

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2001

HERMAN ROBERTS,

**

Appellant,

** CASE NO. 3D01-704

vs.

** LOWER
TRIBUNAL NO. 00-577

THE STATE OF FLORIDA,

**

Appellee.

**

Opinion filed September 26, 2001.

An Appeal from the Circuit Court for Monroe County, Mark Jones,
Judge.

Bennett H. Brummer, Public Defender, and Lisa Walsh, Assistant
Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Steven R. Parrish,
Assistant Attorney General, for appellee.

Before JORGENSON, GREEN, and SORONDO, JJ.

PER CURIAM.

Affirmed. See Simon v. State, 589 So. 2d 381 (Fla. 4th DCA
1991)(holding that some evidence must be introduced to support a
jury instruction on a defense theory).