

Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed December 28, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-2761
Lower Tribunal No. 04-31228-A

Davon Francis,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Julio E. Jimenez, Judge.

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

Bill McCollum, Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before CORTIÑAS, ROTHENBERG and SALTER, JJ.

On Remand From the Supreme Court of Florida

PER CURIAM.

We reconsider on remand our opinion in Francis v. State, 22 So. 3d 788 (Fla. 3d DCA 2009), which was quashed by the Florida Supreme Court in Francis

v. State, 36 Fla. L. Weekly S608 (Fla. Oct. 27, 2011). We withheld issuance of our mandate pending Supreme Court review. Therefore, pursuant to the Supreme Court mandate, this Court's opinion of November 18, 2009, is hereby withdrawn and we substitute the following in its place.

In 2007, Davon Francis was convicted of multiple charges, including three counts of attempted second-degree murder. Because the trial court in instructing the jury gave an erroneous jury instruction on the lesser included offense of attempted voluntary manslaughter, Montgomery v. State, 70 So. 3d 603 (Fla. 1st DCA 2009), we reverse those convictions for second-degree murder and remand for a new trial on those counts.

Reversed and remanded.