

IN THE SUPREME COURT OF FLORIDA

AARON DANIELS, :
 Petitioner, :

vs.

STATE OF FLORIDA, : Case No.
 Respondent. :

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE FACTS AND OF THE CASE

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."

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

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. On October 5, 2011 the District Court affirmed Petitioner's convictions, but certified that its decision was in direct conflict with the decision in Riesel v. State, 48 So. 3rd 885 (Fla. 1st DCA 2010); rev. denied 66 So. 3rd 304, and its progeny in the First District. This petition followed.

ISSUE

Does the Decision in Aaron Daniels v. State of Florida, Case No. 2D09-4951 (Fla. 2nd DCA October 5, 2011) Directly Conflict with a Decision of Another District Court, specifically Riesel v. State, 48 So. 3rd 885 (Fla. 1st DCA 2010), rev. denied 66 So. 3rd 304, and its progeny in the First District?

SUMMARY OF ARGUMENT

The Second District's opinion expressly and directly conflicts with at least one opinion of another District Court on the question of whether a fundamental error is committed by giving the instruction used in this case.

ARGUMENT

Fla.R.A.P. 9.030(a)(2)A(vi) provides for the discretionary review by this Court of any decision of a District Court that expressly and directly conflicts with a decision of another District Court, if the District Court certifies that its decision so conflicts. The District Court did so certify in the instant case, citing Riesel v. State, 48 So. 3rd 885 (Fla. 1st DCA 2010); rev. denied 66 So. 3rd 304. Indeed, there is no perceivable difference in the instruction given in the instant case and that in Riesel. Indeed, the Court in Riesel found that there was no appreciable difference in the instruction as given in that case and that found to be fundamental error in State v. Montgomery, 39 So. 3rd 252 (Fla. 2010). On the other hand, the District Court in the instant case perceived the additional language that before manslaughter could be proven the state did not "need to prove a premeditated intent to cause death, only an intent to commit an act which caused death (emphasis from the opinion) was sufficient to distinguish the instant case (and Riesel) from Montgomery.

CONCLUSION

This Court should accept review of the decision of the Second District to resolve the conflict, certified to exist by the District Court, of whether a fundamental error was committed by the instruction on the elements of manslaughter as given in the instant case.

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 on this the 14th day of October, 2011 by regular U.S. Mail.

CERTIFICATE OF COMPLIANCE

This brief is printed in "courier New" 12 point type in compliance with Fla. R. A. P. 9.210(2).

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APPENDIX