

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)	
)	
Appellant,)	
)	
v.)	Case No. 2D04-4604
)	
CLIFFORD LAVOND GREEN,)	
)	
Appellee.)	
_____)	

Opinion filed June 1, 2005.

Appeal from the Circuit Court for Polk
County; Susan W. Roberts, Judge.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Susan D. Dunlevy,
Assistant Attorney General, Tampa, for
Appellant.

James Marion Moorman, Public Defender,
and Richard J. Sanders, Assistant Public
Defender, Bartow, for Appellee.

PER CURIAM.

The State appeals the trial court's order granting Clifford Lavond Green's
motion to dismiss the charge of failure to return leased equipment in violation of section
812.155, Florida Statutes (2002). We reverse and remand for further proceedings in

accordance with our recent decision in State v. Higby, 30 Fla. L. Weekly D1068 (Fla. 2d DCA Apr. 27, 2005) (holding that trial court erred by identifying section 812.155(4)(b) as mandatory presumption when it is permissive inference). See also State v. Rygwelski, 30 Fla. L. Weekly D1053 (Fla. 2d DCA Apr. 22, 2005).

ALTENBERND, C.J., and WHATLEY and LaROSE, JJ., Concur.