

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

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

ANTONIO SIMMONS,

Appellant,

v.

CASE NO. 1D08-5316

STATE OF FLORIDA,

Appellee.

Opinion filed April 26, 2010.

An appeal from the Circuit Court for Duval County.
Mark H. Mahon, Judge.

Nancy A. Daniels, Public Defender, and M. Gene Stephens, Assistant Public
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Brooke Poland, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

In *State v. Montgomery*, 35 Fla. L. Weekly S204, S205 (Fla. Apr. 8, 2010),
in which the defendant was convicted of second-degree murder, the Florida
Supreme Court held it was fundamental error to give the standard jury instruction

for manslaughter by act as a lesser-included offense of second-degree murder because the manslaughter instruction improperly required the state to prove the defendant intentionally caused the death of the victim while the instruction for second-degree murder did not. Because this case is indistinguishable from *Montgomery*, we REVERSE and REMAND.

WOLF, LEWIS, and MARSTILLER, JJ., CONCUR.