

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

JEROME J. FERRIER,

Ferrier,

v.

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

CASE NO. 1D11-5066

STATE OF FLORIDA,

Appellee.

Opinion filed March 18, 2013.

An appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

Nancy A. Daniels, Public Defender, and Pamela D. Presnell, Assistant Public
Defender, Tallahassee, for Ferrier.

Pamela Jo Bondi, Attorney General, and Donna A. Gerace, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Jerome Ferrier appeals his convictions and sentences for six counts of
attempted first degree murder and two counts of attempted second degree murder.

With respect to counts IX and X, counts alleging attempted second degree murder, at trial, the trial court gave the standard jury instruction for the lesser included offense of attempted voluntary manslaughter. That instruction provided that one of the elements of attempted voluntary manslaughter is that Ferrier committed an act which was intended to cause the death of the victim.

Recently, the Florida Supreme Court expressly approved our decision in Lamb v. State, 18 So. 3d 734, 735 (Fla. 1st DCA 2009), and held that “giving the standard jury instruction on attempted manslaughter by act . . . constitutes fundamental error where the defendant is convicted of an offense not more than one step removed from attempted manslaughter.” Williams v. State, No. SC10-1458, 2013 WL 535449, at *1 (Fla. February 14, 2013); see also State v. Montgomery, 39 So. 3d 252 (Fla. 2010). Accordingly, we hold that the trial court committed fundamental error by giving the jury the standard instruction for the lesser included offense of voluntary manslaughter on the attempted second degree murder charges found in counts IX and X. Thus, we reverse the convictions under counts IX and X and remand for a new trial on those counts. We affirm all other issues raised on appeal.

AFFIRMED, in part, REVERSED, in part, and remanded for further proceedings.

VAN NORTWICK, LEWIS, and SWANSON, JJ., CONCUR.