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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ADRIAN DEVAN BROWN, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D04-2195

Opinion filed September 9, 2005.

Appeal from the Circuit Court for Hillsborough County; William Fuente, Judge.

James Marion Moorman, Public Defender, and Douglas S. Connor, Assistant Public Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Adrian Devan Brown appeals his conviction and fifteen-year sentence for aggravated battery. He contends that he is entitled to a new trial due to fundamental error in the self-defense jury instructions given at his trial. We agree and reverse.

The self-defense instruction given at trial was disapproved as circuitous and misleading in Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002), a case decided almost ten months prior to Mr. Brown's trial. We have held that this instruction is fundamental, reversible error. See, e.g., Bates v. State, 883 So. 2d 907 (Fla. 2d DCA 2004); Velazquez v. State, 884 So. 2d 377 (Fla. 2d DCA 2004); Zuniga v. State, 869 So. 2d 1239 (Fla. 2d DCA 2004). Trial counsel did not object and, as the record before us reveals, unknowingly acquiesced to a fundamentally flawed jury instruction. See Roberts v. State, 694 So. 2d 825, 826 (Fla. 2d DCA 1997); Beckham v. State, 884 So. 2d 969, 972-73 (Fla. 1st DCA 2004).

We reverse and remand for a new trial.

WHATLEY and VILLANTI, JJ., Concur.