

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

MICHAEL JOE GREEN, II ,  
Appellant,

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

v.

CASE NO. 1D11-124

STATE OF FLORIDA,  
Appellee.

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Opinion filed August 3, 2012.

An appeal from the Circuit Court for Escambia County.  
Jan Shackelford, Judge.

Nancy A. Daniels, Public Defender and Steven L. Seliger, Assistant Public  
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General and Trisha Meggs Pate, Bureau Chief,  
Criminal Appeals, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Michael Joe Green, II appeals his conviction and sentence for the lesser-  
included offense of attempted second degree murder due to the trial court's use of  
the standard jury instruction for attempted manslaughter by act, an alternate lesser-  
included offense to the primary charge of attempted first degree murder. As  
required in this situation by [State v. Montgomery](#), 39 So. 3d 252 (Fla. 2010);

[Rushing v. State](#), \_\_\_ So. 3d \_\_\_, 35 Fla. L. Weekly D1376, 2010 WL 2471903 (Fla. 1st DCA June 21, 2010) and [Lamb v. State](#), 18 So. 3d 734 (Fla. 1st DCA 2009), the conviction is reversed and remanded for new trial. In light of this reversal, we decline to address the other issues raised by the appellant and the cross appeal raised by the state.

LEWIS, CLARK, and MARSTILLER, JJ., CONCUR.