

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

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

LARRY FELTON WHITE, JR.,

Appellant,

v.

CASE NO. 1D07-6476

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 28, 2009.

An appeal from the Circuit Court for Duval County.
Michael R. Weatherby, Judge.

Nancy Daniels, Public Defender, and M. Gene Stephens, Assistant Public
Defender, Tallahassee, and J. Craig Williams and Shelley L. Thibodeau,
Jacksonville, for Appellant.

Bill McCollum, Attorney General, and Jennifer J. Moore, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant challenges his conviction for second degree murder with a
firearm. Because fundamental error occurred when the trial court gave the

standard jury instruction for the lesser-included offense of manslaughter by act, which an average juror would understand as requiring the additional element of intent to kill, the appellant's conviction is reversed and the case is remanded for further proceedings. See Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009); Washington v. State, 34 Fla. L. Weekly D743 (Fla. 1st DCA April 13, 2009).

HAWKES, C.J., ALLEN, and CLARK, JJ., CONCUR.