

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Mayque Gomez Marin v. State of Florida

No. 3D23-1994 (Fla. 3d DCA Feb. 11, 2026) · No. 3D23-1994 · Decided February 11, 2026

SUMMARY

The Third District Court of Appeal of Florida affirmed Mayque Gomez Marin’s convictions for manslaughter with a firearm and attempted second-degree murder with a firearm causing great bodily harm. The court held that the trial court’s failure to define “depraved mind” and omission of a heat-of-passion instruction did not constitute fundamental error. The court reversed the \$15,000 legal services fee because it was imposed without an adequate factual basis, notice, or an opportunity for an evidentiary hearing, and remanded for further proceedings.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	GOODEN, J.; LINDSEY, J.; GORDO, J.
JURISDICTION	Third District Court of Appeal of Florida
DECIDED	February 11, 2026
DOCKET	3D23-1994
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct criminal appeal from convictions for manslaughter with a firearm and attempted second-degree murder with a firearm causing great bodily harm, consecutive sentences, and imposition of a \$15,000 legal services fee.
STANDARD OF REVIEW	De novo review applied to the fundamental-error jury-instruction issue, statutory-interpretation issue, and motion to correct sentencing error.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Mayque Gomez Marin v. State of Florida

TOPICS

- jury instructions
- criminal procedure
- preservation of error
- sentencing
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court committed fundamental error by failing to define depraved mind in the attempted second-degree-murder instruction.
2. Whether the trial court committed fundamental error by omitting the heat-of-passion and provocation defense instruction.
3. Whether the trial court lawfully imposed a \$15,000 legal services fee without a factual showing of higher fees, notice of the right to contest the fee, or an evidentiary hearing.

HOLDINGS

1. The omission did not constitute fundamental error because the term was not required to be separately defined absent a request or objection, and the jury instructions considered as a whole adequately guided the jury.
2. The omission did not constitute fundamental error because the omitted instruction concerned a defense rather than an essential element of the charged offense, and an objection was required to preserve the issue.
3. The trial court erred by imposing a \$15,000 legal services fee without sufficient proof of fees or costs incurred, a factual basis, adequate notice, and an opportunity for Gomez Marin to contest the fee.

KEY QUOTATIONS

“The Florida Supreme Court has ruled that such an omission is not fundamental error.” (at 9)

“This was truly arbitrary and contrary to section 938.29, Florida Statutes.” (at 14)

“Affirmed, in part; Reversed, in part, and remanded with instructions.” (at 15)

FACTUAL BACKGROUND

Gomez Marin and his brother approached a group at a fishery after arriving on a moped. Witnesses testified that both brothers displayed guns, that the brother pulled Noa into a shed, and that Gomez Marin shot Noa, severely injuring him; a second shot killed Clemente, although witnesses could not identify which brother fired it. Gomez Marin testified that Noa and his brother fought over a car, that Noa obtained the brother's gun, and that Gomez Marin shot Noa because he feared Noa was about to shoot him. The trial court omitted the standard definitions of depraved mind and heat-of-passion provocation from the jury instructions and later imposed a \$15,000 legal services fee based on a standard administrative fee rather than documented time and costs.

PROCEDURAL HISTORY

Gomez Marin was charged with second-degree murder with a firearm and attempted second-degree murder with a firearm. After the cases were severed, his case proceeded to trial on defenses of self-defense and defense of others. The jury convicted him of the lesser included offense of manslaughter with a firearm and attempted second-degree murder with a firearm causing great bodily harm; the trial court imposed consecutive sentences

and a \$15,000 legal services fee. The appellate court affirmed the convictions but reversed the fee and denial of Gomez Marin's Florida Rule of Criminal Procedure 3.800(b) motion, remanding for reduction of the lien or notice and an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must either reduce the legal services lien to the statutory minimum or provide Gomez Marin with adequate notice and an evidentiary hearing concerning any amount above the minimum. The convictions are affirmed.

CASES CITED

- State v. Smith, 241 So. 3d 53, 55 (Fla. 2018)
- Cotto v. State, 139 So. 3d 283, 286 (Fla. 2014)
- McMath v. State, 409 So. 3d 1271, 1276 (Fla. 1st DCA 2025)
- Gerds v. State, 64 So. 2d 915, 916 (Fla. 1953)
- State v. Delva, 575 So. 2d 643, 644-45 (Fla. 1991)
- Castor v. State, 365 So. 2d 701, 703 (Fla. 1978)
- Brown v. State, 124 So. 2d 481, 484 (Fla. 1960)
- Sanford v. Rubin, 237 So. 2d 134, 137 (Fla. 1970)
- Hamilton v. State, 88 So. 2d 606, 607 (Fla. 1956)
- Stewart v. State, 420 So. 2d 862, 863 (Fla. 1982)
- Garzon v. State, 980 So. 2d 1038, 1042 (Fla. 2008)
- Farina v. State, 937 So. 2d 612, 629 (Fla. 2006)
- State v. Florida, 894 So. 2d 941, 945-46 (Fla. 2005)
- Valdes v. State, 3 So. 3d 1067 (Fla. 2009)
- Mohammed v. State, 309 So. 3d 269, 274 (Fla. 5th DCA 2020)
- Bryan v. State, 287 So. 2d 73, 75-76 (Fla. 1973)
- Johnson v. State, 252 So. 2d 361, 364 (Fla. 1971)
- Driver v. State, 46 So. 2d 718, 720 (Fla. 1950)
- Baston v. Shelton, 13 So. 2d 453, 456 (Fla. 1943)
- Floyd v. State, 186 So. 3d 1013, 1018-19 (Fla. 2016)
- Whidden v. State, 59 So. 561, 561 (Fla. 1912)
- Rivers v. State, 78 So. 343, 345 (Fla. 1918)
- Disney v. State, 73 So. 598, 601 (Fla. 1916)
- Villella v. State, 833 So. 2d 192, 195 (Fla. 5th DCA 2002)

- Taylor v. State, 316 So. 3d 420, 427 (Fla. 1st DCA 2021)
- Smith v. State, 521 So. 2d 106, 108 (Fla. 1988)
- Sochor v. State, 619 So. 2d 285, 290 (Fla. 1993)
- Bridges v. State, 878 So. 2d 483, 484 (Fla. 4th DCA 2004)
- R.R. v. State, 956 So. 2d 557, 558 (Fla. 5th DCA 2007)
- Williams v. State, 207 So. 3d 1029 (Fla. 1st DCA 2017)
- Taylor v. State, 352 So. 3d 346, 348 (Fla. 4th DCA 2022)

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