

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

December 18, 2009

CATALINO BURGOS, JR.,)
)
 Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
 Appellee.)
)
_____)

Case No. 2D08-2895

BY ORDER OF THE COURT:

Upon consideration of a motion for rehearing filed by the appellant on November 12, 2009,

IT IS ORDERED that the request for rehearing is granted. Accordingly, the opinion dated November 6, 2009, is withdrawn, and the attached opinion is substituted therefor. No further motions will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CATALINO BURGOS, JR.,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D08-2895

Opinion filed December 18, 2009.

Appeal from the Circuit Court for
Hillsborough County; Wayne S. Timmerman,
Judge.

James Marion Moorman, Public Defender,
and Timothy J. Ferreri, Assistant Public
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Diana K. Bock, Assistant
Attorney General, Tampa, for Appellee.

FULMER, Judge.

Catalino Burgos appeals his judgment and sentence for second-degree murder following a jury trial and argues that the trial court erred in denying his motion for judgment of acquittal and in instructing the jury on the lesser-included offense of manslaughter by act. We affirm the denial of Burgos's motion for judgment of acquittal without comment. With respect to Burgos's assertion that the trial court fundamentally

erred in giving the then-standard jury instruction on the lesser-included offense of manslaughter by intentional act, we affirm pursuant to our decision in Zeigler v. State, 18 So. 3d 1239 (Fla. 2d DCA 2009). As in Zeigler, we certify conflict with the First District's decision in Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009), review granted, 11 So. 3d 943 (Fla. 2009).

Judgment and sentence affirmed; conflict certified.

NORTHCUTT and VILLANTI, JJ., Concur.