

IN THE SUPREME COURT OF FLORIDA

JEREMY HAYGOOD, :
 :
 Petitioner, :
 :
 vs. : Case No. SC11-294
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

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

INITIAL BRIEF OF PETITIONER ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Following a jury trial, Mr. Haygood was convicted of the second-degree murder of his girlfriend, Jeanine Tuckey. Mr. Haygood was angry with Tuckey for cheating on him some months prior to the argument, and they were arguing outside in a dark backyard. Mr. Haygood described himself as being "in a blind rage." During the argument, Mr. Haygood head-butted Tuckey, choked her for 10 seconds, and tripped her by pulling her legs out from beneath her. She fell and hit her head on the concrete. After falling to the ground, she sat up and leaned on Mr. Haygood. He elbowed her in the chest and she collapsed. (V3/T275) Mr. Haygood told law enforcement that what he did was done on purpose, but he never meant to kill Tuckey. (V2/T209) The medical examiner testified that the cause of death was neck trauma and blunt force trauma to the head. (V2/T237)

At the charge conference, the trial court pondered whether or not to give the manslaughter by culpable negligence instruction in addition to the second-degree murder and manslaughter by act instructions. The State initially objected to the trial court's desire to give the culpable negligence instruction, but after the trial court's analysis and suggestion, as well as the defense's acquiescence, the State withdrew its objection. (V2/T246-253)

The following jury instructions were given to the jury:

To prove the crime of Second-Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. [The victim] is dead.
2. The death was cause (sic) by the criminal act of Jeremy Haygood.
3. There was an unlawful killing of [the victim] by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

. . .

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. [The victim] is dead.
2. Jeremy Haygood intentionally caused the death of [the victim]

OR

The death of [the victim] was caused by the culpable negligence of Jeremy Haygood.

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

I will now define culpable negligence for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty without any conscious intention to harm, the violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard for human life or for the safety of persons exposed to its dangerous effects or such an entire want of care as to raise the presumption of a conscious indifference to consequences or which shows wantonness or recklessness or a grossly careless disregard for the safety and welfare of the public or such an indifference to the rights of others as is equivalent to an intentional violation

of such rights.

Negligent act or omissions must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known or reasonably should have known was likely to cause death or great bodily harm.

(V3/T267-270)

During closing arguments, neither the State nor Mr. Haygood argued that the evidence supported manslaughter by culpable negligence; and, in fact, the State argued against it since there was evidence that Mr. Haygood had intended to harm Tuckey. Mr. Haygood argued that manslaughter was the appropriate verdict because his actions were not imminently dangerous and were not done with an indifference to human life.

Mr. Haygood appealed, and the Second District issued an opinion in Haygood v. State, 54 So. 3d 1035 (Fla. 2d DCA 2011). The Second District cited this Court's decision in State v. Montgomery, 39 So. 3d 252 (Fla. 2010). In Montgomery, this Court held that the standard jury instruction for manslaughter by act was fundamentally erroneous. Mr. Haygood's case contains the same erroneous instruction.

However, the Second District distinguished this case from Montgomery because the jury in this case was also instructed on the culpable negligence portion of the manslaughter instruction. The Second District cited its decisions in Barros-Dias v. State,

41 So. 3d 370 (Fla. 2d DCA 2010), and Nieves v. State, 22 So. 3d 691 (Fla. 2d DCA 2009), as controlling precedent. Haygood, 54 So. 3d at 1037. The Second District noted that other districts have also held that giving the erroneous manslaughter by act instruction is not fundamental error when the jury is also instructed on manslaughter by culpable negligence. See Salonko v. State, 42 So. 3d 801 (Fla. 1st DCA 2010); Singh v. State, 36 So. 3d 848 (Fla. 4th DCA 2010).

In deciding Haygood, the Second District admits, at least twice, that it is adhering to the precedent of the district. 54 So. 3d at 1035. However, the court acknowledged that the evidence presented at trial was inconsistent with a theory of manslaughter by culpable negligence, and the court acknowledged the effect it had on the jury:

In this case, Mr. Haygood was charged with and convicted of fatally beating his girlfriend. Arguably, the evidence presented at trial is inconsistent with a theory of manslaughter by culpable negligence. Additionally, as for manslaughter by act, the instruction as given was flawed. Thus, if the jury believed Mr. Haygood's act was an intentional one but not that he possessed the intent to kill, then neither form of manslaughter provided a viable lesser offense of which the jury could find Mr. Haygood guilty. Although the evidence unquestionably supports the jury's verdict finding Mr. Haygood committed second-degree murder, it is impossible to speculate what the jury would have found had it been properly instructed that manslaughter by act does not require the intent to kill. In this regard, giving the flawed manslaughter by act instruction appears to run afoul of principles which the supreme court has articulated in Pena, 901

So. 2d at 787, and Montgomery, 39 So. 3d at 257-59.

Id. at 1037.

Judge Altenbernd concurred in part and dissented in part:

I fully concur in the certified question and recognize that the court's opinion is entirely consistent with the cited precedent. This is a case in which the evidence unquestionably supports the jury's verdict finding that Mr. Haygood committed second-degree murder. At the same time, the evidence would also have permitted the jury to return a verdict of manslaughter by act if the jury had received the correct instruction. I am hard pressed to believe that any reasonable jury would have found that the evidence in this case supported a theory of manslaughter by culpable negligence.

In this context, I do not believe that the fundamental error identified in Montgomery is rendered harmless by the instruction on manslaughter by culpable negligence. It is useful to consider that a fundamental error must be harmful before it can be classified as fundamental. See Reed v. State, 837 So. 2d 366, 370 (Fla. 2002) ("By its very nature, fundamental error has to be considered harmful. If the error was not harmful, it would not meet our requirement for being fundamental.") I simply fail to see the logic by which a fundamental error of this kind becomes harmless merely because a jury receives an alternative instruction that has little or no application to the evidence presented at trial. I am also not convinced that "pardon power" analysis is the best approach to this particular problem. I recognize that this panel lacks the power to reverse and remand for a new trial under existing precedent, but I believe the case law needs a tweaking to permit a new trial in this type of case in order to fully comply with the supreme court's holding in Montgomery.

Id. at 1038 (Altenbernd, J., specially concurring in part and dissenting in part).

The Second District certified the following question as one of great public importance:

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT FUNDAMENTAL ERROR BY GIVING A FLAWED MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO GIVES AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

Mr. Haygood filed a notice to invoke the jurisdiction of this Court and this Court accepted jurisdiction on May 5, 2011.

SUMMARY OF THE ARGUMENT

The Second District erred in finding fundamental error did not occur in this case. The trial court gave an inaccurate manslaughter by act instruction, and this instruction erroneously required an intent to kill. In State v. Montgomery, 39 So. 3d 252 (Fla. 2010), this Court held that manslaughter by act does not require an intent to kill, the instruction erroneously required an intent to kill, and the reading of this erroneous instruction constituted fundamental error. The Second District failed to follow Montgomery, as the court concluded that because the jury was also instructed on manslaughter by culpable negligence, the erroneous manslaughter by act instruction did not amount to fundamental error.

Since the jury instruction in this case erroneously required an intent to kill element for manslaughter by act, the jury was left with a choice between second-degree murder or manslaughter by culpable negligence. If the jury believed Mr. Haygood had no intent to kill but had an intent to commit an act, the jury was precluded from choosing manslaughter. Because fundamental error similar to Montgomery occurred in this case, and because this fundamental error was not cured with the addition of the manslaughter by culpable negligence instruction, this Court should quash the decision of the Second District.

ARGUMENT

ISSUE

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT FUNDAMENTAL ERROR BY GIVING A FLAWED MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO GIVES AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

In this case, the trial court gave the following manslaughter instruction to the jury:

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. [The victim] is dead.
2. Jeremy Haygood intentionally caused the death of [the victim]

OR

The death of [the victim] was caused by the culpable negligence of Jeremy Haygood.

The trial court erred by giving this instruction because this instruction erroneously required an intent to kill.

In State v. Montgomery, 39 So. 3d 252, 256 (Fla. 2010), this Court held that the crime of manslaughter does not require the State to prove intent to kill. "Instead, it plainly provides that where one commits an act that results in death, and such an act is not lawfully justified or excusable, it is manslaughter." Id. at 256. This Court found that the jury instruction erroneously required an intent to kill: "We agree with the district court's

observation in Montgomery that a reasonable jury would believe that in order to convict Montgomery of manslaughter by act, it had to find that he intended to kill Ellis." Id. at 257. Further, in Montgomery, this Court held that the manslaughter by act jury instruction constituted fundamental error: "We conclude that fundamental error occurred in this case, where Montgomery was indicted and tried for first-degree murder and ultimately convicted of second-degree murder after the jury was erroneously instructed on the lesser included offense of manslaughter." Id. at 259.

Like Montgomery, the jury in this case was given this same erroneous instruction. However, in this case, the trial court gave the manslaughter by culpable negligence instruction in addition to the erroneous manslaughter by act instruction. The Second District concluded that, because the jury was also instructed on manslaughter by culpable negligence, the erroneous manslaughter by act instruction did not amount to fundamental error.

The Second District cited its decisions in Barros-Dias v. State, 41 So. 3d 370 (Fla. 2d DCA 2010) and Nieves v. State, 22 So. 3d 691 (Fla. 2d DCA 2009), as controlling precedent. In Barros-Dias, the Second District quoted Salonko v. State, 42 So. 3d 801 (Fla. 1st DCA 2010):

Although the jury found, by its second-degree murder verdict, that Appellant did not intend to kill the victim, based on the instructions given, it could have returned a verdict for

the lesser-included offense of manslaughter by culpable negligence while still honoring its finding that there was no intent to kill. Unlike in Montgomery, the jury in the instant case was not directed to choose the greater offense simply because the lesser-included offense would have improperly required a more depraved level of intent. Therefore, Appellant has not shown that fundamental error occurred under this Court's opinion in Montgomery.

Barros-Dias, 41 So. 3d at 372; see also Singh v. State, 36 So. 3d 848 (Fla. 4th DCA 2010)(same). The Second District found that the jury in this case was not forced to choose the greater offense, second-degree murder, because the jury could still have chosen to convict Mr. Haygood of manslaughter by culpable negligence. However, there is no indication in the record that either party relied on the culpable negligence portion of the manslaughter jury instruction. Therefore, the jury would not have relied on it either. Thus, the erroneous manslaughter instruction caused the jury to engage in the same problematic exercise outlined in Montgomery. See Montgomery, 39 So. 3d at 258 ("The instruction in this case, requiring the jury to find that Montgomery intended to kill Ellis, erroneously explained Florida law on manslaughter by act. Moreover, it was 'pertinent or material to what the jury must consider in order to convict.'"(citations omitted)).

The Second District's reasoning is faulty. Although the decisions in Salonko, Barros-Dias, and this case acknowledge the fact that neither second-degree murder nor manslaughter by act requires an intent to kill, these decisions ignore the intent to

commit an act requirement of these crimes. By definition, manslaughter by culpable negligence requires no intent to kill the victim and no intent to commit an act. As explained in Bolin v. State, 8 So. 3d 428 (Fla. 2d DCA 2009),

Florida law distinguishes between voluntary manslaughter, which is committed by act or procurement, and involuntary manslaughter, committed by culpable negligence. Whereas voluntary manslaughter is a crime of intent, involuntary manslaughter is not.

Id. at 430 (citing Taylor v. State, 444 So. 2d 931, 934 (Fla. 1983)).

Since the jury instruction in this case erroneously required an intent to kill element for manslaughter by act, the jury was left with a choice between second-degree murder or manslaughter by culpable negligence. If the jury believed Mr. Haygood had no intent to kill but had an intent to commit an act, the jury was precluded from choosing manslaughter.

Because the jury reached a second-degree murder verdict, it reached the conclusion that Mr. Haygood did not have the intent to kill the victim. However, second-degree murder requires an act "imminently dangerous to another and demonstrating a depraved mind without regard for human life." But the jury may have believed Mr. Haygood had the intent to commit an act (an act not "imminently dangerous to another and demonstrating a depraved mind without regard for human life") and had no intent to kill the victim. The evidence in this case supports such a finding and, moreover, was

argued as such during closing arguments. This choice would have been available had the trial court read the corrected standard instruction: "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 added.)

However, the jury was not read the revised instruction. If the jury found that Mr. Haygood did intend to commit an act but did not intend to cause the death of the victim, as Mr. Haygood explained to law enforcement, then the jury was precluded from choosing manslaughter by act under the erroneous jury instruction. The jury would also have been precluded from choosing manslaughter by culpable negligence, as the instruction required no intent to kill and no intent to commit an act. Only if the jury believed Mr. Haygood had no intent to kill and no intent to commit an act could the jury have chosen the manslaughter by culpable negligence.

In this case, the majority also mentioned the jury's inherent "pardon power," the jury's "ability to convict a defendant of a lesser offense even though there is evidence supporting the greater one." Id. at 1037 (citing Sanders v. State, 946 So. 2d 953, 957-58 (Fla. 2006)). However, Judge Altenbernd noted that he was "not convinced that 'pardon power' analysis is the best approach to this particular problem." Id. at 1038. In Montgomery, this Court mentioned Pena v. State, 901 So. 2d 781 (Fla. 2005), for comparative purposes only. The error in this case, like the

error in Montgomery, is not fundamental because it deprived the jury of its pardon power; the error in this case remains fundamental because it erroneously required an intent to kill for manslaughter by act. This error remains fundamental because it effectively forced the jury to return a verdict of second-degree murder. Fundamental error occurred because the jury was not properly instructed on the law, not because it was denied its pardon power. Only with a correct instruction on the law can a jury perform its fact-finding duties.

The standard of review in this case is de novo. See State v. Glatzmayer, 789 So. 2d 297, 301 n.7 (Fla. 2001)("If the ruling consists of a pure question of law, the ruling is subject to a de novo review.").

The Second District erred by concluding that giving the culpable negligence portion of the manslaughter instruction cures the fundamental nature of the error outlined in Montgomery. The jury in this case was in the same posture as the Montgomery jury. In Montgomery, this Court held that Montgomery was "entitled to an accurate instruction on the lesser included offense of manslaughter." Likewise, Mr. Haygood was entitled to an accurate jury instruction. The error is fundamental because the error "is pertinent or material to what the jury must consider to convict." State v. Delva, 575 So. 2d 643 (Fla. 1991)(quoting Stewart v. State, 420 So. 2d 862 (Fla. 1982)). Judge Altenbernd noted below that he "fail[ed] to see the logic by which a fundamental error of

this kind becomes harmless merely because a jury receives an alternative instruction that has little or no application to the evidence presented at trial." Haygood, 54 So. 3d at 1038 (Altenbernd, J., specially concurring in part and dissenting in part).

Mr. Haygood was charged with and convicted of second-degree murder. Because Mr. Haygood's conviction for second-degree murder was only one step removed from the necessarily lesser included offense of manslaughter, fundamental error occurred. See Montgomery, 39 So. 3d at 259. Because fundamental error similar to Montgomery occurred in this case, and because this fundamental error was not cured with the addition of the manslaughter by culpable negligence instruction, Mr. Haygood respectfully requests that this Court quash the decision of the Second District.

CONCLUSION

Based on the foregoing arguments and authorities, the Petitioner respectfully requests that this Court answer the certified question in the affirmative and quash the decision of the Second District.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Marilyn Muir Beccue, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of August, 2011.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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APPENDIX

1. Haygood v. State, 54 So. 3d 1035 (Fla. 2d DCA 2011)