

Third District Court of Appeal

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

Opinion filed May 18, 2011.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-2505

Lower Tribunal No. 07-21141

Stevenland Davis,
Appellant,

vs.

The State of Florida,
Appellee.

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

Carlos J. Martinez, Public Defender, and Shannon P. McKenna, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Natalia Costea, Assistant Attorney General, for appellee.

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

PER CURIAM.

Stevenland Davis appeals his conviction and sentence for two counts of second-degree murder. We reverse and remand for a new trial because the trial

court fundamentally erred in instructing the jury that intent to kill was an element of manslaughter by act, a lesser-included offense of second-degree murder. See State v. Montgomery, 39 So. 3d 252 (Fla. 2010).

Reversed and remanded for a new trial.