IN THE

SUPREME COURT OF FLORIDA

GILBERT DUDLEY III Petitioner, v. STATE OF FLORIDA, Respondent.	CASE NO.: SC11-2292

JURISDICTIONAL BRIEF OF THE PETITIONER

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STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

A jury convicted Dudley of two counts of sexual battery on a mentally defective person in violation of § 794.011(4)(e), Fla. Stat. (2007). The trial court set aside the verdict after the trial and found that the State's evidence at trial was insufficient to support the jury finding that the victim was "mentally defective" as defined in the § 794.011(1)(b), Fla. Stat. (2007).

The State presented testimony from four different witnesses to establish that the victim was "mentally defective". The victim testified about her sexual encounter with Dudley and spoke in a way that indicated some degree of mental impairment. Her special education teacher testified about her behavior at school, where she took classes for the mentally disabled. Her mother testified that she has mild cerebral palsy and was "childlike" and "not like everyone else." A psychologist testified that in his opinion, she suffered from a mental defect that rendered her permanently incapable of appraising the nature of her conduct (which is also the definition of "mentally defective" under the statute).

On direct appeal, the Fifth District Court of Appeal disagreed with the trial court and found that the State presented sufficient evidence to prove the victim was "mentally defective." In reaching its decision, the Fifth District certified conflict with the First District's decision in Mathis v. State, 682 So. 2d 175 (Fla. 1st DCA

1996) and receded from it's own opinion in State v. Torresgrossa, 776 So. 2d 1009 (Fla. 5th DCA 2001).

JURISDICTIONAL STATEMENT

The Court has discretionary jurisdiction to review a decision of a district court of appeal that certifies that it directly conflicts with a decision of another district court of appeal on the same point of law. See Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi).

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal certified conflict with the First District Court in its opinion below. In State v. Dudley, 64 So. 3d 746 (Fla. 5th DCA 2011), the court followed the line of cases that interpreted "mentally defective" to mean something less than total lack of mental capacity. In Mathis v. State, 682 So. 2d 175 (Fla. 1st DCA 1996), the First District concluded that "mentally defective" was similar to legal insanity and be defined as such. The different interpretations has created confusion in the quantum of proof necessary to convict an accused under § 794.011(1)(b), Florida Statutes.

ARGUMENT AND CITATIONS OF AUTHORITY

In certifying conflict, the Fifth District Court of Appeal was concerned with what it found to be an "unreasonably narrow reading of the term 'mentally deficient'" by the First District Court of Appeal in Mathis v. State, 682 So. 2d 175 (Fla. 1st DCA 1996). In the opinion, the court summarized the issue taken with Mathis and stated, "to the extent that Mathis can be read as equating 'mental deficiency' with competence to testify, or to mean a total or complete lack of mental capacity or understanding, we disagree and conflict with Mathis." State v. Dudley, 64 So. 3d 746 (Fla. 5th DCA 2011)

To be more precise, the Fifth District stated, "Mathis equates 'mental deficiency' with 'legal insanity,' and further suggests that anyone with a sufficient mental capacity to competently testify in court cannot be found 'mentally deficient.'" *Id*. The district court added that its earlier opinion, State v. Torresgrossa, 776 So. 2d 1009 (Fla. 5th DCA 2001), could be read to agree with the Mathis definition of "mental deficiency" and receded from Torresgrossa as to that narrow point. *Id*.

The district court aligned itself with the Fourth District Court of Appeal and approved of the analysis in Bowman v. State, 760 So. 2d 1053 (Fla. 4th DCA 2000). Bowman disagreed with Mathis and stated:

> We do not see a problem, as the Mathis court may have, with a victim being found able to understand the moral obligation to testify truthfully, and still being mentally defective under the statutory definition. It is not unusual for a child who is actually or mentally five years old to sufficiently understand the moral obligation to tell the truth so as to be competent to testify…The fact that such a child is competent to testify, however, is not inconsistent with being mentally defective under section 794.011(1)(b), Florida Statutes. *Id.* at 1055

The Fifth District Court offered its interpretation of "mentally defective" by referring to the Merriam-Webster Dictionary and suggested that the definition of "deficient" should be considered. Ultimately, the court explained that "[deficient] does not mean 'devoid of' or 'totally lacking.' Similarly, the statutory definition of 'mentally deficient'…connotes significantly diminished judgment, but not a complete and total lack of mental awareness."

A term that has no medical significance, a statutory definition that is just as confusing, and varying interpretations by appellate courts, provides little help for the lawyers that try these cases. This Court should resolve the conflict and provide an accurate picture of the types of victims this statute intends to protect. Accordingly, Petitioner Dudley respectfully requests the Court to accept jurisdiction in this case to resolve the conflict.

CONCLUSION

This case presents an important issue that potentially has an effect on numerous criminal cases in the state. The Court has discretionary jurisdiction to review the decision below and Petitioner Dudley prays that the Court will exercise its discretion and consider the merits of his argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Office of the Attorney General
Criminal Appeals Division
444 Seabreeze Blvd., Suite 500
Daytona Beach, FL 32118-3951

By U.S. mail delivery this 19th day of December 2011.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Jurisdictional Brief of the Petitioner complies with the type-font limitation.

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