

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2006

KEVIN SLATTERY,

Appellant,

v.

Case No. 5D05-4408

STATE OF FLORIDA,

Appellee.

Opinion filed December 1, 2006.

Appeal from the Circuit Court
for Volusia County,
S. James Foxman, Judge.

C. Michael Barnette of Law Office of
C. Michael Barnette, Daytona Beach,
for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

THOMPSON, J.

Kevin Slattery was convicted of two counts of aggravated battery with a deadly weapon or causing great bodily harm for events arising from a single episode.¹ He raises several issues on appeal. We find that only one has merit, and reverse.

¹ § 784.045 (1)(a), Fla. Stat. (2003).

Slattery claimed self-defense, but objected when the court instructed the jury on the "forcible felony" exception to his self-defense claim. We find his objection was not specific enough to apprise the court of the grounds for his objection. See Lane v. State, 861 So. 2d 451, 452-53 (Fla. 4th DCA 2003). Nevertheless, we conclude that fundamental error occurred. Where self-defense is the only defense asserted at trial, and evidence supports that defense, the giving of the forcible felony instruction may constitute fundamental error. Smith v. State, 933 So. 2d 1275, 1277 (Fla. 2d DCA 2006); Carter v. State, 889 So. 2d 937, 939 (Fla. 5th DCA 2004). The instruction has been deemed fundamentally erroneous even where the defendant is charged with two acts, but claims self-defense to each. See Jackson v. State, 935 So. 2d 107 (Fla. 4th DCA 2006); Ruiz v. State, 900 So. 2d 733, 733-34 (Fla. 4th DCA 2005). We conclude that fundamental error occurred in this case.

Accordingly, we REVERSE and REMAND for a new trial.

PALMER and TORPY, JJ., concur.