

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed April 20, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-1139
Lower Tribunal No. 05-15081

William Cruz,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Julio Jimenez, Judge.

Carlos J. Martinez, Public Defender, and Maria E. Lauredo, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Forrest L. Andrews, Jr., Assistant Attorney General, for appellee.

Before LAGOA and SALTER, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

William Cruz appeals his conviction and sentence for attempted second

degree murder. We reverse the conviction on each of two independently-sufficient grounds. First, the attempted voluntary manslaughter instruction, as given to the jury, violates the holding in State v. Montgomery, 39 So. 3d 252 (Fla. 2010).

Second, we find that Cruz's second demand to represent himself was unequivocally made, necessitating a Faretta¹ hearing. Rodriguez v. State, 982 So. 2d 1272 (Fla. 3d DCA 2008). Because such a hearing was not conducted before the trial court denied Cruz's demand, a reversal on this ground is also required.

Reversed and remanded.

¹ Faretta v. California, 422 U.S. 806 (1975).