IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

ANGEL MANUEL NIEVES,

Appellant,

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STATE OF FLORIDA,

Appellee.

Case No. 2D08-3809

Opinion filed October 30, 2015.

Appeal from the Circuit Court for Lee County; Thomas S. Reese, Judge.

Lee Hollander of Law Offices of Hollander and Hanuka, Naples, for Appellant.

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

ON REMAND FROM THE SUPREME COURT OF FLORIDA

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PER CURIAM.

Upon remand from the Florida Supreme Court, we reconsider Angel

Manuel Nieves' conviction for second-degree murder in light of the subsequent decision

in Griffin v. State, 160 So. 3d 63 (Fla. 2015). In Griffin, the Florida Supreme Court

clarified that "a sole defense of misidentification does not concede or fail to place in

dispute intent or any other element of the crime charged except identity when the

offense charged is an unlawful homicide." Id. at 67. Accordingly, the jury instruction for

manslaughter by act given in this case did indeed constitute fundamental error, and we must reverse and remand for a new trial.

Reversed and remanded for new trial.

WALLACE, KHOUZAM, and MORRIS, JJ., Concur.