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IN THE SUPREME COURT OF THE STATE OF FLORIDA

LANCE BLAIR,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO, **87,509**

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach County, Florida.

In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The symbol "R" will denote the initial Record on Appeal, which was filed July 29, 1994.

The symbol "ST" will denote Trial Transcript, which was filed April 4, 1994.

The symbol "2ST" will denote Supplemental Transcript, containing voir dire and transcripts of exhibits, June 21, 1994 and August 11, 1994.

STATEMENT OF THE CASE

Proceedings below

Lance Blair was initially charged along with others with burglary while armed, and conspiracy to commit burglary and grand theft, and firearm charges, which all arose from the single burglary of a residence in Palm Beach (R 71-72). The Information was later amended to include an additional charge of dealing in stolen property against Mr. Blair (R 127-129).

Trial proceeded on four counts: Count 1, burglary while armed, Count **2,** grand theft, Count 4, conspiracy to commit burglary, and Count **7,** dealing in stolen property. The judge excused two jurors during trial, and it continued with only five (ST 592-599). The five jurors convicted Mr. Blair of the lesser charge of burglary of an occupied structure on Count 1, and as charged on the remaining counts (R 156-57). The trial court entered judgment on the lesser offense on Count 1, and on the other offenses. Mr. Blair was sentenced to three and a half years in the Department of Corrections followed by eleven and a half years probation, concurrent with each count (R 161-62; 177-78).

Notice of appeal was timely filed (R **163). An** Initial Brief was served, but was found to be inadequate, so appellate counsel moved to strike the Initial Brief and supplement the record, and that motion was granted. Petitioner then filed an Amended Initial Brief.

Mr. Blair raised a number of issues on appeal to the Fourth District, including error in the trial court's continuation of trial with five jurors when a sitting juror was excused. The Fourth District reversed the grand theft conviction only, but wrote extensively on the five member jury issue. Blair v. State, 667 **So. 2d 834,** 837-840 (Fla. 4th DCA 1996). The Fourth District concluded that a five member jury may be legally

constituted, and that there was an adequate waiver by Mr. Blair of his right to a **six** member jury. Ibid. Judge Pariente dissented on this issue, expressing doubt whether a five member jury would ever pass constitutional muster, and concluding Mr. Blair's waiver of his right to a six member jury was inadequate. Blair, ***667*** So. 2d at 843-846 (Pariente, J., concurring and dissenting)

Jurisdiction

The Fourth District certified the following two questions as matters of great public importance to this court[1]:

> Do the Florida and United States Constitutions permit a defendant to waive his right to a six-member jury and agree to be tried by a five-member jury in a criminal case?
>
> To have a valid oral waiver of the right to a six-member jury in a criminal case, is it necessary for the trial court to conduct an on-the-record inquiry with the defendant where the trial court advises the defendant of his constitutional right to a six-member jury and gives a full explanation of the consequences of the waiver of that right?

Blair, 667 ***So.*** 2d at **843.** Notice of to Invoke Discretionary Jurisdiction was timely filed.

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[1] In its original opinion the court certified the questions but did not say why. On Motion for Rehearing or Clarification the court clarified the two questions were certified as ones of great public importance pursuant to Rule 9.030(a)(2)(A)(v), Fla. R. App. P. Order Denying Rehearing: and Granting Clarification, Feb. 21, 1996.

STATEMENT OF THE FACTS

The Fourth District decision accurately recounts the facts surrounding the mid-trial reduction of the jury to five members. Petitioner has added footnotes to the quote below to provide this Court with the record citations to the facts found by the court:

MID TERM REDUCTION TO FIVE-MEMBER JURY

> When trial began, six jurors and one alternate were selected and sworn'. After opening statements and the testimony of one witness, the trial court excused a juror for lateness and sleeping and seated the alternate as a sixth juror[3]. On the afternoon of the fourth day of trial, the trial court informed the jury that the trial would last longer than the jury had been originally advised, querying whether that would cause "terrible problems for anyone . . . anything that can't be rescheduled?" One juror explained he had a conflict which could not be resolved because he was giving a five-day seminar out of state and cold not return until the following Wednesday[4]. After discussing scheduling alternatives, such as continuing the case for a week, another juror expressed reservations about the delay.
>
> The trial court then addressed the lawyers at a side bar conference and stated that a possible resolution would be "to go with five."[5] The defense lawyer responded "What if both sides agree to five?" The court and the state indicated agreement and defense counsel advised that he needed "thirty seconds to discuss it with my client because I don't think it would be fair." After a brief break, both sides indicated their willingness to stipulate. However the trial court stated that "I've got to explain to Mr. Blair what **we** are considering" and then told defense counsel to take "as much time as you need now to discuss that possibility with your client.[6]" In the presence of defendant the following colloquy took place:
>
> > DEFENSE COUNSEL: I have already discussed with him and as opposed to postponing it a week or having a possible mistrial, we would rather go with five and I quickly tried to explain him the alternative.

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[2] ST **3, 2ST** 142.

[3] The juror was excused on the motion of the prosecutor ST 80, 81-86.

[4] ST 592, ***594.***

[5] ST 592-96.

[6] ST ***596-597***

> THE COURT: All right. Let me have you explain them again. I want to make sure that this is what he wants to do.
>
> DEFENSE COUNSEL: Well, I told him there is a potential for a mistrial. There also is, as the Court has suggested, postponing it a full week until February 1st . . . . Well, there are other possibilities of postponing it for a full week and starting it up again February 1st or going with five jurors. I see that as the three alternatives. I'm sure that my client doesn't want a mistrial. So, that leaves us with two alternatives, either February 1st starting off again a week later or going with five jurors.
>
> THE DEFENDANT: Your Honor, we will take the five, if that's all right with you.[7]

The trial court then excused the sixth seated juror and proceeded with trial with the remaining five jurors'.

Blair, 667 So. 2d at **837.**

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[7] ST ***597-598.***

[8] ST *599.*

SUMMARY OF THE ARGUMENT

POINT I

The Court years ago determined that a jury of five was constitutionally insufficient to render a reliable verdict in a felony case. Yet here, at the suggestion of the judge in the midst of trial, the sixth juror was excused due to a scheduling conflict and the number of jurors was reduced to five, Mr. Blair personally consented, but there can be no waiver of the right to a six member jury in a felony case. Alternatively, the consent was based on the misleading advice from counsel, reinforced by the trial judge, that a consequence of failing to consent may be a retrial. In fact, no retrial could have been conducted had the judge mistried the case against Mr. Blair's wishes. Had a mistrial been granted, jeopardy having attached, Mr. Blair would have been discharged from these offenses. Mr. Blair was never informed of his right to a six member jury. The waiver was thus not knowing, intelligent or voluntary, and so the convictions must be reversed.

ARGUMENT

POINT I

THE TRIAL COURT'S MID-TRIAL REDUCTION OF THE JURY TO FIVE MEMBERS WITHOUT AN ADEQUATE INQUIRY OF THE DEFENDANT RENDERS THE CONVICTIONS AND SENTENCES UNCONSTITUTIONAL

This case began with six jurors and an alternate but when two jurors were excused during the course of the trial, Mr. Blair's fate was decided by five. Mr. Blair personally waived his right to six jurors, but there was no inquiry as to the knowing, intelligent and voluntary nature of that waiver. There is ample indication that Mr. Blair was affirmatively misadvised as to whether his failure to waive the right to proceed with six jurors would result in a mistrial. In any event, the law does not permit trial of a felony by less than six jurors, waiver or not. The convictions must be reversed.

B. A Felony Jury of Less than Six Members is Unlawful

It is plainly unconstitutional under the sixth and fourteenth amendments to the United States Constitution to proceed to trial in a felony case with only five jurors. Ballew v. Georgia, 435 U.S. 223, 98 S.Ct. 1029, 55 L.Ed.2d 234 (1978). A five person jury, the Court has held, is unlikely to render an accurate decision in a felony case. In Ballew, Justice Blackmun wrote that a number of studies

> lead us to conclude that the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in size to below six members. We readily admit that we do not pretend to discern a clear line between six members and five. But the assembled data raise substantial doubt about the reliability and appropriate representation of panels smaller than six. Because of the fundamental importance of the jury trial to the American system of criminal justice, any further reduction that promotes inaccurate and possibly biased decision making, that causes untoward differences in verdicts, and that prevents juries from truly representing their communities, attains constitutional significance.

Ballew, 435 U.S. at 239, 98 S.Ct. at 1038-39. The term determined *Ballew* had

to be retroactively applied because its purpose was to "overcome an aspect of the criminal trial that substantially impairs its truth-finding function." Brown v. Louisiana, 447 U.S. 323, 100 S.Ct. 2214, 2219, 64 L.Ed.2d 159 (1980); See Thomas v. Blackburn, 623 F.2d 383 (5th Cir. 1980) *cert. denied,* 450 U.S. 953, 101 S.Ct. 1413, 67 L.Ed.2d 380 (1981). Article I, Section 22 of the Florida Constitution likewise forbids a determination of guilt to be made by less than six jurors'.

Because the Court has found unreliable the determination of guilt by a jury composed of fewer than six members, the constitutionally minimum felony jury of at least six is one that cannot be waived. The Fourth District held otherwise below, reasoning that many fundamental rights can be waived. Blair *667 So.* 2d at *837 (citing Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). More specifically, the Fourth District noted "[t]he United States Supreme Court has held that one charged with a serious crime may dispense with his constitutional right to a jury trial, *Adams v. United States ex. rel. McCann,* 317 U.S. 269, 277-78, 63 S.Ct. 236, 241, 87 L.Ed. 268 (1942), either by waiver of a jury trial altogether or by consenting to a trial by fewer than the required number of jurors. *Patton v. United States,* 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930)." Blair, **667 So.** 2d at 837-8[10].

The analysis of the Fourth District misses the point. The Court permits a jury to be waived altogether because the determination of guilt is then made by a trial judge. But the Court has not permitted trial by "consent to a trial by fewer that the required

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[9] It states: "[t]he right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, **not fewer than six,** shall be fixed by law." Art. I, Sec. 22, Fla. Const. (emphasis supplied).

[10] The Fourth District also cited similar decisions from this court allowing jury waiver: Zellers v. State, 138 Fla. 158, 189 So. 236 (1939), and Tucker v. State, 559 So. 2d 218 (Fla. 1990).

number of jurors" when the jurors number less than six. Patton. Court's decisions point to precisely the opposite conclusion. See Burch v. Louisiana, 441 U.S. 130, 99 S.Ct. 1623, 60 L.Ed.2d 96 (1979)(conviction of nonpetty offense by nonunanimous six person jury violates right to trial by jury).

In holding the right to a six-member jury is one that can be waived, the Fourth District relied heavily on Flanning v. State, 597 So. 2d 864 (Fla. 3d DCA 1992), in which the Third District held a defendant can waive the **unanimity** requirement, and agree to a decision of five of six jurors in a felony case. Blair, 667 So. 2d at 838-39. The Flanning court adopted the approach governing mid-trial unanimity waiver set forth by the Eleventh Circuit in Sanchez v. United States, 782 F.2d 928 (1 lth Cir. 1986). But the Sanchez decision has been widely criticized on this point in the federal courts. United States v. Ullah, 976 F.2d 509, 512-13 (9th Cir. 1992)("Despite the overwhelming and irrefutable authority to the contrary, the government urges us to adopt the singular view of the Eleventh Circuit, which permits the unanimity requirement of Rule 31(a) to be waived in 'exceptional circumstances.' *See Sanchez v. United States, 782* F.2d 928, 932-34 (1 lth Cir. 1986). We reject that invitation"). Sanchez stands alone in permitting waiver of jury unanimity for federal defendants, and its copy Flanning is no more persuasive on that issue. The twin decisions do not provide reliable authority supporting the constitutionality of permitting a defendant to waive altogether the sixth juror in a felony case.

This Court implicitly recognized six jurors were the minimum in State v. Griffith, 561 So. 2d 528 (Fla. 1990). Griffith holds that in a capital case where the state waives death defense counsel alone can forego the right to a twelve person jury. In so holding, however, this court found Mr. Griffith's right to a jury trial was not infringed by

counsel's waiver **because** his trial was conducted before the "mandated" six person jury.

> While a defendant's right to a jury trial is indisputably one of the most basic rights guaranteed by our constitution, Griffith has not been deprived of this fundamental right. He received a trial by a six-person jury as mandated by the constitution in article I, section 22, Florida Constitution.

Griffith, 561 So. 2d at 530. Unlike Mr. Griffith, Mr. Blair did not complete his trial before a six person jury, so Mr. Blair **has** been deprived of "one of the most basic rights guaranteed by our constitution". Ibid. This Court should follow *Ballew* and *Griffith*, and conclude the right to a six member jury in a criminal case is not one that can be waived under either the United States or Florida Constitutions.

C **The Waiver of a Six Member Jury Here Was Insufficient**

The Fourth District concluded that the right to a six member jury can be waived, and that the oral waiver here was sufficient. If this Court agrees the right to a six member jury is one that can be waived, petitioner contends the waiver here was deficient because the record does not show a knowing, intelligent and voluntary waiver, and because the record affirmatively shows petitioner was misled in making that decision.

"[P]roceeding to trial with less than six jurors does in fact deprive a defendant of a fundamental right which accordingly requires an on-the-record waiver." Blair, 667 So. 2d at 838 *(citing Griffith* and *Tucker v. State, 559* So. 2d 218 (Fla. 1990)). For waiver of a fundamental right to be effective, Due Process requires that the record show "an intentional relinquishment or abandonment of a known right or privilege." Bovkin v. Alabama, 395 U.S. 238, 243 n.5, 9 S.Ct. 1709, 1712 n. 5, 23 L.Ed.2d 274, 280 n.5 (1969). The courts are to "indulge every reasonable presumption against waiver, " Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461, 1466 (1938).

The record here shows the trial court did not even cover the fundamentals. ST

596-99. As Judge Pariente noted in dissent:

> Clearly the record reflects that defendant, with advice of counsel, agreed to 'go with five.' Yet just as clearly, the record is devoid of any indication that defendant was aware he was relinquishing a constitutional right to a jury of six persons. Without knowing of the right, there can be no knowing and intelligent waiver.

Blair, 667 So. 2d at 843 (Pariente, J., dissenting). The failure of the trial court to inform petitioner even of the fact he had a fundamental constitutional right to a six person jury precludes a finding that he sufficiently waived it.

The Fourth District majority declined to "adopt a hard and fast rule" governing mid-trial waiver of the right to a six person jury in a felony case. Blair, 667 So. 2d at 839. However, in following Flanning and Sanchez the court agreed "a jury unanimity waiver is fraught with some danger," as described by the Flanning court:

> In particular, there is the danger that a defendant might feel pressured by the trial judge or prosecutor into accepting a majority verdict so as to save the state the time and expense of a second trial -- or face a heavier sentence if eventually convicted should he/she refuse to waive the unanimity requirement.

Blair, 667 So. 2d at 838 (*quoting Flanning*). Fourth District added "the danger that a defendant in jail awaiting trial may fear that he will not be tried for a long time if he insists on a mistrial," Blair, 667 So. 2d at 838, a danger fully realized in this case where petitioner had been jailed awaiting trial nearly a year, R 170.

In Flanning, the court adopted the Eleventh Circuit's guidelines for mid-trial jury unanimity waiver:

> Before allowing the defendant to waive the right, the following criteria should be met: (1) the waiver should be initiated by the defendant, not the judge or prosecutor; (2) the jury must have had a reasonable time to deliberate and should have told the court only that it could not reach a decision, but not how it stood numerically; (3) the judge should carefully explain to the defendant the right to a unanimous verdict and the consequences of a waiver of that right; and (4) the judge should question the defendant directly to determine whether the waiver is being made

knowingly and voluntarily.

Flanning, 597 So. 2d at 867-88 (quoting Sanchez, 782 F.2d at 934). The waiver here does not meet these criteria".

Here, it was the trial judge, and not the defense, that suggested going to six jurors[12]. As recognized in Flanning, the judge's initiation of the idea raises the "danger that a defendant might feel pressured by the trial judge or prosecutor" into accepting the arrangement. Sanchez, 597 So. 2d at 867. The second Sanchez criteria does not really apply here because the jury had not yet begun to deliberate, but the last two criteria were plainly not met. At no time did the judge personally explain to Mr. Blair the importance of the right to at least six persons on the jury, and at no time did the court make any inquiry into whether the waiver was knowing, intelligent and voluntary (ST 596-598).

To the contrary, the record shows Mr. Blair was coercively misinformed by counsel as to the consequences of failing to agree to five jurors, and that the trial judge adopted and had counsel repeat the coercive misinformation to Mr. Blair. Mr. Blair was

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[11] Judge Pariente proposes a modified version of the Flanning criteria in conducting a mid-trial waiver. Blair, 667 So. 2d at 845 (Pariente, J., dissenting). The waiver conversation in the trial court does not meet these criteria, either.

[12] The judge suggested the procedure when the attorneys came to the bench after the juror informed the court he had other plans for the next week:

MR. LAWSON: Judge, can I approach?

(The following bench conference is held on the record.)

THE COURT: A possible resolution, go with five.

MR. BROWN: What if both sides agree to go with five?

THE COURT: That's fine with me.

MR. LAWSON: Judge, the State is willing to go along with that.

MR. BROWN [DEFENSE COUNSEL]: Let me tell you in thirty seconds ot discuss it with my client because I don't think it would be fair.

THE COURT: All right. What I am gong to do is -- you can have a seat.

(The bench conference is concluded,)

(ST 596)(emphasis supplied).

repeatedly told that if he did not agree to proceed with live jurors, a mistrial could be granted against his wishes. Mr. Blair did not want a mistrial, as the court was informed, but the trial judge had counsel repeat the mistrial option to Mr. Blair. In fact, juror inconvenience does not constitute manifest necessity for a mistrial, and had the court granted a mistrial over defense objection, since jeopardy had attached, it also would have had to discharge Mr. Blair as to these offenses. This is what the record shows occurred after the judge suggested the parties agree to continuing trial with five jurors:

> THE COURT: All right. I am going to ask the jury to step back into the jury room.
>
> (Jury is out.)
>
> THE COURT: All right. It is my understanding that both attorneys will stipulate that we can excuse juror number six who is Thomas Murray and we will try this case with five jurors and be bound --
>
> MR. LAWSON [PROSECUTOR]: Judge, I will go along with that. I only have one request and that is that Mr. Murray put it on the record.
>
> THE COURT: I am going to do that but first I've got to explain to Mr. Blair what we are considering.
>
> MR. LAWSON: Okay.
>
> THE COURT: Okay then, whatever decision they make will be binding on the court and on the defendant. I am going to give you as much time as you need now to discuss that possibility with your client, Mr. Brown.
>
> MR. BROWN [DEFENSE COUNSEL]: I have already discussed it with him and as opposed to postponing it a week **or having a possible mistrial,** we would rather go with five and I quickly tried to explain to him the alternative."
>
> THE COURT: All right. **Let me have you explain them again.** I want to be sure that this is what he wants to do.
>
> MR. BROWN: Well, **I told him there is a potential for a mistrial.** There also is, as the court has suggested, postponing a full week until February 1st and I have to admit I didn't tune in to what the other guy's [another juror's] problem is going to be, something about an owner coming into town.
>
> THE COURT: Well, he didn't sound that terrifically serious to me.

MR. BROWN: Well, there are other possibilities of postponing it for a full week and starting it up again February 1st or going with five jurors. I see that as the three alternatives. **I'm sure my client doesn't want a mistrial. So, that leaves us with two alternatives,** either February 1st starting off again a week later or going with five jurors.

THE DEFENDANT: Your Honor, we will take the five, if that's all right with you.

THE COURT: All right. I will release him right now.

(ST 596-598)(emphasis supplied).

The mistrial possibility weighed very heavily in Mr. Blair's decision to forego a six member jury, and he obviously thought a mistrial meant starting over another trial, Yet under the law had the court granted a mistrial on its own or at the state's suggestion (defense counsel explicitly said Mr. Blair did not want a mistrial), jeopardy having attached, a new trial would have been forbidden, and Mr. Blair would have been discharged. That is precisely what happened in the like circumstances in Perkins v. Graziano, 608 So. 2d 532 (Fla. 5th DCA 1992) and Cohens v. Elwell, 600 So. 2d 1224 (Fla. 1st DCA 1992)[13].

In Perkins, a six member jury was selected and sworn on a Monday, and told to come back for trial on Friday, One of the jurors didn't show on Friday; apparently a clerk told the juror the trial had been cancelled. The juror could not be reached, and though the defense offered to try the case with five jurors, the court sua sponte declared a mistrial. Ordering Mr. Perkins discharged, the Fifth District found the mistrial had been ordered in the absence of manifest necessity, violating the jeopardy principle that "[a] defendant has a 'valued right to have his trial completed by a particular tribunal,

[13] This Court approved of both Cohens and Perkins in Thomason v. State, 620 So. 2d 1234, 1239 (Fla. 1993).

United States v. Jorn, 400 U.S. 470, 484, 91 S.Ct. 547, 556, 27 L.Ed.2d 543, 556 (1971)." Perkins, 608 So. 2d at 532-33.

In Cohens a six member jury and an alternate were selected and sworn on a Monday, and also scheduled for a Friday trial. In the meantime a witness became ill. The court tried to reschedule trial to begin the following Friday, instead. Two jurors said they wouldn't be able to serve then. One had nonrefundable airline tickets for a family vacation and another, a veterinarian, was scheduled to perform surgery on that Friday. The court discharged the jury when the defense refused to proceed with five jurors. The First District was "hesitant to conclude . . . that the potential inconveniences to the two jurors rendered them legitimately unavailable and created a manifest necessity for a mistrial. " Id. at 1226. It granted the writ of prohibition and ordered Mr. Cohens discharged,

The Fourth District notes this problem but dismisses it because it was "not faced with the trial court having declared a mistrial or having indicated that a mistrial was the only alternative. " Blair 667 So. 2d at 839. But this court *is* faced with a record which shows petitioner was misled as to the effect of a mistrial as one of his only two other options to "going with five." The enormity of this misinformation substantially undermines a finding the waiver was knowing, intelligent and voluntary. See Smith v. Blackburn, 632 F.2d 1194 (5th Cir. 1980)(applying *Ballew* to vacate conviction even though petitioner informed of majority verdict alternative to five member jury, since "petitioner was forced to choose between what were to become two unconstitutional choices") .

There is no real question that a mistrial could not have been granted over Mr. Blair's objection without discharging him. It is plain from the record Mr. Blair did not

want a retrial. Both counsel and the court participated in misinforming Mr. Blair that a mistrial might result from his failure to waive his right to a six member jury. This is not a knowing, intelligent and voluntary waiver. The record shows as much. Mr. Blair's right to a jury trial was completely compromised. This court should reverse.

D Relief

Petitioner requests this Court reverse and remand for a new trial. On Count I, Mr. Blair was charged with burglary while armed but was convicted of the lesser included offense of burglary of a structure. R 156. The trial court entered judgment on this lesser included offense pursuant to the jury's verdict. R 161, 177. This entry of judgment acquits Mr. Blair of the greater offense of burglary with a firearm even if this Court determines the verdict itself was not lawfully rendered, See Rule 3.650, Fla.R.Crim.P., and he can only be retried on that lesser offense. Price v. Georgia, 398 U.S. 323, 90 S.Ct. 1757, 26 L.Ed.2d 300 (1970)(conviction of lesser offense operates as acquittal of greater); Fong Foo v. United States, 369 U.S. 141, 143, 82 S.Ct. 671, 672, 7 L.Ed.2d 629 (1962)(jeopardy attaches precluding retrial even where acquittal is "based upon an egregiously erroneous foundation"); Mars v. Mounts, 895 F.2d 1348 (11th Cir. 1990).

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Honorable Court to reverse this cause with appropriate directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Michelle Konig, Assistant Attorney General, 1655 Palm Beach Lakes Blvd, Third Floor, West Palm Beach, Florida, 33401 by courier this 1 day of May, 1996.

STEVEN H. MALONE
Attorney for Lance Blair