

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

RICHARD DALE  
HARRINGTON,

Appellant,

v.

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

CASE NO. 1D08-4981

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Opinion filed August 26, 2009.

An appeal from the Circuit Court for Walton County.  
Kelvin C. Wells, Judge.

James C. Banks of Law Firm of Banks & Morris, P.A., Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Jennifer J. Moore, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

Following this court's recent decision in Montgomery v. State, 34 Fla. Law  
Weekly D360 (Fla. 1st DCA February 12, 2009), we hold that the trial court  
committed fundamental error by giving the standard jury instruction for

manslaughter by act which added the additional element that the defendant “intentionally caused the death” of the victim when manslaughter by act requires only an intentional unlawful act.

REVERSED and REMANDED.

WOLF, KAHN, AND VAN NORTWICK, JJ., CONCUR.