

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

KYLE BASS,

Appellant,

v.

CASE NO. 1D07-6218

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Opinion filed June 30, 2009.

An appeal from the Circuit Court for Duval County.  
John M. Merrett, Judge.

Nancy A. Daniels, Public Defender, and Pamela D. Presnell, Assistant Public  
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Stephen R. White, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant challenges his convictions for second degree murder and  
tampering with evidence. The appellant's arguments that the trial court erred in  
denying his motion for judgment of acquittal on the two charges are without merit,

and his conviction for tampering with evidence is affirmed. However, because the trial court gave the standard jury instruction for the lesser-included offense of manslaughter by act, which an average juror would understand as requiring the additional element of intent to kill, the appellant's conviction for second degree murder is reversed and the case is remanded for further proceedings. See Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009); Washington v. State, 34 Fla. L. Weekly D743 (Fla. 1st DCA April 13, 2009).

ALLEN, WOLF, and DAVIS, JJ., CONCUR.