

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

WILLIS FOSTER, DOC No. 389641, )

Appellant, )

v. )

STATE OF FLORIDA, )

Appellee. )

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Case No. 2D08-1716

Opinion filed June 19, 2009.

Appeal from the Circuit Court for Collier  
County; Franklin G. Baker, Judge.

James Marion Moorman, Public Defender,  
and Robert Augustus Harper, Special  
Assistant Public Defender, Bartow, for  
Appellant.

Bill McCollum, Attorney General,  
Tallahassee, and Elba C. Martin-  
Schomaker, Assistant Attorney General,  
Tampa, for Appellee.

KHOUZAM, Judge.

Willis Foster appeals his convictions for aggravated battery with a deadly  
weapon causing harm, attempted second-degree murder with a firearm, and possession  
of cocaine. He asserts that reversible error occurred in regard to the manner in which

the trial court instructed the jury on a note submitted to the court by the jurors during deliberations. Because any error in this regard was harmless, we affirm.

During deliberations, the jury sent a note to the trial court. In turn, the trial court discussed the handling of the note with the prosecutor, defense counsel, and Foster. After this discussion, the trial court instructed the jury in the deliberation room rather than in open court. Although the prosecutor and defense counsel were present in the deliberation room when the jury was instructed, Foster was not present. Instructing the jury in this manner was fraught with peril. Issues that arise from utilizing such a procedure can be avoided by returning the jury to the courtroom and instructing the jury in the presence of the prosecutor, defense counsel, and the defendant. Nonetheless, in this case any error that resulted was harmless. See, e.g., Meek v. State, 487 So. 2d 1058 (Fla. 1986).

Affirmed.

ALTENBERND and CASANUEVA, JJ., Concur.