IN THE SUPREME COURT OF FLORIDA

JEREMY HAYGOOD,

Petitioner, CASE NO. SC11-294

v.

STATE OF FLORIDA,

Respondent

AMICUS BRIEF IN SUPPORT OF RESPONDENT

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C/O
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SUMMARY OF ARGUMENT

The certified question contains an analytical flaw, in that it presumes the evidence can support a conviction for second degree (depraved mind) murder but not support an instruction on (involuntary) manslaughter by culpable negligence. Stated somewhat differently, an individual who commits second degree (depraved mind) murder necessarily commits the offense of (involuntary) manslaughter by culpable negligence. Indeed, under the rationale of this Court's decision in *Coicou v. State*, 39 So. 3d 237 (Fla. 2010), the latter serves as the necessarily lesser included offense of the former.

The decision below fails to acknowledge the significant overlap between the crimes of (involuntary) manslaughter by act and (involuntary) manslaughter by culpable negligence. Unrecognized by the majority below, the law often proscribes certain conduct because of the risk of harm associated with that conduct. For example, motorists in the State of Florida cannot operate a motor vehicle in a reckless manner. If a motorist drives recklessly and causes a collision that kills another, that motorist, in addition to remaining guilty to vehicular

homicide, *should* remain guilty of both (involuntary) manslaughter by act and (involuntary) manslaughter by culpable negligence. With regard to the former, the driver intentionally committed an unlawful act that unintentionally caused death. With regard to the latter, the driver, demonstrating a reckless disregard for the safety of others, engaged in a course of conduct caused the death of another.

Finally, the decision below highlights the difficulty that lower courts face when they attempt to apply the holding of this Court's decision in *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010). Put simply, is the *Montgomery* holding based upon a concern that the jury lacked an adequate opportunity to exercise its pardon power? Or, is the holding based upon a concern of an over-conviction?

ARGUMENT

ISSUE

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT FUNDAMENTAL ERROR BY GIVING A FLAWED MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO GIVES AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

Manslaughter by culpable negligence serves as the necessarily lesser included offense of second degree murder.

In the past, the courts of this State tended to view homicide offenses in a vertical fashion, with first degree murder (whether premeditated or felony) on top, second degree murder in

the middle, and manslaughter (and third degree murder) on the bottom. To some extent, this view makes sense as each level of offense carries with it a certain level of punishment. For example, first degree murder constitutes a capital felony; second degree murder constitutes a first degree felony; and, manslaughter constitutes a second degree felony. See Sections 782.04, 782.07, Florida Statutes. In other words, the vertical model tracks the severity level of the various offenses. The following table illustrates the vertical approach:

Offense	**Severity Level**
First Degree Murder	Capital Felony
Second Degree Murder	First Degree Felony
Manslaughter	Second Degree Felony

Relying on the above model, many courts viewed second degree murder as a necessarily lesser included offense of all forms of first degree murder. Additionally, many courts viewed all forms of manslaughter as lesser included offenses of second degree murder. Under this Court's recent case law, however, the vertical model no longer works. *See Coicou v. State*, 39 So. 3d 237 (Fla. 2010).

Effect of *Coicou*

In *Coicou*, this Court determined that, under the *Sanders* "same elements" test, the crime of attempted second degree murder no

longer constitutes a necessarily lesser included offense of the crime of attempted first degree felony murder. See *Coicou* at 241. Applying the *Coicou* holding to other homicide offenses produces some interesting results. For instance, under the *Coicou* rationale, second degree murder no longer constitutes a necessarily lesser included offense of first degree premeditated felony. Whereas the former requires depravity and death, the latter requires premeditation, intent to kill, and death. Thus, second degree murder only serves as a permissive, lesser included offense to all forms of first degree murder. Additionally, under the *Coicou* rationale, manslaughter by act (whether voluntary or involuntary) no longer constitutes a necessarily lesser included offense of second degree murder. Whereas the former requires either an intent to kill mitigated by sudden and sufficient provocation (voluntary manslaughter by act) or the intentional commission of an unlawful act that causes death (involuntary manslaughter by act), the latter requires depravity.

Instead of a vertical approach, courts now must apply a horizontal model that places each form of murder (except third degree felony murder) on top of a particular form of manslaughter as a necessarily lesser included offense. The following table illustrates the horizontal view:

Offense	First Degree Premeditated Murder	First Degree Felony Murder	Second Degree (Depraved Mind) Murder
Necessarily Lesser Included Offense	(Voluntary) Manslaughter by Act	(Involuntary) Manslaughter by Act	(Involuntary) Manslaughter by Culpable Negligence

Importantly, the horizontal model should assist trial courts in deciding which form of manslaughter constitutes the appropriate lesser included offense in a murder prosecution. Worth noting, recent decisions of the Fifth and Second District Courts of Appeal highlight the difficulty trial courts face in that regard. In *Duncan v. State*, 703 So. 2d 1069 (Fla. 5th DCA 1997), the Fifth District faulted the trial court for instructing the jury on the lesser offense of voluntary manslaughter (by act) when the State only charged the defendant with second degree murder. *See Duncan* at 1070. Conversely, in *Bolin v. State*, 8 So. 3d 428 (Fla. 2d DCA 2009), the Second District faulted the trial court for instructing the jury on the lesser offense of involuntary manslaughter by culpable negligence when the State charged first degree murder. *See Bolin* at 430. Importantly, both *Duncan* and *Bolin* correctly conclude that the level of intent, if any, alleged in the murder count necessarily dictates the appropriate form of manslaughter that constitutes the lesser included offense.

A simple rule of easy application, the mental state for the lesser form of manslaughter should match the mental state for the charged form of murder. *See generally Coicou* at 243. Because first degree murder requires proof of an intent to kill, voluntary manslaughter by act (which also includes an intent to kill) constitutes the appropriate form of manslaughter as a lesser included offense. See *In re Standard Jury Instructions in Criminal Cases-Report No. 2007-10*, 997 So. 2d 403, 404 (Fla. 2008); accord *Duncan*; see also LaFave, *Substantive Criminal Law §15.2* (2d ed. 2003) ("Voluntary manslaughter in most jurisdictions consists of an intentional homicide committed under extenuating circumstances which mitigate, though they do not justify or excuse, the killing."). Because second degree murder does not require proof of an intent to kill, involuntary manslaughter by culpable negligence constitutes the appropriate, lesser form of manslaughter. See generally *Salonko v. State*, 42 So. 3d 801 (Fla. 1st DCA 2001). Finally, involuntary manslaughter by act provides the appropriate lesser form of manslaughter when the State charges a defendant with first degree felony murder. See LaFave and Scott, *Substantive Criminal Law, §15.5(a)* p.531 (2d ed.):

> [T]he unlawful-act type of manslaughter is often referred to, somewhat loosely, as the "misdemeanor-manslaughter doctrine," a sort of junior-grade counterpart of the "felony-murder doctrine." Although the misdemeanor involved is commonly a traffic offense (e.g., speeding,

> drunk driving), another common type of misdemeanor causing death is simple battery, as where the defendant hits the victim a light blow, intending to inflict only minor harm, but actually causing a quite unexpected death.

Although arguably oversimplified, the following equations correlate the particular form of murder with the appropriate form of manslaughter as a necessarily lesser included offense:

First Degree Murder

First degree murder **=** premeditation **+** intent to kill **+** death

First degree murder **-** premeditation **=** voluntary manslaughter by act (intent to kill)

In other words, if you eliminate premeditation but keep the intent to kill (and do not add a depraved mind), the homicide moves straight from first degree murder to voluntary manslaughter by act (without a stopping at second degree murder). See generally LaFave, *Substantive Criminal Law §14.2* (2d ed. 2003):

> Conduct, accompanied by an intent to kill, which is the legal cause of another's death constitutes murder, unless the circumstances surrounding the homicide are such that the crime is reduced to voluntary manslaughter or such that the intentional killing is justifiable or excusable and so constitutes no crime at all.

See also *Watkins v. State*, 705 So. 2d 938, 943 n.1 (Fla. 5th DCA 1998) (Harris, J., dissenting).

Felony Murder

Felony murder **=** felony intent **+** death

Felony murder **-** felony intent **+** misdemeanor intent **=** involuntary manslaughter by act

In other words, if you reduce the general intent from that of a felony to a misdemeanor, the homicide moves from felony murder to involuntary manslaughter by act (without stopping at second degree murder or voluntary manslaughter by act). See *Coicou* at 243.

Second Degree Murder

Second degree murder **=** depraved mind (i.e. "super" recklessness) **+** death

Second degree murder **-** depraved mind **+** culpable negligence = involuntary manslaughter by culpable negligence (recklessness)

In other words, if you reduce the state of mind from "super" reckless to just reckless, the homicide moves from second degree murder straight to involuntary manslaughter by culpable negligence (without stopping at manslaughter by act)[1]. See *Brown*

[1] Although ultimately rejected by the courts that reviewed them, two *habeas corpus* claims (one federal, one state) demonstrate the problems that arise when a trial court instructs a jury on voluntary manslaughter by act as a necessarily lesser included offense of second degree murder. In *Oliva v. McDonough*, Case No.8:05-CV-246-T-30EAJ (M.D. Fla., Feb. 15, 2008), the petitioner argued that his trial counsel provided ineffective assistance by failing to object to an instruction on voluntary manslaughter as a lesser offense of second degree murder. *Ibid*. In *Rayl v. State*, 891 So. 2d 1052 (Fla. 2d DCA 2004), the petitioner raised a similar claim regarding the effectiveness of appellate counsel. See *Rayl* at 1054. Under the reasoning of *Coicou*, however, the petitioners in both *Oliva* and *Rayl* presented potentially meritorious claims that the reviewing

v. State, 790 So. 2d 389, 395 (Fla. 2000) (Harding, J., dissenting); but see *Light v. State*, 841 So. 2d 623, 626 (Fla. 2d DCA 2003).

Factually Dependent

Admittedly, defendants facing murder charges often dispute the nature of the killing. As a result, juries frequently resolve factual matters like motive and the presence, *vel non*, of an intent to kill. Because enmity often provides a motive (which can lead to premeditation), many individuals who possess an intent to kill also manifest a depraved mind. Hence, many murder prosecutions would support a charge of both first degree premeditated murder and second degree murder. Also, because provocation can lead to enmity (given a significant passage of time between the initial provocation and the eventual killing), many homicide prosecutions would support a charge of both second degree murder and voluntary manslaughter. See *Holland v. State*, 12 Fla. 117 (Fla. 1867).

Importantly, however, not everyone who intends to kill necessarily disregards the value of human life. Therefore, some killings, even if intentional, may only support an instruction on manslaughter. See LaFave, *Substantive Criminal Law §15.2(a)*:

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courts unfortunately dismissed without sufficient consideration. *But see Nesbitt v. State*, 889 So. 2d 801, 802 (Fla. 2004), *quoting Ray v. State*, 403 So. 2d 956 (Fla. 1981).

> Although the killing of another person — when accompanied by an intent to kill, or by an intent to do serious bodily injury short of death, or when resulting from such unreasonable and highly reckless conduct as to "evince a depraved heart" — often amounts to murder, yet it may under certain circumstances amount only to voluntary manslaughter.

Obviously, the jury's factual findings determine the degree of homicide; nonetheless, some of those findings may overlap. For example, a properly instructed jury may determine that the defendant who possesses an intent to kill and who proceeds with premeditation remains guilty of first degree premeditated murder – even if the jury also finds that defendant evinced the level of depravity required for second degree murder. In this scenario, the finding of depravity remains superfluous. As an additional example, a jury may determine that the defendant who possesses an intent to kill and evinces depravity remains guilty of second degree murder – but only if the jury also finds that the defendant did not proceed from any premeditation. See *Knight v. State*, 28 So. 759, 761 (Fla. 1900). In this scenario, the finding of an intent to kill remains superfluous. Finally, if the jury finds that the defendant possesses an intent to kill, but lacks premeditation and depravity, then the defendant remains guilty of voluntary manslaughter. See generally *Feagle v. State*, 46 So. 182, 183 (Fla. 1908). The following table illustrates these points:

	Intent to Kill?	Premeditation?	Depravity?
First Degree Premeditated Murder	Yes.	Yes.	Irrelevant.
Second Degree Murder	Irrelevant.	No.	Yes.
Voluntary Manslaughter	Yes.	No.	No.

Necessarily Lesser and Permissive Lesser Included Offenses

Based upon the foregoing analysis, the undersigned respectfully suggests the following schedule of necessarily lesser included offenses and permissive lesser included offenses for homicide charges:

	First Degree Premeditated Murder	Second Degree Murder	First Degree Felony Murder
Necessarily Included Lesser Offense	Voluntary Manslaughter by Act	Involuntary Manslaughter by Culpable Negligence	Involuntary Manslaughter by Act
Permissive Lesser Included Offenses	Second Degree Murder; Involuntary Manslaughter by Act; Involuntary Manslaughter by Culpable Negligence	Voluntary Manslaughter by Act; Involuntary Manslaughter by Act	Second Degree Murder; Voluntary Manslaughter by Act; Involuntary Manslaughter by Culpable Negligence

The Case *Sub Judice*

In the decision below, both the majority opinion and the concurring opinion state that the evidence "unquestionably" supports the Petitioner's conviction for second degree murder. *See Haygood v. State*, 54 So. 3d 1035, 1037 (Fla. 2d DCA 2011) ("[T]he evidence *unquestionably* supports the jury's verdict finding Mr. Haygood committed second-degree murder.") (Emphasis added); *see also Haygood* at 1038 (Altenbernd, J., concurring) ("This is a case in which the evidence *unquestionably* supports the jury's verdict finding that Mr. Haygood committed second-degree murder.") (Emphasis added). Without explanation, however, the majority suggests that the evidence did not support a theory of manslaughter by culpable negligence. *See Haygood at 1037* ("Arguably, the evidence presented at trial is inconsistent with a theory of manslaughter by culpable negligence."). Going one step further, the concurring judge expresses outright skepticism that a "reasonable jury" would accept a theory of culpable negligence based on the evidence in the case. *See Haygood* at 1038 (Altenbernd, J., concurring) ("I am hard pressed to believe that any reasonable jury would have found that the evidence in this case supported a theory of manslaughter by culpable negligence.").

Based upon its view of the law and the facts of the case, the majority certified a question of great public importance that

contains an analytical flaw: it presumes the evidence in a criminal trial can support a conviction for second degree (depraved mind) murder but not support an instruction on (involuntary) manslaughter by culpable negligence. As demonstrated by the foregoing analysis, however, (involuntary) manslaughter by culpable negligence serves as the necessarily lesser included offense of second degree (depraved mind) murder. Thus, under the law of this State, an individual cannot commit the latter without necessarily committing the former.

Correcting the analytical flaw in the certified question completely changes the outcome of this case. If the evidence "unquestionably" supports the Petitioner's conviction for second degree (depraved mind) murder, then that same evidence *necessarily* supports a theory of (involuntary) manslaughter by culpable negligence. Therefore, the crime of (involuntary) manslaughter by culpable negligence *necessarily* provided a viable option for the jury. Furthermore, because (involuntary) manslaughter by culpable negligence constitutes a necessarily lesser included offense of second degree (depraved mind) murder, the jury could find the Petitioner guilty of manslaughter by culpable negligence while still honoring its finding that the Petitioner lacked any intent to kill (as evidenced by the conviction for second degree murder). *See Salonko v. State*, 42

So. 3d 801 (Fla. 1st DCA 2010). Thus, no fundamental error occurred.

Overlap of Manslaughter Offenses

As an additional consideration, the decision below fails to recognize that the same act may give rise to criminal culpability under both an (involuntary) manslaughter by act theory and an (involuntary) manslaughter by culpable negligence theory. See *Haygood* at 1037 ("[I]f the jury believed Mr. Haygood's act was an intentional one but not that he possessed the intent to kill, then neither form of manslaughter provided a viable lesser offense of which the jury could find Mr. Haygood guilty."); see also *Haygood* at 1038 (Altenbernd, J., concurring):

> This is a case in which the evidence unquestionably supports the jury's verdict finding that Mr. Haygood committed second-degree murder. At the same time, the evidence would also have permitted the jury to return a verdict of manslaughter by act if the jury had received the correct instruction. I am hard pressed to believe that any reasonable jury would have found that the evidence in this case supported a theory of manslaughter by culpable negligence.

Unrecognized by the majority below, the law often proscribes certain conduct because of the risk of harm associated with that conduct. See LaFave, *Substantive Criminal Law, §15.5*(e) (2d ed. 2003) ("[T]he fact of the defendant's unlawful conduct may generally be looked to as evidence of criminal negligence.").

Firearm offenses provide an excellent example. *See e.g. Folks v. State*, 95 So. 619, 621 (Fla. 1923):

> [T]here is evidence legally sufficient to sustain an inference that the defendant by culpable negligence *or* other unlawful act fired the shot that caused the death of the decedent under such circumstances as to constitute manslaughter. An intent to kill was not an essential element of the offense… (Emphasis added)

Motor vehicle offenses provide another example. *Cf. McCreary v. State*, 371 So. 2d 1024 (Fla. 1979). For instance, motorists in the State of Florida cannot operate a motor vehicle in a reckless manner. *See Section 316.192, Florid Statutes*. If a motorist drives recklessly and causes a collision that kills another, that motorist clearly remains guilty of vehicular homicide. *See Section 782.071, Florida Statutes*. However, that motorist *should* also remain guilty of both (involuntary) manslaughter by culpable negligence and (involuntary) manslaughter by act. With regard to the former, the driver intentionally committed an unlawful act that unintentionally caused the death of another. With regard to the latter, the driver, demonstrating a reckless disregard for the safety of others, engaged in a course of conduct that caused the death of another. *But see McCreary* at 1026:

> The legislature did not intend the word “reckless” used in the vehicular homicide statute to mean the same thing as the word “culpable” used in the manslaughter statute. Had the legislature intended that vehicular homicide and manslaughter be the same offense with the same standard of proof and only that

> there be a reduced penalty for the former, then it simply could have provided that vehicular homicide is the killing of a human being by the operation of a motor vehicle in a culpably negligent manner.

Thus, (involuntary) manslaughter by act and (involuntary) manslaughter by culpable negligence often overlap.

Finally, the decision below highlights the difficulty that lower courts face when they attempt to apply the holding of this Court's decision in *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010). *Compare Haygood* at 1037 ("As the supreme court has observed, however, the jury's 'pardon power' is its ability to convict a defendant of a lesser offense even though there is evidence supporting the greater one.") *with Haygood* at 1038 (Altenbernd, J., concurring) ("I am also not convinced that 'pardon power' analysis is the best approach to this particular problem."). Put simply, is the *Montgomery* holding based upon a concern that the jury lacked an adequate opportunity to exercise its pardon power? Or, is the holding based upon a concern that the jury over-convicted the defendant?

At its core, a "jury pardon" involves an aberration – a refusal by the jury to follow its oath as well as the instructions provided by the trial court. *See Sanders v. State*, 946 So. 2d 953, 958 (Fla. 2006). Essentially, a jury pardon constitutes an irrational act – a refusal to apply pure reason coupled with a conscious decision to substitute, in reason's

place, some form of mercy. *See Sanders v. State*, 946 So. 2d 953, 957 (Fla. 2006), *quoting Potts v. State*, 430 So. 2d 900, 903 (Fla. 1982); *cf. Sanders v. State*, 847 So. 2d 504, 511-514 (Fla. 1st DCA 2003) (Erwin, J., concurring and dissenting):

> Ideally, lesser instructions allow the jury to return a guilty verdict when the jury expressly finds that the State failed to prove the charged offense with proof beyond a reasonable doubt. Hence, rather than a compromise or an exercise of mercy, such a verdict reflects a rational decision by the jury to follow its oath and the instructions provided. Borrowing from the "A", "B", "C" example from this Court's decision in *State v. Abreau*, 363 So. 2d 1063 (Fla. 1978), "A" represents the charged offense. In contrast with a jury pardon scenario, though, "B" represents: (1) a lesser offense; (2) the highest crime supported by proof beyond a reasonable doubt; (3) the crime for which the jury should return a verdict of guilty if it follows its oath and the instructions on the law; and, (4) the crime of conviction. In this scenario, jury pardon concerns arguably remain, but only if the trial court fails to instruct on "C", an offense lesser than both "A" and "B".
>
> The proper use of lesser included offense instructions contrasts greatly with a true jury pardon situation. Again borrowing *Abreau's* "A", "B", "C", example, in a true jury pardon scenario "A" represents: (1) the charged offense; (2) the

highest crime supported by proof beyond a reasonable doubt; and, (3) the crime for which the jury should return a verdict of guilty if it follows its oath and the instructions on the law. Continuing with the example, “B” represents: (1) a lesser offense; (2) the crime of conviction; and, (3) the crime that best matches the jury’s desire to exercise mercy. Thus, the jury chooses emotion (the crime that best matches the jury’s desire to exercise mercy) over reason (the crime for which the jury should return a verdict of guilty if it follows its oath and the instructions on the law).

Following *Abreau’s* rationale, when the trial court fails to instruct on “B”, the trial court unfairly precludes the jury from rendering a partial acquittal based upon mercy and therefore forces the jury to render a verdict based upon its oath and the instructions on the law. In other words, *Abreau* finds that per se reversible error occurs when a trial court shapes the judicial landscape in such a way as to cajole the jury into following the law. Importantly, however, *Abreau* relies upon an illogical premise: a jury will initially and irrationally decline to convict on “A”, will determine that “C” remains too low to honor its desire to exercise mercy, and ultimately will conclude that “A” more closely resembles what the jury irrationally considers the true crime committed.

Thus, *Abreau* expresses a concern that a jury might irrationally arrive at the most rational of conclusions (guilt as to "A").

The concern expressed in the *Abreau*/jury pardon line of cases differs significantly from the concern expressed in a small number of cases the undersigned refers to as the over-conviction line of cases. In those cases, a few courts expressed a concern that the lack of an appropriate instruction on a lesser included offense precludes the jury from considering that offense as the highest charge proven. *See e.g*. *Hankerson v. State*, 831 So. 2d 235, 236-37 (Fla. 1st DCA 2002); *see also Montgomery v. State*, Case No. 1D07-4688 (Fla. 1st DCA Feb. 12, 2009) (*Montgomery I*), *quoting Hankerson*; *but see State v. Montgomery*, 39 So. 3d at 259 (*Montgomery II*), *citing Pena v. State*, 901 So. 2d 781 (Fla. 2005) (using the "one-step" removed language of *Abreau*). Once again borrowing *Abreau's* "A", "B", "C", example, "A" represents: (1) the charged offense; (2) an offense for which the jury received an instruction; and, (3) the crime of conviction. However, "B" represents: (1) a lesser offense; (2) the highest crime supported by proof beyond a reasonable doubt; and most importantly, (3) an offense for which the jury did not receive an instruction. Continuing with the example, "C" represents: (1) an offense less than both "A" and "B"; (2) an offense for which the jury received an instruction; and, (3) the crime for which the jury should return a verdict of guilty if it follows

its oath and the instructions on the law. In essence, this scenario involves a concern that the jury will "bump-up" its verdict (i.e. "over-convict") simply because the actual crime committed ("B") remains closer to the offense charged ("A") than to the lesser offense instructed ("C"). Put somewhat differently, a jury, when faced with the possibility of "over-acquitting" (guilt as to "C") or "under-acquitting" (guilt as to "A"), will decide to "under-acquit." Hence, the jury returns a verdict of guilty to the charged offense even though: (1) the State lacks adequate proof of the crime of conviction; and, (2) the oath and the instructions demand a verdict of guilty as to the lesser instructed offense.

Following its prior decision in *Hankerson*, the First District appeared to analyze the purported error in *Montgomery I* by focusing on the possibility of an over-conviction. *See Montgomery I*, *quoting Hankerson*. In contrast, this Court, by citing to its prior decision in *Pena* (and borrowing the "one step removed" language from *Abreau*) appeared to analyze the purported error by focusing on the lack of an opportunity for the jury to exercise its pardon power. *See Montgomery II* at 259, *citing Pena*. This discrepancy has caused confusion in the lower courts.

Conclusion

This Court should affirm the judgment and conviction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to to Maureen E. Surber, Assistant Public Defender, P.O. Box 9000 – Drawer PD, Bartow, Florida 33831, and to Cerese Crawford Taylor, Assistant Attorney General, Concourse Center #4, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607, by MAIL on August 22, 2011.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla.R.App.R. 9.210.

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