

IN THE SUPREME COURT OF FLORIDA
CASE # SC11-2170

AARON DANIELS, :

Petitioner, :

vs.

STATE OF FLORIDA, : Lower Tribunal Case Nos.
2D09-4951; CRC07-09682CFANO

Respondent. :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT

BRIEF OF PETITIONER

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner was charged with one count of murder in the first degree. The alleged victim was Amanda Lynn Fanter. The offense allegedly occurred on May 4, 2007. It was alleged that in the commission of that offense, Petitioner used a firearm, discharged a firearm, and caused injury or death by discharging the firearm. A jury trial was conducted at which the jury was instructed on the lesser included offenses of second degree murder and manslaughter. Specifically as to the manslaughter lesser included offense, the jury was told:

"Before you can find the defendant guilty of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

Elements

1. Amanda Lynn Fanter is dead.
2. Aaron Treves Daniels intentionally caused the death of Amanda Lynn Fanter.

However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

In order to convict of manslaughter by intentional act, it is not necessary for the state to prove that the defendant had a premeditated intent to cause death, only an

intent to commit an act which caused death" (emphasis from the opinion of the District Court).

The court did not instruct the jury that Petitioner could be guilty of manslaughter by culpable negligence. There was no objection to the instruction as given.

The jury found Petitioner guilty of the lesser included offense of murder in the second degree, and that in the course of the commission of that offense he carried a firearm, discharged it, and caused the death by that discharge. Petitioner was sentenced to life in prison, with the required minimum sentence of 25 years in prison. An appeal to the District Court of Appeal followed. The District Court affirmed Petitioner's conviction and sentence. This Petition timely followed.

ISSUE UNDER REVIEW

Did the Trial Court Commit Fundamental Error in Instructing the Jury on the Lesser Included Offense of Manslaughter?

SUMMARY OF ARGUMENT

It was fundamental error to instruct the jury that an intent to kill is an element of the lesser included offense of manslaughter. A new trial is required.

ARGUMENT

The Trial Court used the "old", 2008 standard jury instruction on the lesser included offense of manslaughter, that incorrectly stated an element of the offense was an intentional killing. The Trial Court added only the language concerning it was only necessary for the Defendant (Petitioner) to have intentionally committed the act that caused the death. It was this additional language that, in the opinion of the District Court, distinguished the instant case from this Court's decision in State v. Montgomery, 39 So. 3rd 252 (Fla. 2010). Based on the additional language, the District Court concluded the Trial Court had not instructed the jury that an element of the offense of manslaughter was the intentional killing of the victim, and that therefore the instruction was not fundamentally erroneous.

Undersigned counsel concedes the language of the jury instruction in the instant case is not exactly the same language as that found to be erroneous in Montgomery, because of the additional language previously described, and therefore the precise holding in Montgomery does not dictate the outcome of the instant case. Indeed, the language of the instruction in the instant case is the interim language approved in Montgomery. Nevertheless, it is submitted the

District Court erred when it concluded the language in the instruction as given by the Trial Court "did not require the jury to find that Daniels intended to kill the victim" in order to be guilty of manslaughter. This holding overlooks the second element of "manslaughter" as that offense was defined by the Trial Court, "2. Aaron Treves Daniels intentionally caused the death of the victim" (emphasis added). It is not possible to reconcile that instruction with the holding of the District Court that the jury was not instructed Petitioner needed to have the intent to kill in order to be guilty of manslaughter. Of course, even though the language used by the Trial Court was the "interim language" set forth in Montgomery, it is axiomatic that the standard jury instructions are not intended to be exclusive, and are only intended to be a guide to the trial court. If a particular point needs more specific instruction, the specific instruction should be given, Steele v. State, 561 So. 2nd 638 (Fla. 1st DCA 1990). Thus, the mere fact the language used by the Trial Court in the instant case was the standard interim language also does not dictate the outcome of this case. It is noted the 2010 amendments to the jury instructions have solved this issue prospectively by changing the wording of element 2 to simply require the death to have been caused by the defendant, and eliminating any mention of intent to cause death.

In Montgomery this Court stated the focus of its discussion was the second element of the offense of manslaughter by act, which was said to require the intentional killing of the victim by defendant. In that respect, the instruction in the instant case did not differ at all from that in Montgomery, in each the jury was told that an element of the lesser included offense of manslaughter by act was the intentional killing of the victim by the defendant. This Court found that the subsequent language used in the Montgomery instruction to the effect that premeditation was not required, was insufficient to erode the import of the faulty instruction that an element was the intentional killing of the victim.

Unfortunately, the same problems that existed in the Montgomery instruction also exist in the instruction used in the instant case and with the interim instruction set forth in Montgomery. The jury was still told, in stark terms, that an element of manslaughter was the intentional killing of the victim by the defendant. Quite correctly, this Court reasoned that having been once told unequivocally that the intentional killing was an element of manslaughter, any subsequent instruction seeming to modify that element would be difficult for the average juror to comprehend. Those concerns are not eliminated by the instruction used in the instant case. At most, the new language more clearly contradicted the language defining element 2, leaving the

average juror to wonder which was the correct interpretation. Either the intentional killing was an element, as stated in the actual definition of element 2, or it was not, as subsequently stated. A jury instruction which confuses the jury as to an element of the crime is erroneous, Gill v. State, 586 So. 2nd 471 (Fla. 4th DCA 1991). Since the instruction as given by the Trial Court incorrectly told the jury that an element of the offense of manslaughter was the intentional killing of the victim, it was fundamental error for the Trial Court to have given that instruction, Riesel v. State, 48 So. 3rd 885 (Fla. 1st DCA 2010).

CONCLUSION

Petitioner's judgment and sentence must be reversed and he must be given a new trial.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of the Attorney General at 3507 East Frontage Rd. Ste 200, Tampa, Fl. 33607, and on Petitioner, on this the 28th Day of February, 2012.

THIS BRIEF IS PRINTED IN "COURIER NEW" 12 POINT TYPE

CERTIFICATE OF COMPLIANCE

Petitioner's Brief is Prepared in "Courier new" 12 Point Type.

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APPENDIX