

Third District Court of Appeal

State of Florida, January Term, A.D. 2012

Opinion filed June 6, 2012.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1629
Lower Tribunal No. 07-34029

Wade Davis,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Yvonne Colodny, Judge.

Carlos J. Martinez, Public Defender, Eleventh Judicial Circuit, and Melissa Del Valle, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Lunar Claire Alvey, Assistant Attorney General, for appellee.

Before SALTER and FERNANDEZ, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

Davis was charged with and convicted of attempted premeditated murder and now appeals. We reverse for a new trial because of two fundamental errors in the jury instructions:

1. The court omitted entirely any definition of “excusable homicide.” See *State v. Lucas*, 645 So. 2d 425 (Fla. 1994); *Rojas v. State*, 552 So. 2d 914 (Fla. 1989); *Richardson v. State*, 818 So. 2d 679 (Fla. 3d DCA 2002).
2. The charge on attempted voluntary manslaughter as a lesser included offense required an intent to kill, which, as we have held in *Coiscou v. State*, 43 So. 3d 123 (Fla. 3d DCA 2010), and *Bass v. State*, 45 So. 3d 970 (Fla. 3d DCA 2010), is per se reversible error. On this point, we certify conflict with *Williams v. State*, 40 So. 3d 72 (Fla. 4th DCA 2010), review granted, 64 So. 3d 1262 (Fla. 2011).

Reversed and remanded for a new trial.