

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

LEO RICHARD BERUBE,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D09-4385
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
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Opinion filed April 4, 2012.

Appeal from the Circuit Court for Pinellas  
County; Thane Covert, Judge.

James Marion Moorman, Public Defender,  
and Cynthia J. Dodge, Assistant Public  
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Susan D. Dunlevy,  
Assistant Attorney General, Tampa, for  
Appellee.

ALTENBERND, Judge.

Leo Richard Berube appeals his judgment and life sentence for second-degree murder. This court reversed an earlier judgment and sentence and remanded the case for a new trial. See Berube v. State, 5 So. 3d 734, 736 (Fla. 2d DCA 2009).

We affirm the new judgment and sentence in all respects. We write only to certify that

this decision conflicts with Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010), concerning the jury instruction on the lesser included offense of manslaughter. For the reasons set forth in this court's decision in Daniels v. State, 72 So. 3d 227, 230 (Fla. 2d DCA 2011), this jury instruction did not constitute fundamental error.

Affirmed; conflict certified.

SILBERMAN, C.J., and WALLACE, J., Concur.