

IN THE SUPREME COURT OF FLORIDA

CASE NO. \_\_\_\_\_

LOWER COURT CASE NO. 3D08-1417

JOHN VALDES-PINO,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

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BRIEF OF PETITIONER ON JURISDICTION

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## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES   iii

INTRODUCTION 1

STATEMENT OF THE CASE AND FACTS    1

SUMMARY OF ARGUMENT 3

ARGUMENT    3

I.    JURISDICTION EXISTS DUE TO EXPRESS AND DIRECT  
CONFLICT WITH EVERY OTHER COURT THAT HAS  
CONSIDERED THIS SAME INSTRUCTIONAL ERROR

II.   JURISDICTION EXISTS PURSUANT TO ARTICLE V, SECTION  
3(b)(3) OF THE FLORIDA CONSTITUTION AND JOLLIE v. STATE,  
405 So. 2d 418 (Fla. 1981), AS THE DECISION BELOW CITES TO  
SLOSS v. STATE, 31 Fla. L. Weekly D879 (Fla. 5th DCA March 24, 2006),  
AND THAT CASE IS PENDING REVIEW IN THIS COURT (CASE NO.  
SC06-916)

CONCLUSION   6

CERTIFICATE OF SERVICE 6

CERTIFICATE OF COMPLIANCE 6

## TABLE OF AUTHORITIES

### Cases

- Bryan v. State*,  
862 So. 2d 822 (Fla. 5th DCA 2003) 5
- Bryan v. State*,  
905 So. 2d 120 (Fla. 2005) 5
- Cote v. State*,  
841 So. 2d 488 (Fla. 2d DCA 2003) 5
- Jollie v. State*,  
405 So. 2d 418 (Fla. 1981) 3, 4, 5
- Liberty Mutual Insurance Co. v. Steadman*,  
895 So. 2d 434 (Fla. 2d DCA 2005) 5
- McMillon v. State*,  
745 So. 2d 566 (Fla. 5th DCCA 1999) 6
- McMillon v. State*,  
813 So. 2d 56 (Fla. 2002) 6
- Montgomery v. State*,  
34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009) 1, 2, 3, 4, 5
- State v. Cote*,  
913 So. 2d 544 (Fla. 2005) 5
- Steadman v. Liberty Mut. Ins. Co.*,  
31 Fla. L. Weekly S316 (Fla. May 18, 2006) 5
- Wingfield v. State*,  
799 So. 2d 1022 (Fla. 2001) 5

*Zeigler v. State*,  
34 Fla. L. Weekly D2074 (Fla. 2d DCA Oct. 9, 2009) 2, 5

**Constitutional Provisions**

Article V, Section 3(b)(3) 3, 4, 5

Article V, Section 3(b)(4) 3

## INTRODUCTION

Petitioner, John Valdes-Pino, seeks discretionary review of a decision that the Third District Court of Appeal certified is in direct conflict with *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009), which is currently pending before this Court. In this brief, the designation “A.” refers to the attached appendix, which contains a conformed copy of the decision of the lower court.

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

John Valdes-Pino was charged with the second degree murder of Julio Argueta. At trial, there was no question that Mr. Valdes-Pino killed Argueta, the only question was his state of mind in doing so.

The State’s evidence revealed that Mr. Valdes-Pino was seen running out of Argueta’s apartment, wearing no pants or underwear and covered with blood. There had been a fight; Argueta had been stabbed four times and hit several times with a knife. He too was not wearing pants.

When he was arrested seven months later, John Valdes-Pino told the police that he stabbed Argueta in self defense. While walking under a bridge, Mr. Valdes-Pino was hit on the head and lost consciousness. He awoke to find himself kneeling and bent over an unfamiliar bed. His pants and underwear had been removed, and he saw Argueta approaching him

with an erection. Fearing that he was about to be raped, Mr. Valdes-Pino hit Argueta and a struggle ensued. Ultimately, Mr. Valdes-Pino was able to escape, but only after stabbing and hitting Argueta with a kitchen knife.

The jury was given the standard instructions on second degree murder and manslaughter. The manslaughter instruction read:

To prove the crime of Manslaughter/Deadly Weapon as a lesser included, the State must prove the following two elements beyond a reasonable doubt:

1. Julio Alejandro Argueta is dead.
2. John Valdes-Pino *intentionally* caused the death of Julio Alejandro Argueta.

Mr. Valdes-Pino was convicted of second degree murder with a deadly weapon and was sentenced to life in prison.

On appeal to the Third District, Mr. Valdes-Pino argued, based on the reasoning of the First District Court of Appeal in *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009), that the manslaughter instruction was fundamental error. The Third District held that the instruction did not cause fundamental error, citing *Zeigler v. State*, 34 Fla. L.

Weekly D2074 (Fla. 2d DCA Oct. 9, 2009). The Court did however note the contrary analysis in *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009), that *Montgomery* is currently before this Court, and certified decisional conflict with that opinion. (Appendix A at 2)

### **SUMMARY OF ARGUMENT**

Express and direct conflict jurisdiction exists pursuant to Article V, Section 3(b)(4) of the Florida Constitution as the Third District Court of Appeal certified a conflict with the First District Court of Appeal's decision in *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009) Jurisdiction also exists pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), as the decision below cites to *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1stDCA Feb. 12, 2009), which is pending review before this Court (Case No. SC09-332).

### **ARGUMENT**

#### **I. JURISDICTION EXISTS DUE TO THE CERTIFIED DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN *MONTGOMERY V. STATE*.<sup>1</sup>**

Conflict jurisdiction exists under Article V, Section 3(b)(4) of the Florida Constitution when a district court of appeal certifies a decision by it

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<sup>1</sup> *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1stDCA Feb. 12, 2009)

to be in direct conflict with a decision of another district. The opinion below expressly and directly conflicts with *Montgomery*. The Third District certified the conflict.

Thus, jurisdiction should be accepted on the basis that the Third District certified its decision in this case is in direct conflict with *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009).

II. JURISDICTION EXISTS PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE FLORIDA CONSTITUTION AND *JOLLIE V. STATE*, 405 So. 2d 418 (Fla. 1981), AS THE DECISION BELOW CITES TO *MONTGOMERY V. STATE*, 34 Fla. L. Weekly D360 (Fla. 1<sup>st</sup> DCA Feb. 12, 2009) AND THAT CASE IS PENDING REVIEW IN THIS COURT (CASE NO. SC09-332)

Under Article V, Section 3(b)(3) of the Florida Constitution, 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 or of the supreme court on the same question of law.” In *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), this Court held that “a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.” *Id.* at 420.

Since then, this Court has accepted jurisdiction in cases where the lower court issued a decision with citation to a case or cases that were pending review in this Court, even if the decision pending review was not cited as controlling authority. *See Cote v. State*, 841 So. 2d 488 (Fla. 2d DCA 2003), and *State v. Cote*, 913 So. 2d 544 (Fla. 2005). As this Court explained in *Wingfield v. State*, 799 So. 2d 1022 (Fla. 2001), *Jollie* stands for the proposition that “a district court decision which cites as controlling authority a decision that is either pending review in or has been reversed by this Court constitutes prima facie express conflict and allows this Court to exercise its jurisdiction.” 799 So. 2d at 1024. As well as citing to *Montgomery*, the Third District’s opinion in the case below cited to *Zeigler v. State*, 34 Fla. L. Weekly D2074 (Fla. 2d DCA Oct. 9, 2009), a case from the Second District Court of Appeal which also certified a conflict with *Montgomery*. Thus, an express conflict is clear, and this Court’s jurisdiction is properly invoked pursuant to Article V, Section 3(b)(3) of the Florida Constitution and *Jollie v. State*, 405 So. 2d 418 (Fla. 1981). *See, e.g., Liberty Mut. Ins. Co. v. Steadman*, 895 So. 2d 434 (Fla. 2d DCA 2005), and *Steadman v. Liberty Mut. Ins. Co.*, 31 Fla. L. Weekly S316 (Fla. May 18, 2006); *Bryan v. State*, 862 So. 2d 822 (Fla. 5th DCA 2003), and *Bryan v.*

*State*, 905 So. 2d 120 (Fla. 2005); *McMillon v. State*, 745 So. 2d 566 (Fla. 5th DCCA 1999), and *McMillon v. State*, 813 So. 2d 56 (Fla. 2002).

**CONCLUSION**

Jurisdiction should be accepted based on the two reasons discussed above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Brief of Petitioner on Jurisdiction was sent by U.S. mail to the Office of the Attorney General, Appellate Division, 444 Brickell Avenue, Suite 650, Miami, FL 33131 on January 4, 2010.

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief was prepared using Times New

Roman 14-point font, and so is in compliance with Rule 9.210(a)(2).

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