

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

QUENTIN LAMAR JOYNER,
Appellant,

v.

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

CASE NO. 1D09-2744

STATE OF FLORIDA,
Appellee.

/

Opinion filed July 7, 2010.

An appeal from the Circuit Court for Duval County.
Elizabeth A. Senterfitt, Judge.

Nancy A. Daniels, Public Defender, and William C. McLain, Assistant Public Defender, for Appellant.

Bill McCollum, Attorney General, and Charlie McCoy, Assistant Attorney General, for Appellee.

CLARK, J.

Quentin Lamar Joyner challenges his conviction for second-degree murder as charged. Appellant argues that the trial court's use of the standard jury instruction for the lesser included offense of manslaughter by act constituted fundamental error and requires reversal of his conviction of the charged offense.

He relies on Montgomery v. State, ___ So. 3d ___, 35 Fla. L. Weekly S204, 2010

WL 1372701 (Fla. Apr. 8, 2010), approving Montgomery v. State, ___ So. 2d ___, 34 Fla. L. Weekly D360, 2009 WL 350624 (Fla. 1st DCA Feb. 12, 2009).

This case is distinguishable from Montgomery v. State because Joyner was convicted as charged, rather than for one of the lesser included offenses.

In addition, the jury instructions given in this case included an instruction on manslaughter by culpable negligence. As was the case in Salonko v. State, ___ So. 3d ___, 35 Fla. L. Weekly D376, 2010 WL 480844 (Fla. 1st DCA Feb. 12, 2010), the instruction on manslaughter by culpable negligence gave the jury to option of finding the appellant guilty of a lesser included offense which did not require an intent to kill. Accordingly, the erroneous manslaughter instruction here “did not interfere with the jury’s deliberative process in a way that tainted the underlying fairness of the entire proceeding” and was thus not fundamental error. Salonko v. State, 2010 WL 480844, *2.

The fundamental error doctrine is to be applied “only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application.” Nesbitt v. State, 889 So. 2d 801, 803 (Fla. 2004); Martinez v. State, 981 So. 2d 449, 455 (Fla. 2008). To determine whether an instruction error “vitiated the ‘validity of the trial,’ courts conduct a totality of the circumstances analysis.” Croom v. State, ___ So. 3d ___, 35 Fla. L. Weekly D815, 2010 WL 1407320, *2 (Fla. 1st DCA April 9, 2010) (quoting Garzon v.

State, 980 So. 2d 1038, 1043 (Fla. 2008)). Appellate courts are constrained to exercise their discretion concerning fundamental error “very guardedly” and “only in rare cases.” Fike v. State, 4 So. 3d 734, 739 (Fla. 5th DCA 2009).

Finally, this case can be distinguished from Montgomery because the defense not only failed to object to the standard jury instruction on manslaughter, he specifically agreed to that instruction at the charging conference and incorporated the instruction into his closing argument to the jury. This court’s recent opinion in Calloway v. State, ___ So. 3d ___, 35 Fla. L. Weekly D963, 2010 WL 1709195 (Fla. 1st DCA Apr. 29, 2010) recognized that where defense counsel agrees to a standard jury instruction and then challenges the conviction based upon fundamental error in that instruction, reversal would have the unintended consequence of encouraging defense counsel to “stand mute and, if necessary, agree to an erroneous instruction” or sacrifice his client’s opportunity for a second trial. Encouraging counsel to invite such error subverts the trial process and is counter to the interests of justice.

Because this case is distinguishable from Montgomery, and because the totality of the circumstances does not establish the rare situation where the erroneous standard instruction vitiated the validity of the entire trial proceedings on the charge of second degree murder, the conviction is AFFIRMED.

HAWKES, C.J., and VAN NORTWICK, J., CONCUR.