## NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

LUIS MILLAN-COLON,	)
Appellant,	)
٧.	)
STATE OF FLORIDA,	)
Appellee.	)

Case No. 2D13-1823

Opinion filed November 26, 2014.

Appeal from the Circuit Court for Polk County; William D. Sites, Judge.

Howard L. Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Dawn A. Tiffin, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed. See Gregory v. State, 937 So. 2d 180, 183 (Fla. 4th DCA 2006)

("[T]he defendant waived this issue, because he did not request the instruction and

assented to the court's decision to list trespass and battery separately on the verdict

form. We have held that this is not fundamental error."); see also Daniel v. State, 137

So. 3d 1181, 1185 (Fla. 3d DCA 2014) (holding that failure to instruct on trespass as a lesser-included offense three steps removed from armed burglary of a dwelling was harmless because the jury did not exercise its pardon power by finding defendant guilty of any of the lesser-included offenses one and two steps removed).

DAVIS, C.J., and LaROSE and MORRIS, JJ., Concur.