

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

NESTOR RIOS,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D03-395
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed June 3, 2005.

Appeal from the Circuit Court for Hillsborough County; Daniel Lee Perry, Jr., Judge.

Heather M. Gray of Bodiford & Associates, P.A., Tampa, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Richard M. Franklin, Assistant Attorney General, Tampa, for Appellee.

NORTHCUTT, Judge.

The State charged Nestor Rios and several codefendants with racketeering, conspiracy and drug trafficking offenses. Rios was tried with codefendant

Miguel Cabrera. As we have explained in our opinion in Cabrera v. State, 890 So. 2d 506, 508 (Fla. 2d DCA 2005), the trial court committed fundamental error by including the conjunction and/or between Rios's and Cabrera's names in the jury instructions for the various crimes. For example, in a trafficking instruction, the judge stated that the jurors must find that "Miguel A. Cabrera and/or Nelson E. Rios knew that the substance was heroin . . . ." The State has conceded that the decision in Cabrera controls this appeal. Accordingly, we reverse Rios's convictions and remand for a new trial.

Reversed and remanded.

CASANUEVA and LaROSE, JJ., CONCUR.