

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed March 17, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-1518

Lower Tribunal No. 04-2111

Manuel Walters,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Julio E. Jimenez, Judge.

Carlos J. Martinez, Public Defender, and Leslie Scalley, Special Assistant Public Defender (Tampa), for appellant.

Bill McCollum, Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before SHEPHERD and ROTHENBERG, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Manuel Walters appeals his conviction for second-degree murder, asserting fundamental error in the standard manslaughter by act instruction given to the jury.¹ See Fla. Std. Jury Instr. (Crim.) 7.7. We affirm the conviction. See Valdes-Pino v. State, 23 So. 3d 871, 872 (Fla. 3d DCA 2009). However, to preserve the defendant's rights, we certify direct conflict with Montgomery v. State, --- So. 2d ---, 2009 WL 350624 (Fla. 1st DCA 2009), which currently is pending review before the Florida Supreme Court. State v. Montgomery, 11 So. 3d 943 (Fla.2009).

Conviction affirmed, conflict certified.

¹ The defendant's remaining two points of appeal are without merit. See Irving v. State, 627 So. 2d 92, 94 (Fla. 3d DCA 1993) ("A trial court has wide discretion concerning the admissibility of evidence, and a ruling on admissibility will not be disturbed unless there has been an abuse of discretion.").