discretionary jurisdiction. *See* Article V, Section 3(4), *Florida Constitution.*

In addition, since the Fourth District issued its opinion, the Third District Court of Appeal issued its decision in *Coiscou v State*, 35 Fla. L. Weekly D1882 (Fla. 3d DCA August 18, 2010). The Third District relied on *Montgomery v. State*, 39 So. 3d 352 (Fla. 2010), to conclude that that the attempted manslaughter instruction was fundamental error. This conclusion was also reached by the First District in *Rushing v. State*, 35 Fla. L. Weekly D1376 (Fla. 1st DCA June 21, 2010).

The opinion of the District Court, therefore, directly conflicts with this Court's decision in *Montgomery,* and District Court opinions in *Lamb, Rushing,* and *Coiscou*, as well as contains two questions certified as being of great public importance.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *STATE V. MONTGOMERY* AS WELL AS DISCTRICT COURT DECISIONS IN *LAMB, RUSHING* AND *COISCOU.*

In *State v. Montgomery*, 39 So. 3d 352 (Fla. 2010), this Court found that the manslaughter by act instruction given by the trial court was fundamentally flawed. The instruction given in *Montgomery* was the standard instruction for manslaughter by act then in effect.

> The court instructed the jury that to prove the crime of manslaughter, the State had to prove "two things: The first being again that [the victim] is dead and, secondly, that Mr. Montgomery intentionally caused her death." After an intervening instruction regarding excusable and justifiable homicide, the court continued, "In order to convict of manslaughter by intentional act it is not necessary for the state to prove that the defendant had a premeditated design to cause death...." These instructions are consistent with the standard jury instructions for second-degree murder and manslaughter by act. *See Fla. Std. Jury Instr. (Crim.)* 7.4, 7.7.

Id.

This Court concluded that the instruction was reversible error even without an objection.

> Montgomery was entitled to an accurate instruction on the lesser included offense of manslaughter. The instruction in

> this case, requiring the jury to find that Montgomery intended to kill Ellis, erroneously explained Florida law on manslaughter by act. Moreover, it was "pertinent or material to what the jury must consider in order to convict." *State v. Delva*, 575 So.2d 643, 645 (Fla.1991) *(quoting Stewart v. State*, 420 So.2d 862, 863 (Fla.1982)). Thus, we conclude that fundamental error occurred in this case, where Montgomery was indicted and tried for first-degree murder and ultimately convicted of second-degree murder after the jury was erroneously instructed on the lesser included offense of manslaughter.

Id.

In Petitioner's case, the trial court gave essentially the same defective manslaughter by act instruction, except for the fact that the charge was *attempted:*

> To prove the crime of attempted voluntary manslaughter, the State must prove the following beyond a reasonable doubt: That Mr. Williams **committed an act which was intended to cause the death** of Ms. Lindsay and would have resulted in the death of Ms. Lindsay except that someone prevented Mr. Williams from killing Ms. Lindsay or he failed to do so . . .

Williams v. State, 40 So. 3d 72, 73 (Fla. 4th DCA 2010). Here, however, the District Court distinguished *Williams* from *Montgomery* because the instruction was on *attempted* manslaughter instead of manslaughter. *Id.* at 74. It wrote:

> Attempted manslaughter is a general intent crime, requiring only an intentional act, rather than a specific intent to kill. In other words, the crime of attempted manslaughter requires an intent to commit an unlawful act that would have resulted in the victim's death rather than an intent to kill. . . .
> . . . The error that occurs by instructing the jury that "an intent to kill" is an element of manslaughter does not exist when instructing the jury that

> the defendant committed an act which was intended to cause the death of the victim. . . . [Y]ou cannot attempt to commit an unintentional act.

Id. at 74, 75.

The Fourth District certified conflict with *Lamb v.* State, 18 So. 3d 734, 735 (Fla. 1st DCA 1009), which flatly stated:

> [T]he trial court committed fundamental error by giving the standard jury instruction for attempted manslaughter by act, which adds the additional element that the defendant "committed an act intended to cause the death" of the victim when attempted manslaughter by act requires only an intentional unlawful act.

Since that time, the Third District Court of Appeal agreed that it was "per se reversible" error to give the jury instruction identical to the one given in *Williams* on attempted manslaughter by act. *Coiscou v. State*, 2010 WL 3239165, 35 Fla. L. Weekly D1882 (Fla. 3d DCA Aug. 18, 2010). Following *Lamb*, the First wrote, "We have also held that the standard jury instruction for the lesser included offense of attempted manslaughter by act suffers from the same infirmities as the instruction in *Montgomery*." *Rushing v. State*, 2010 WL 2471903, 35 Fla. L. Weekly D1376 (Fla. 1st DCA 2010).

This Court should accept jurisdiction for two reasons. First, the Fourth District's reasoning directly conflicts with this Court's decision in *Montgomery, Lamb, Rushing,* and *Coiscou*. Petitioner was entitled to an accurate jury instruction on attempted

manslaughter by act. The instruction given was inaccurate, and the District Court's holding is contrary to *Montgomery*.

Second, the Fourth District Court looked to this Court for guidance by certifying the two questions of great public importance. The discrepancies in the rulings by the District Courts on this issue indicate a need for clarification from this Court. The certified questions have far-reaching consequences, as they will affect every criminal case that involves the charge of attempted manslaughter by act. A correct, uniform jury instruction on attempted manslaughter by act is essential to the integrity of all current and future convictions for this offense. Finally, Petitioner respectfully submits that the Fourth District Court of Appeal wa not empowered to make a ruling contrary to *Montgomery.* See *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973) (district courts of appeal may not overrule supreme court precedents).

CONCLUSION

Based on the foregoing argument and authorities cited, Petitioner requests this Court to exercise its discretionary jurisdiction under Article V, Section 3(4), *Florida Constitution*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this Petitioner's Brief on Jurisdiction with Appendix has been furnished to **Diane Medley**, Assistant Attorney General, 1515 North Flagler Drive, 9th floor, West Palm Beach, FL 33401-3432, by courier, this _____ day of October, 2010.

____
Counsel for Petitioner

CERTIFICATE OF FONT SIZE

I CERTIFY that this brief has been prepared with 14 point Times New Roman font as required by *Fla. R. App. P.* 9.210.

____
Of counsel

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APPENDIX

Amos Augustus Williams v. State, 40 So. 3d 72 (Fla. 4th DCA 2010)

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I CERTIFY that a copy of the Appendix to this Petitioner's Brief on Jurisdiction with Appendix has been furnished to **Diane Medley**, Assistant Attorney General, 1515 North Flagler Drive, 9th floor, West Palm Beach, FL 33401-3432, by courier, this _____ day of October, 2010.

____
Counsel for Petitioner