

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed December 23, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-1417

Lower Tribunal No. 05-16147

John Valdes-Pino,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Beatrice A. Butchko, Judge.

Carlos J. Martinez, Public Defender, and Leslie Scalley, Special Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Forrest L. Andrews, Jr., Assistant Attorney General, for appellee.

Before WELLS, ROTHENBERG, and SALTER, JJ.

PER CURIAM.

John Valdes-Pino appeals his conviction for second-degree murder asserting fundamental error in the manslaughter instruction given to the jury.¹ We affirm the conviction.

On the record presented, we find that the then-standard instructions given by the trial court (without objection) did not constitute fundamental error. Zeigler v. State, 34 Fla. L. Weekly D2074 (Fla. 2d DCA Oct. 9, 2009). However, because the contrary analysis in Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009), is currently pending review before the Florida Supreme Court,² we certify decisional conflict with that First District opinion.

Affirmed. Direct conflict certified.

¹ The defendant's remaining point lacks merit.

² State v. Montgomery, 11 So. 3d 943 (Fla. 2009); oral argument was heard October 7, 2009.