

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

EDDIE McNEALY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D09-5869

Opinion filed August 19, 2011.

Appeal from the Circuit Court for  
Charlotte County; Alane Laboda,  
Judge.

James Marion Moorman, Public  
Defender, and Terri L. Backhus,  
Special Assistant Public Defender,  
Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Susan M. Shanahan,  
Assistant Attorney General, Tampa,  
for Appellee.

PER CURIAM.

We affirm Eddie McNealy's judgment and sentence for second-degree  
murder. However, as this court did in Haygood v. State, 54 So. 3d 1035 (Fla. 2d DCA

2011), we certify the following question to the Florida Supreme Court to be of great public importance:

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT FUNDAMENTAL ERROR BY GIVING A FLAWED MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO GIVES AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

Affirmed; question certified.

WHATLEY, KELLY, and WALLACE, JJ., Concur.