

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THOMAS EDWARD FULLER,)	
)	
Appellant,)	
)	
v.)	Case No. 2D05-5660
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed December 8, 2006.

Appeal from the Circuit Court
for Lee County;
James R. Thompson, Judge.

James Marion Moorman,
Public Defender, and
Richard J. Sanders, Assistant
Public Defender, Bartow,
for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Danilo Cruz-Carino,
Assistant Attorney General, Tampa,
for Appellee.

CANADY, Judge.

Thomas Edward Fuller appeals his judgment and sentence for aggravated assault with a deadly weapon. We affirm the denial of Fuller's motion for judgment of acquittal without comment. We conclude, however, that the jury instructions were—as

the State concedes—fundamentally erroneous because they improperly “permitted the jury to convict [the defendant] of aggravated assault[, see § 784.021, Fla. Stat. (2004),] if one alleged victim was threatened while the other [alleged victim] had a well-founded fear of violence.” Miller v. State, 918 So. 2d 415, 416-17 (Fla. 2d DCA 2006); see also Tindle v. State, 832 So. 2d 966, 967 (Fla. 5th DCA 2002); James v. State, 706 So. 2d 64, 65 (Fla. 5th DCA 1998). We therefore reverse and remand for a new trial.

Reversed and remanded.

FULMER, C.J., and WHATLEY, J., Concur.