

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2009

MARK A. AQUINO,

Appellant,

v.

Case No. 5D07-3249

STATE OF FLORIDA,

Appellee.

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Opinion filed February 13, 2009

Appeal from the Circuit Court  
for Orange County,  
Lisa T. Munyon, Judge.

James S. Purdy, Public Defender, and  
Kevin R. Holtz, Assistant Public Defender,  
Daytona Beach, for Appellant.

Bill McCollum, Attorney General, Tallahassee,  
and Douglas T. Squire, Assistant Attorney  
General, Daytona Beach, for Appellee.

PER CURIAM.

Appellant, Mark A. Aquino ["Aquino"], was charged and tried on charges of first-degree murder and accessory after the fact to first-degree murder. During trial, he contended that the evidence was inadequate to prove accessory after the fact to first-degree murder and requested an instruction on accessory after the fact to aggravated battery as a lesser included offense. The trial court denied his motion for judgment of acquittal, but gave the requested instruction, as well as instructions on additional lesser included offenses. The jury acquitted Aquino on the first-degree murder charge and

found him guilty of accessory after the fact to first-degree murder. We agree that the evidence admitted at trial was insufficient to support the accessory-to-murder conviction, but the evidence is ample to support a conviction of accessory after the fact to aggravated battery. We order the judgment be amended accordingly and that Aquino be resentenced in accordance with the amended judgment of conviction of accessory after the fact to aggravated battery.

REVERSED and REMANDED.

GRIFFIN, ORFINGER and COHEN, J., concur.