

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Emmanuel Dumay v. State of Florida

No. 3D23-1819, Third District Court of Appeal of Florida (October 8, 2025)

SUMMARY

The Third District Court of Appeal of Florida affirmed Emmanuel Dumay’s convictions and sentences for two counts of attempted second-degree murder. The court held that the trial court’s failure to give an unrequested instruction on justifiable and excusable attempted homicide was not fundamental error because Dumay neither raised those defenses at trial nor presented evidence supporting them.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Chief Judge SCALES; Judge LINDSEY; Judge MILLER
JURISDICTION	Third District Court of Appeal of Florida
DECIDED	October 8, 2025
DOCKET	3D23-1819
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dumay appealed his convictions and sentences for two counts of attempted second-degree murder from the Circuit Court for Miami-Dade County.
STANDARD OF REVIEW	The court reviewed the unpreserved jury-instruction claim for fundamental error.
PRECEDENTIAL VALUE	Published
PARTIES	Emmanuel Dumay v. State of Florida

TOPICS

- jury instructions
- instructions objections
- criminal procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the trial court committed fundamental error by failing to give the Introduction to Attempted Homicide instruction concerning justifiable and excusable attempted homicide when Dumay neither raised those defenses at trial nor presented evidence supporting them.

HOLDINGS

1. The trial court's failure to give the Introduction to Attempted Homicide instruction as to defenses that were neither raised at trial nor supported by the evidence did not constitute fundamental error.

KEY QUOTATIONS

“On this record, where (i) there was no error in the jury instruction for the offenses of conviction (two counts of attempted second-degree murder), and (ii) Dumay makes no claim that the trial evidence was insufficient to support those convictions, we conclude that the trial court’s failure to give the Introduction to Attempted Homicide instruction as to defenses neither raised at trial nor supported by the trial evidence did not constitute fundamental error.” (at 2)

FACTUAL BACKGROUND

Dumay was convicted of two counts of attempted second-degree murder based on evidence that he shot a firearm toward the victims. He did not raise a defense at trial that the shootings were justified or excused, and the trial evidence did not support either defense. He did not challenge the sufficiency of the evidence supporting the convictions.

PROCEDURAL HISTORY

The trial court entered convictions and sentences on two counts of attempted second-degree murder. On appeal, Dumay argued that the trial court committed fundamental error by failing to instruct the jury on justifiable and excusable attempted homicide. The Third District Court of Appeal rejected the argument and affirmed.

DISPOSITION

affirmed

CASES CITED

- Mohammed v. State, 309 So. 3d 269, 274-75 (Fla. 5th DCA 2020)
- Knight v. State, 286 So. 3d 147, 151, 154 (Fla. 2019)
- Sochor v. State, 629 So. 2d 295 (Fla. 1993)
- State v. Spencer, 216 So. 3d 481 (Fla. 2017)
- Stewart v. State, 420 So. 2d 862 (Fla. 1982)
- Melendez v. State, 325 So. 3d 114, 115 (Fla. 5th DCA 2020)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed October 8, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D23-1819 Lower Tribunal No. F21-7161 _____ Emmanuel Dumay, Appellant, vs. State of Florida, Appellee. An Appeal from the Circuit Court for Miami-Dade County, Teresa Mary Pooler, Judge.

Carlos J. Martinez, Public Defender, and Nicholas A. Lynch, Assistant Public Defender, for appellant. James Uthmeier, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee. Before SCALES, C.J., and LINDSEY and MILLER, JJ. PER CURIAM. Emmanuel Dumay appeals his convictions and sentences for two counts of attempted second-degree murder.

Dumay claims that the trial court committed fundamental error by failing to instruct the jury on justifiable and excusable attempted homicide. See Fla. Std. Jury Instr. (Crim.) 6.1 (setting forth the Introduction to Attempted Homicide instruction). Dumay, though, raised no defense below that his shooting of a firearm toward the victims was either justified or excused – indeed, the trial evidence did not support either defense.

As our sister court has explained, the Introduction to Attempted Homicide instruction relates to a defense against the charge of attempted second-degree murder, not to an element of the crime. See *Mohammed v. State*, 309 So. 3d 269, 274 (Fla. 5th DCA 2020).

On this record, where (i) there was no error in the jury instruction for the offenses of conviction (two counts of attempted second-degree murder), and (ii) Dumay makes no claim that the trial evidence was insufficient to support those convictions,¹ we conclude that the trial court’s failure to give the Introduction to Attempted Homicide instruction as to defenses neither raised at trial nor supported by the trial evidence did not constitute fundamental error.

See e.g. *id.* at 275 ¹ See *Knight v. State*, 286 So. 3d 147, 151 (Fla. 2019). ² (citing *Sochor v. State*, 629 So. 2d 295 (Fla. 1993), and concluding that “we are bound by *Sochor*’s holding that a failure to issue an unrequested defense instruction is not fundamental error”) (footnote omitted).² Affirmed. ² Dumay urges this Court to apply the fundamental error analysis set forth in *State v. Spencer*, 216 So.

3d 481 (Fla. 2017). In *Knight*, however, the Florida Supreme Court receded from (i) its “precedent where a finding of fundamental error was predicated on Florida’s jury pardon doctrine,” and (ii) its “precedent applying the fundamental error analysis of *Stewart v. State*, 420 So. 2d 862 (Fla. 1982), outside the context of erroneous jury instructions on the offense of conviction.” *Knight*, 286 So.

3d at 154. “*Spencer* falls into this category of cases” with respect to convictions for attempted second- degree murder. *Melendez v. State*, 325 So. 3d 114, 115 (Fla. 5th DCA 2020). ³