

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

KEVIN BRUCE STONE, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D11-5738

Opinion filed March 13, 2013.

Appeal from the Circuit Court for Polk  
County; Karla Foreman Wright, Judge.

Ita M. Neymotin, Regional Counsel, Second  
District, and Joseph Thye Sexton, Assistant  
Regional Counsel, Office of Criminal  
Conflict and Civil Regional Counsel,  
Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Danilo Cruz-Carino,  
Assistant Attorney General, Tampa, for  
Appellee.

KHOUZAM, Judge.

Affirmed. See Williams v. State, 66 So. 3d 360 (Fla. 2d DCA 2011). As in  
Williams, we hold that a trial court's failure to instruct the jury on section 812.025,  
Florida Statutes (2011), does not constitute fundamental error. Also as in Williams, we

recognize conflict with Kiss v. State, 42 So. 3d 810 (Fla. 4th DCA 2010), and certify to the Florida Supreme Court the following questions of great public importance:

1. MUST THE TRIAL COURT INSTRUCT THE JURY TO PERFORM THE SELECTION PROCESS DESCRIBED IN SECTION 812.025 OF THE FLORIDA STATUTES?
2. IF SO, MUST THE APPELLATE COURT ORDER A NEW TRIAL ON BOTH OFFENSES IF THE TRIAL COURT FAILS TO GIVE THE INSTRUCTION?
3. IF THE APPELLATE COURT IS NOT REQUIRED TO MANDATE A NEW TRIAL, MUST IT REQUIRE THE TRIAL COURT TO SELECT THE GREATER OFFENSE OR THE LESSER OFFENSE WHEN THE TWO OFFENSES ARE OFFENSES OF DIFFERENT DEGREES OR OF DIFFERENT SEVERITY RANKING?

Affirmed; question certified.

ALTENBERND and SLEET, JJ., Concur.