

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2024-2441
Lower Tribunal No. 2022-CF-000016

RAFAEL ALFREDO MONTEJO LUNA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Hendry County.
James D. Sloan, Judge.

March 27, 2026

MIZE, J.

Appellant, Rafael Alfredo Montejo Luna (“Luna”), appeals his final judgment and sentence for second-degree murder. Luna argues that the trial court erred by admitting evidence that Luna failed to appear at a previously agreed-upon meeting with a law enforcement officer that was investigating the victim’s death. The trial court found that such evidence was admissible as evidence of consciousness of guilt, but Luna asserts that such evidence was not relevant to show Luna’s consciousness of guilt where there was no evidence to establish that

Luna was informed that the meeting was mandatory or that there would be any potential adverse consequences to Luna for not attending the meeting. While Luna did not make this argument in the trial court, he asserts that the trial court's error constituted fundamental error that can be raised for the first time on appeal.

Based on the arguments presented by Luna on appeal, we find no fundamental error and affirm Luna's judgment and sentence.

In the trial court, Luna argued that the evidence that he failed to appear at the meeting with law enforcement was improper evidence of him exercising his constitutional right to remain silent. As Luna did not make that argument on appeal, we have not addressed it. Our affirmance of Luna's judgment and sentence is without prejudice for Luna to file a petition for ineffective assistance of appellate counsel.

AFFIRMED.

WOZNIAK and WHITE, JJ., concur.

Blair Allen, Public Defender, and Kimberly Nolen Hopkins, Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Wendy Buffington, Senior Assistant Attorney General, Tampa, for Appellee.

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