

improperly added an additional element of "intent to kill" to the crime of manslaughter. Because he did not object to it at trial, Barros-Dias argues that the instruction was fundamentally erroneous. We affirm but certify conflict.

This court recently held that the standard jury instruction for manslaughter which was in effect at the time of Barros-Dias' trial¹ in 2007 was not fundamentally erroneous. See Zeigler v. State, 18 So. 3d 1239, 1245-46 (Fla. 2d DCA 2009). However, the First District in Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009), review granted, 11 So. 3d 943 (Fla. 2009), concluded that the same standard instruction was fundamentally erroneous.² Accordingly, we affirm Barros-Dias' conviction and sentence and, as we did in Zeigler, certify conflict with Montgomery.

Judgment and sentence affirmed; conflict certified.

WALLACE and LaROSE, JJ., Concur.

¹The standard manslaughter jury instruction at issue in the case is no longer the standard instruction. It was modified by the supreme court in December 2008 and now reads: "In order to convict of manslaughter by intentional act, it is not necessary for the State to prove that the defendant had a premeditated intent to cause death, only an intent to commit an act which caused death."

²We note that, unlike in Zeigler and Montgomery, the jury in this case was also instructed on the offense of manslaughter by culpable negligence.