

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

MICHAEL D. JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D12-3748

Opinion filed October 25, 2013.

An appeal from the Circuit Court for Duval County.
Tyrie W. Boyer, Judge.

Nancy A. Daniels, Public Defender, Paula S. Saunders, Assistant Public Defender,
Tallahassee, FL, for Appellant.

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Bureau Chief, Criminal
Appeals, Brittany Ann Rhodaback, Assistant Attorney General, Tallahassee, FL,
for Appellee.

PER CURIAM.

Appellant, Michael D. Johnson, appeals his conviction and sentence for attempted second-degree murder. As properly conceded by the State, fundamental error occurred during the proceedings when the jury was read the attempted voluntary manslaughter by act instruction disapproved of in State v. Montgomery.

39 So. 3d 252, 256 (Fla. 2010) (“(Defendant) intentionally caused the death of (victim).”) (quoting Fla. Std. Jury Instr. (Crim.) 7.7 (2006)). See also Williams v. State, -- So. 3d --, 38 Fla. L. Weekly S99 (Fla. Feb. 14, 2013) (extending Montgomery to jury instruction on attempted voluntary manslaughter by act). We therefore reverse Appellant’s conviction and sentence for attempted second-degree murder and remand to the trial court for a new trial on that count. We affirm Appellant’s remaining conviction and sentence for possession of a firearm by a convicted felon.

AFFIRMED in part, REVERSED in part and REMANDED.

VAN NORTWICK, CLARK, and OSTERHAUS, JJ., CONCUR.