

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BENJAMIN WASHINGTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D07-3110

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Opinion filed April 13, 2009.

An appeal from the Circuit Court for Duval County.
John M. Merrett, Judge.

Nancy A. Daniels, Public Defender, Pamela D. Presnell, Assistant Public
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Philip W. Edwards, Assistant Attorney
General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The defendant appeals his conviction, arguing that the trial court committed
fundamental error by giving a jury instruction for manslaughter by act that required
the state to prove that the defendant “intentionally caused the death” of the victim.
Based on this court’s recent decision in Montgomery v. State, 34 Fla. L. Weekly

D360 (Fla. 1st DCA Feb. 12, 2009) (question certified; conflict certified), we reverse the defendant's conviction.

In Montgomery, we held that manslaughter by act requires only an intentional unlawful act, rather than an intent to kill, and that the standard jury instruction improperly imposed an additional element for the crime of manslaughter. See id. at D362. In the instant appeal, the trial court gave the standard jury instruction for the lesser included offense of manslaughter by act, which improperly imposed the additional element of intent to kill. The instruction as provided would likely result in a misinterpretation by an average juror; therefore, this case is reversed and remanded for a new trial.

REVERSED AND REMANDED.

DAVIS, BENTON, and PADOVANO, JJ., CONCUR.