

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HEROLD PIERRE-LOUIS, DOC #H31532,)	
)	
Appellant,)	
)	
v.)	Case No. 2D08-6265
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
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Opinion filed July 20, 2012.

Appeal from the Circuit Court for Polk
County; Mark F. Carpanini, Judge.

Karen L. Meeks, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Susan D. Dunlevy,
Assistant Attorney General, Tampa, for
Appellee.

ALTENBERND, Judge.

Herold Pierre-Louis appeals his judgments and sentences for second-degree murder and attempted second-degree murder. We affirm Mr. Pierre-Louis's conviction and sentence for second-degree murder. We reverse his conviction and sentence for attempted second-degree murder and we remand for a new trial.

These convictions arise from a drive-by shooting in which one person was killed and another injured. There were several persons in the offending vehicles. The

testimony at trial was conflicting as to whether Mr. Pierre-Louis was in one of the vehicles and, if so, whether he actually fired a weapon. The jury found that he did not possess or discharge a firearm and found him not guilty of unlawful discharge of a firearm. Thus, he was found guilty of second-degree murder and attempted second-degree murder as a principal.

The jury was instructed in this case with two controversial jury instructions. First, as to second-degree murder, Mr. Pierre-Louis received an instruction comparable to the instructions given in Barros-Dias v. State, 41 So. 3d 370 (Fla. 2d DCA 2010), and Haygood v. State, 54 So. 3d 1035, 1037 (Fla. 2d DCA), review granted, 61 So. 3d 410 (Fla. 2011). We affirm his judgment and sentence for second-degree murder for the reasons discussed in those opinions and also because sufficient evidence exists to support Mr. Pierre-Louis's conviction for second-degree murder as a principal. As we did in Haygood, we certify the following question to the Florida Supreme Court as one of great public importance:

IF A JURY RETURNS A VERDICT FINDING A
DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN
A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A
THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL
COURT COMMIT FUNDAMENTAL ERROR BY GIVING A
FLAWED MANSLAUGHTER BY ACT INSTRUCTION
WHEN IT ALSO GIVES AN INSTRUCTION ON MAN-
SLAUGHTER BY CULPABLE NEGLIGENCE?

Second, as to attempted second-degree murder, Mr. Pierre-Louis received an instruction comparable to the instruction in Houston v. State, 87 So. 3d 1 (Fla. 2d DCA), review granted, 64 So. 3d 1262 (Fla.), and appeal dismissed, 73 So. 3d 760 (Fla. 2011). As we have in the past, we reverse the judgment and sentence for attempted second-degree murder and remand for a new trial. In so doing, we certify conflict with

Williams v. State, 40 So. 3d 72 (Fla. 4th DCA), review granted, 64 So. 3d 1262 (Fla. 2011).

On retrial, we express no opinion as to whether the first jury's verdict as to possession and discharge of a firearm has established any finding binding on the trial court or the next jury.

Affirmed in part, reversed in part, and remanded.

VILLANTI and BLACK, JJ., Concur.