

We now move to the final case on today's docket, Williams versus the state of Florida.

>> May it please the court.

I'm sorry.

>> Please proceed.

>> Thank you.

I am Margaret Natale and I represent the petitioner, Amos Williams.

Mr. Williams was charged with attempted first-degree murder. He was convicted of attempted second-degree murder.

The jury instruction on the attempted voluntary manslaughter red committed an act which was intended to cause the death of the victim and would have resulted in death except he did not succeed.

So, the jury was instructed that in order to find for voluntary manslaughter, there had to be an intent to cause the death.

In Montgomery this court unanimously decided that it was an error to instruct the jury that there was an intent to cause death and manslaughter. It's just a natural progression of this court's decision in Montgomery that the same logic should apply to the attempted manslaughter act.

Four out of the five district courts of appeal have held that its fundamental error to give the same instruction that was used in this case.

The fundamental error in this case because when the jury is not properly instructed on the next lower crime, it's impossible to determine if the jury properly instructed would have found the defendant else he of that crime.

And here.

>> Would you describe the facts of this crime?

>> It was stabbings, multiple stabbings in the leg, the chest, I think the arm and the face. Over a period of a couple of

hours it seems like, he followed her outside.

He drug her back inside and finally the police arrived.

So anyway, its fundamental error also because this court has decided that when something is pertinent or material to what the jury must consider in order to convict its fundamental and in this case the intent was a disputed element at trial.

The defense argued there was no intent to kill.

The prosecution obviously argued there was an intent to kill.

Because the jury, because the jury was not constructed properly instructed properly on the attempted manslaughter, we don't no, we are not able, they were not able to test really, the verdict for attempted second-degree murder was the proper outcome that they wanted.

Obviously they ruled out an intent to kill or at least a premeditated intent to kill because they didn't find him guilty of attempted first-degree murder.

The only alternative they had available just like in Montgomery, was where there was no intent, really was second-degree and possibly aggravated battery.

>> Every other court -- Court of Appeal other than the fourth district has ruled the way you are advocating.

And I was trying to understand their reasoning of the court in this case about how Montgomery does not compel the same result. Could you address anything that you would say is a fallacy in their reasoning?

>> Well, the Fourth District seem to say that the intent was to commit an act.

They interpreted the way the jury instruction was that they said intent to commit an act and it didn't say an intent to cause

death.

I am not sure how they arrived at that conclusion because.

>> When we adopted the original instructions and again it's unfortunate that the court may have contributed to these various errors, because I think everyone always knew that intent to kill wasn't going to be part of manslaughter.

Some intentional act was required so again the issue here is that they were given an instruction that said intent to kill.

>> Yes, definitely.

>> Perhaps this is a framing question but, if the general crime requires a specific intent, that logic follows that the it attempted to require specific intent.

>> Yes, we found that in Gentry.

>> Gentry, 1983 and it seems to be the case here so I don't follow the fourth district's reasoning in saying there is a difference between a completed crime and attempts.

>> I did not follow any either, honestly.

>> Like I said, it was a friendly question.

>> If I could find Williams, just a minute.

What they said in Williams and I will just read it to you and you can make your own interpretation was that an intent to kill, the error of instructing the jury that an attempt to kill is an element of manslaughter does not exist when instructing the jury that the defendant committed an act which was intended to cause the death of the victim.

Then they said as the Second District explained you cannot commit an unintentional act and they cite Hall -- you misinterpreted us in Hall because you found there was an intent to kill.

So, the Fourth District also

reason this may explain why the Supreme Court has not amended the manslaughter instruction even though it has twice admitted the amended -- the Supreme Court has amended the manslaughter so there is a proposal before the court for an attempted manslaughter by act of instruction which would eliminate the intent to kill. So, that was the reasoning and the decision.

And I think at least part of that has been shown to be faulty reasoning.

Are there any questions?

If not, I will save the rest for rebuttal.

Thank you.

>> Good morning.

May it please the court.

I am Melanie Surber.

I am here on behalf of the state.

In this case the fourth DCA certify to questions.

The first one was does the standard jury instruction on attempted manslaughter constitute fundamental error?

I submit the Fourth DCA is correct and the answer is no.

The second question is attempted manslaughter a viable offense in light of state v. monger me.

Montgomery does not apply.

We must look at this court's prior precedent.

It's been cited in the briefs but it hasn't been discussed yet.

This court's 1983 case in State v. Taylor specifically talks about the crime of attempted manslaughter and how it was commended and what we need to prove.

I would submit that case talk about the requisite intent, not just the intent to do the act, it was the act in that case was the shooting.

In this 1983 this court said in Taylor that showed an intent to

kill for attempted manslaughter so I think we need to look at that precedent.

That hasn't been discussed with respect to this instruction.

>> Did Montgomery clear that up?

>> My argument is, and this will get back to the specific versus the general intent we were talking about.

Montgomery did clear it up for the completed offense and while I understand the reasoning of Gentry I would point to the language in Gentry would specifically explain explained the rationale was that had a death occurred, the defendant could be prosecuted for second-degree murder.

There is no good reason to reward the defendant simply because that death did not result and I can take it further.

There is no other crime that would have covered and attempted second-degree murder except for taking the rationale that there would be a reward for not having a crime.

When you look at what happened in an attempted manslaughter case, if you make the jury instruction intend to commit the stabbing, that may have resulted in the death except it didn't happen, it's going to be nothing more than the aggravated battery instruction that was in fact given in this case and the defense argued it was an aggravated battery.

That is the problem.

The attempted manslaughter in applying Montgomery to the attempted manslaughter you will subsume that into an aggravated battery and there are some issues with felony offenses.

>> Let me make sure I understand.

You are saying that for attempted manslaughter, it has to be an intent to kill?

>> Yes.

>> How is that different from attempted first-degree murder?

>> Doesn't it rise to the level of culpability.

It's not a premeditated design and I think that is when we get into the discussion about the history of the levels of the offenses in the level of culpability.

Attempted first-degree murder has a premeditated design with the intent to kill.

>> The premeditated design could be formed a moment before.

Is a fully formed intent, so is somehow the intent for attempted manslaughter going to be, how is that going to be differentiated from the content for attempted first-degree murder?

>> Exactly as it has always been differentiated, by using the heat of passion example.

It's the circumstances of the crime that defined that intent I think you, the intent to kill and how it becomes a premeditated design of attempted first-degree murder case.

We will just call it an attempted heat of passion case to distinguish the term manslaughter.

[INAUDIBLE]

>> Heat of passion has always been recognized as a voluntary manslaughter.

Second-degree is the depravity, the indifference which I think is where we get lost in second-degree murder was specifically addressed in Gentry, specifically how it would reward the defendant.

>> Let me see if I can understand what you are actually arguing here.

Are you actually saying that there is no attempted manslaughter?

>> If we apply Montgomery, because the jury instruction would have to be something along

the lines of the defendant intended the stabbing and it would have caused death but it didn't.

It's really how it comes in the simplest terms.

That is going to be nothing more than aggravated battery which was given in that case.

Its illogical conclusion.

>> Is attempted manslaughter the same degree crime as attempted, not attempted but as aggravated battery?

>> That is exactly what I was going to get to next.

Going through with the offense levels, starting at attempted first-degree murder, it's a first-degree felony.

Attempted second-degree murder is a second-degree felony.

Attempted manslaughter is a third-degree felony and aggravated battery is a second-degree felony which therein lies the problem because using the Montgomery analysis to apply to an attempt of manslaughter instruction, that would be the detriment of defendants.

They don't get the third-degree felony and a longer.

>> But, he was convicted of attempted second-degree murder which is a felony?

>> That would be a second-degree felony.

>> Okay, and then attempted, not attempted -- Aggravated battery.

A second-degree felony so you still end up with no next removed from.

>> Exactly, there would be no instruction.

It would be the same instruction for two crimes.

Attempted manslaughter.

The instructions if you lay them side-by-side for the attempts would be the same.

So to the detriment of the defendant without having the

intent to kill heat of passion  
style manslaughter --

>> Except the jury would be  
instructed with the attempted  
manslaughter that this is in  
fact a third-degree felony,  
correct?

>> I don't believe that was  
instructed in this case  
regarding the degrees of the  
felony.

The lesser-included crimes are  
instructed as attempted  
second-degree murder without --  
it defines what second-degree  
murder would be and then to  
prove the crime of attempted  
voluntary manslaughter and then  
battery.

>> Was tried for attempted  
first-degree murder.

The next lesser included  
offenses are attempted  
second-degree murder and  
aggravated?

>> Not the way the verdict form  
reads.

I understand.

Putting them side-by-side is  
where I think logically we have  
to think of the logical  
application of Montgomery to  
these cases.

The jury is instructed in the  
order of attempted first-degree,  
attempted second-degree and  
attempted voluntary, attempted  
manslaughter by acts.

>> Which is third-degree.

>> Which is third-degree and  
below they are instructed on  
aggravated battery with a weapon  
which could cause death or great  
bodily harm.

Yes, which is second-degree.

And I double checked the  
statutes to make sure before he  
came in here and that is how it  
breaks down.

Things may change when there is  
a firearm involved but then it  
would just elevate aggravated  
battery and attempted  
manslaughter to the same degree.  
They would both be second-degree

felonies.

>> If you have battery from attempted manslaughter, I know they both end up being the same. You are saying in this portion, you are -- it's not the same felony?

>> Have any of the other District Court's addressed these issues?

You are talking about it is same as aggravated battery.

>> No one looking at the facts of the case and frankly looking at the fundamental error analysis that is how I came to, even if we applied Montgomery in this case it would be almost impossible to be fundamental error because the instruction the defendant saying he didn't get or should've gotten he did get if Montgomery applies because the aggravated battery instruction states exactly what Montgomery says.

That is why I don't think Montgomery needs to be changed or overruled for this case or looked at.

This court just need to look at its prior precedent.

There may be some inartful phrasing regarding the intent to kill or the intent to do the act.

>> Is your argument the basis of the Fourth ruling?

>> I think it is.

The Fourth did note the difference between the manslaughter completed crime and the attempted crime.

And I recognize that Gentry exists regarding second-degree murder but I think based on the rationale in Gentry that this court didn't want to report the defendant by doing away with the crime.

In this case, if we don't tailor the instruction to the actual crime that was committed, the defendant to the detriment of the defendant in some cases it

will be third-degree felony.

There will be no attempted  
manslaughter if we apply  
Montgomery.

There would be nothing more than  
argument and battery.

>> What is the battery  
instruction given in this case?

>> To prove the crime of  
aggravated battery the state  
must remove the elements beyond  
a reasonable doubt.

The first element is a  
definition of battery.

Amos Augustus Williams  
intentionally caused bodily harm  
to Samantha Lindsay.

A weapon is a deadly weapon if  
it is used or threatened to be  
used in a way likely to produce  
death or great bodily harm.

Which is exactly what one --

Montgomery put call for an  
attempted --

>> Do you recall any of the  
opinions are wrong in dealing  
with this issue?

>> To be frank, yes in the sense  
that I don't know all the facts  
of all of them, if there were  
aggravated battery instruction  
so I don't know.

If there were no aggravated  
battery instructions I think  
there may be a problem with  
failing to instruct on the crime  
required to be instructed by  
Montgomery so that may be why  
they are wrong if the facts  
allow for it.

That is why this case in  
particular is important because  
we do have the jury instructions  
laid out.

We do have an explanation of  
what these crimes are to  
determine how would Montgomery  
apply to cases which is exactly  
what Montgomery itself called  
or.

Montgomery did not say every  
error is fundamental.

It was fundamental in the case  
of Montgomery so you have to  
look at each case to determine

if it would be fundamental error in not giving the correct jury instruction.

In this case we got the correct instruction so I would submit there is no error and not so much that is not fundamental, actually complied.

For lack of a better term -- on the crime.

>> You think the instruction that was given here, the attempted manslaughter, which talks about having an intent to kill is the correct attempted manslaughter instruction?

>> Pursuant to this court's precedent for Taylor.

As I pointed out in Taylor, it's from 1983.

That was a gunshot case.

>> I am still at a loss how you can have manslaughter itself not requiring an attempt to kill.

Manslaughter by act not requiring an intent to kill but the attempted offense requiring an attempt to kill?

If you could explain that to me.

>> I would point to Montgomery itself.

In Montgomery this court said it could be inferred that there is an intent to kill.

The intent to do the act would cover both types of voluntary manslaughter and involuntary manslaughter by act, two types of manslaughter by act that have been recognized by this court for over 100 years.

Since it 1899 this court has recognized their two types of manslaughter by acts as the best way to describe it.

You would at least have to have the intent to do the act but you can infer an intent to kill and I think when you look at Taylor, this court prior to Montgomery did save the only way to commit attempted manslaughter by act was to have an intent to kill.

There is language that says there was an intent to do the

act but that language comes to paragraphs after this court said that doing of that act, it's inferred intent to kill was there by shooting point-blank that it proves the requisite intent to kill.

>> It certainly seems to me that logically speaking this manslaughter requires an act, and attempted manslaughter would certainly be an attempt to commit that act.

>> I'm not saying attempted manslaughter doesn't require the attempts to commit the act but it has to require the intent to kill in order to be convicted of it.

Otherwise Montgomery effectively would abolish the crime of attempted manslaughter by act because again logically going through the crimes as charge to the jury, it would be nothing more than aggravated battery.

I can't imagine that is the intent of Montgomery.

It looks to me Montgomery covers those types of manslaughter by act.

The intent to kill and the intent to do the act, you intended to do the act when you shot a gun or when you stabbed him in this case, we have a protracted crime of stabbing. A child was in the house and the victim was pulled back in and stabbed again.

This crime is nothing if it's not an attempted second-degree murder that the jury in this case heard everything, and they heard it -- a correct jury instruction on attempted manslaughter by act.

It's the circumstances that really define what the intent is.

I think just saying the words intent to kill don't necessarily raise it above the depravity.

I think that is what got lost in Montgomery because in Montgomery

we are dealing with completed crimes.

Now we are talking about an attempt and attempts have to be looked at differently.

>> I have a question.

If I/you with a knife, would that be an aggravated battery?

>> Yes.

>> If I slash like this would that be aggravated battery?

>> Yes.

>> It's really no intent to kill.

It's just slashing.

That is the aggravated battery but if we get into the manslaughter situation where there are multiple stabbings --

>> Aggravated battery is you do the act and in this case is defined with a deadly weapon that is likely to cause death or great bodily harm.

It's not the intent.

It's the same intent as the attempted manslaughter.

Is the exact same intent.

I struggled with it, looking through the jury instructions. How could it be different?

When you read the facts of this case and in particular Taylor which cites over 100 years of case law.

>> I think this is, and again I am struggling with what you are saying.

There seems to be a degree of permitting -- committing an act that is likely going to lead to death.

I would think of that is attempted manslaughter.

Committing an act that is likely to injure would not kill you such as slashing you.

That maybe aggravated battery.

It's one thing to stab somebody and that will likely lead to -- as opposed to slashing somebody and a fighter something.

>> Aggravated battery is defined as an act that is likely to cause death or great bodily

harm.

>> You don't have that in manslaughter.

>> It's proven both ways.

Is presented both ways so the attempted manslaughter would be likely to cause death.

That would be splitting hairs and it would seem like a repetitive jury instruction.

How could it not be subsumed?

Because there was no death.

There is no attempted aggravated battery.

Is likely to cause death or great bodily harm so it did not cause death.

>> You would be using manslaughter is a lesser in a crime where attempted murder was not charged.

As battery could be charged whether charge whether or not there is intent to kill.

>> I'm not sure I'm following what you are talking about.

I'm sorry.

>> It seems to me again, I see what you are saying.

Attempted manslaughter in this case is for crimes where there are multiple degrees of the act at such a high multiple stabbing and shooting, likely to bleed to death as opposed to an act --

I am trying to find --

>> I would say that is a distinction without the difference a difference under the definitions of crime.

If we apply a Montgomery I don't know how you could have an attempted manslaughter instruction that is not going to be subsumed in the aggravated battery instruction.

I think this court doesn't necessarily need to apply the Montgomery analysis.

I recognize that Gentry is a case that talks about the general intent.

This courts rationale didn't want to do away with a crime, didn't want to reward the

defendant because there was no crime.

Second degree murder could be subsumed in.

Now we are getting down to the third-degree third degree purposes of the verdict form. How the jury has seen them and how the cases then presented. Specifically in this case the jury instruction was not an error.

It specifically addressed the crime charged in the facts. So I would suggest that this court needs to follow its prior precedent in Taylor and the 100 years before that when this court has said attempted manslaughter is an intent to kill attempts.

If there are no further questions.

>> Why don't we start here with how you would distinguish aggravated battery with attempted manslaughter.

>> OKAY, WELL FIRST OF ALL, I NEED TO TELL YOU THAT THAT WAS NOT RAISED IN THE STATE'S ANSWER, AND NOT ARGUED BELOW. BUT --

AGGRAVATED BATTERY IS THE SECOND DEGREE FELONY.

>> ATTEMPTED MANSLAUGHTER. AN ATTEMPTED MANSLAUGHTER IS THE THIRD DEGREE, SO THAT'S --

>> HOW WOULD THE JURY INSTRUCTIONS ON THE TWO CRIMES DIFFER?

>> BECAUSE AS I UNDERSTAND THE STATE'S ARGUMENT IS THAT WHAT YOU WOULD BE TELLING THE JURY WHEN ATTEMPTED, FOR AN AGGRAVATED BATTERY WOULD BE THE SAME THING THAT YOU WOULD TELL THE JURY FOR AN ATTEMPTED MANSLAUGHTER.

>> TO SOME DEGREE THAT IS TRUE. BUT THAT DOESN'T -- THE ERROR OCCURRED BECAUSE THE JURY WASN'T INSTRUCTED ON THE NEXT LESSER CRIME WHICH IS ATTEMPTED VOLUNTARY MANSLAUGHTER SO GIVEN TO SECOND DEGREE

FELONIES DOESN'T CLEAR THE AIR  
ON THE NEXT LESSER CRIME.  
>> IT MAY BE BECAUSE I WASN'T  
RAISED BUT WE'VE GOT TO GET IF  
RIGHT HERE, AND WE'VE GOT YOUR  
INSTRUCTIONS BEFORE US.  
THAT THEY'LL BE CHANGED OR  
REMAIN THE SAME.  
HELD OFF ON THAT UNTIL THIS CASE  
WAS DECIDED.  
BUT THE ELEMENTS OF CRIMES HAVE  
TO BE DIFFERENT --  
YOU WOULD AGREE?  
>> SO THE QUESTION THAT WAS  
RAISED IS AND WHAT JUSTICE ASKED  
OR SHE GOT AN ANSWER IS  
AGGRAVATED BATTERY IN ATTEMPTED  
MANSLAUGHTER, WHERE IS IF ONE  
DOESN'T HAVE -- IF THEY BOTH  
JUST NEED AN INTENT TO DO AN  
ACT, OR ARE THEY DIFFERENT?  
>> OKAY.  
AGGRAVATED BATTERY REQUIRES  
SERIOUS BODILY INJURY.  
AND ATTEMPTED MANSLAUGHTER DOES  
NOT.  
>> THAT'S ONE DIFFERENCE I CAN  
THINK OF.  
>> WELL SOUNDS LIKE THE  
AGGRAVATED BATTERY THEN WOULD BE  
THE GREATER OFFENSE, AND IT'S  
NOT.  
>> IT'S NOT.  
IT'S AGGRAVATED BATTERY IS TO  
GREATER OFFENSE, ISN'T IT?  
>> BETWEEN THE TWO.  
>> THE ATTEMPTED MANSLAUGHTER.  
IT IS.  
>> WHAT'S THE NEXT?  
>> I THOUGHT IT WAS AFTER  
ATTEMPTED MANSLAUGHTER.  
>> THAT'S WAY THE JURY WAS  
GIVEN THAT.  
BUT IN REALITY, IT'S NOT THE  
LESSER OF ATTEMPTED VOLUNTARY  
MANSLAUGHTER THAT IS THE THIRD  
DEGREE FELONY.  
ATTEMPTED --  
AGGRAVATED BATTERY IS A SECOND  
DEGREE FELONY.  
>> BECAUSE THEY WERE COLLECTLY  
INSTRUCTED ON AGGRAVATED BATTERY  
IS THAT THE ARGUMENT?  
THAT WE NOW HAVE --  
GIVEN A CORRECT INSTRUCTION ON

AGGRAVATED BATTERY.

>> SHE SAYS THAT THAT NEGATES  
THE ERROR IN THE ATTEMPTED  
VOLUNTARY MANSLAUGHTER.

BECAUSE IT DOESN'T BECAUSE THE  
JURY WAS NOT GIVEN THE NEXT  
LESSER DOWN FROM SECOND-DEGREE  
MURDER.

>> BECAUSE THE AGGRAVATED  
BATTERY IS THE SAME DEGREE --  
AS THE CONVICTION IN THE  
ATTEMPTED VOLUNTARY MANSLAUGHTER  
IS A THIRD DEGREE.

>> RIGHT.

>> SO ALL OF THIS IS DRIVEN BY  
THE JURY PARDON.

NO CREDIBLE.

SEEMS TO ME THE FACTS HERE THERE  
WAS NO WAY THAT WAS AN ATTEMPTED  
MANSLAUGHTER WITH STABBING HER  
MULTIPLE TIMES THAT SEEMS TO  
BE -- IF THE NOTION THAT THAT  
COULD HAVE ACTUALLY DESCRIBE  
WHAT HAPPENED HERE.

IF THAT IS FENCIBLE.

SO ALL DRIVEN BY THE JURY  
PARDON; RIGHT?

>> NOT COMPLETELY, NO.

BECAUSE THE JURY PARDON WAS  
DRIVEN BY THAT THEY HAVE TO BE  
INSTRUCTED ON THE NEXT LESSER.  
I JUST THINK THEY HAVE TO BE  
INSTRUCTED ON THE NEXT LESSER SO  
THAT THEY CAN DETERMINE ALL OF  
THE ELEMENTS IN THE HOMICIDE  
CRIMES ON ATTEMPTED HOMICIDE IN  
THIS CASE.

TO DETERMINE WHICH ONE THEY  
THINK FITS THE BEST.

AND SO THE FACT THAT THEY  
WEREN'T GIVEN A CORRECT  
INSTRUCTION ON THE ATTEMPTED  
VOLUNTARY MANSLAUGHTER, THE JURY  
WASN'T ABLE TO PROPERLY CONSIDER  
WHICH HOMICIDE -- ATTEMPTED  
HOMICIDE OFFENSE THEY THOUGHT  
FIT THE BILL.

>> I NODE TO ADDRESS THIS.

THIS COURT HAS FOUND THAT THERE  
IS ATTEMPTED MANSLAUGHTER BY ACT  
IN TAYLOR.

POSING COUNSEL DISCUSSED AN  
INTEND TO KILL.

TRUE ENOUGH TAYLOR DOES MENTION  
INTENT TO KILL IN THE BODY OF

IT.

BUT WHEN IT GETS DOWN TO THE HOLDING, IT HOLDS THAT WE VERDICT FOR VOLUNTARY MANSLAUGHTER CAN BE RENDERED ONLY IF THERE'S PROOF THAT THE DEFENDANT HAD THE INTENT TO COMMIT AN UNLAWFUL ACT.

LATER IN BROWN, THIS COURSE -- COURT AGAIN ADDRESSED IT IN TALKED ABOUT THE TAYLOR.

AND BROWN HELD THAT STRESS, THE ATTEMPTED MANSLAUGHTER BY ACT REQUIRED AN INTENT TO COMMIT AN UNLAWFUL ACT.

SO GOING BACK TO TAYLOR, AND BROWN, THIS COURT DID NOT FIND AN INTENT TO KILL WITH MANSLAUGHTER.

THE STATE ARGUES TO RESULT BACK TO THE COMMON LAW.

AND THEY RELY ON SECTION 77501 WHICH TELLS US WHICH WE CAN APPLY COMMON LAW, AND IT'S WHEN THERE'S NO EXISTING PROVISION BY STATUTE ON THE SUBJECT.

HERE, THERE IS A STATUTE ON THE SUBJECT BECAUSE WE HAVE A STATUTE ON ATTEMPTED VOLUNTARY MANSLAUGHTER.

ATTEMPTED MANSLAUGHTER AND -- I MEAN, MANSLAUGHTER AND ATTEMPT.

SO THERE'S NO NEED TO REPORT BACK TO THE COMMON LAW.

BECAUSE, ONCE THE STATUTE IS IN EFFECT, WE'RE REQUIRED TO LOOK TO THAT INSTEAD OF THE COMMON LAW.

>> INSTEAD IS SAYS WHAT ON MANSLAUGHTER?

>> WHICH THE STATUTE SAYS --

>> WHAT DOES IT SAY?

>> OH GOD, I'VE GOT IT.

>> DOES IT TALK ABOUT INTENT TO KILL?

>> IT DOESN'T TALK ABOUT INTENT.

BECAUSE IT'S DEFINED BY WHAT IT IS NOT.

IT'S A RESIDUAL OFFENSE NOT JUSTIFIABLE OR EXCUSABLE.

>> STRUGGLING WITH MONTGOMERY BEFORE AND AFTER IS THAT -- BUT IT DOESN'T -- DOESN'T INCLUDE AN

INTENT TO KILL AS ITS ELEMENT.  
>> NO.  
IT DOESN'T, THE STATUTE DOESN'T.  
>> AND ALSO IT'S A RESIDUAL OF  
WHAT ATTEMPTED FIRST-DEGREE AND  
SECOND-DEGREE ARE NOT ATTEMPTED  
MANSLAUGHTER IS.  
AND IT'S DIFFERENT FROM  
AGGRAVATED BATTERY, AGGRAVATED  
BATTERY REQUIRES USE OF A DEADLY  
WEAPON, OR SERIOUS BODILY  
INJURY.  
WHICH ATTEMPTED MANSLAUGHTER  
DOES NOT.  
I THINK THAT BASICALLY IF YOU  
ARE TO RULE FOR THE STATE, YOU  
WOULD HAVE TO BASICALLY OVERRULE  
MONTGOMERY.  
AND THE STATE SEEMS TO BE  
ARGUING THAT THIS IS MORE  
REHEARING ON MONTGOMERY THAN  
ANYTHING ELSE.  
THIS COURT WAS CLEAR THAT THERE  
IS NO INTENT TO KILL.  
IN MANSLAUGHTER, THEREFORE IT  
SEEMS LOGICAL THERE'S NO INTENT  
TO KILL AN A ATTEMPTED  
MANSLAUGHTER.  
ONLY AN INTENT TO COMMIT AN ACT.  
WHICH WOULD HAVE CAUSED THE  
DEATH BUT IT DID NOT.  
WE ASK THIS COURT TO FOLLOW THE  
LOGIC IN MONTGOMERY BECAUSE IT'S  
CORRECT, AND IN THIS CASE,  
MR. WILLIAMS SHOULD BE GIVEN A  
NEW TRIAL WITH A CORRECT JURY  
INSTRUCTION ON THE LESSER  
INCLUDED OF VOLUNTARY  
MANSLAUGHTER.  
THANK YOU.  
>> WE THANK YOU BOTH FOR YOUR  
ARGUMENTS.  
THAT CONCLUDES TODAY'S SESSION  
OF COURT.  
WE ARE ADJOURNED.  
>> ALL RISE.