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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

REILIES WAYNE MILLER,	
Appellant,))
v. ,	Case No. 2D11-6133
STATE OF FLORIDA,	
Appellee.)))

Opinion filed May 10, 2013.

Appeal from the Circuit Court for Sarasota County; Donna Berlin, Judge.

Howard L. Dimmig, II, Public Defender, and Richard J. Sanders, Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cerese Crawford Taylor, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Reilies Wayne Miller challenges his conviction for first-degree murder which was based on evidence that he shot the victim four times while in the back of a parked van. Miller claimed self-defense at trial, and he argues on appeal that the trial court erred in giving the jury a misleading instruction regarding the duty to retreat.

Although we agree that the instruction was erroneous, we conclude that the error was

harmless in light of the testimony and the physical evidence presented at trial. <u>See Martinez v. State</u>, 981 So. 2d 449, 455-56 (Fla. 2008); <u>Cancel v. State</u>, 985 So. 2d 1127, 1130 (Fla. 5th DCA 2008).

Affirmed.

SILBERMAN, C.J., and DAVIS and CRENSHAW, JJ., Concur.