

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2006*

**STANLEY J. BARTON,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D05-2012

[ November 22, 2006 ]

PER CURIAM.

The defendant appeals his conviction and sentence for aggravated battery. We agree with the defendant that the trial court committed fundamental error by instructing the jury that the defendant's use of force was not justifiable if he was attempting to commit, committing, or escaping after the commission of aggravated battery. This instruction would only have been appropriate had the defendant been engaged in some other forcible felony. In the absence of such an independent felony, the instruction is circular and impermissibly negates the defendant's claim of self-defense. *Jackson v. State*, 935 So. 2d 107 (Fla. 4th DCA 2006). The defendant is entitled to a new trial.

*Reversed and Remanded.*

STEVENSON, C.J., WARNER and TAYLOR, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Elijah M. Williams, Judge; L.T. Case No. 03-13959 CF 10 A.

Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and August A.

Bonavita, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***