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**IN THE SUPREME COURT OF FLORIDA**

BRIEN ALLEN, :  
 :  
 Petitioner, :  
 :  
 v. : Fla. S. Ct. Case No. 87,941  
 :  
 STATE OF FLORIDA, :  
 :  
 Respondent. :  
 :  
 \_\_\_\_\_/

**REPLY BRIEF OF PETITIONER**

**PRELIMINARY STATEMENT**

Pages in petitioner's initial brief shall be referred to as "IB#" and pages in the State's answer brief shall be referred to as "AB". Other cites shall be in accordance with those in the initial brief.

**REPLY ARGUMENT**

PETITIONER'S CONVICTIONS AND SENTENCES FOR THE OFFENSES OF ARMED BURGLARY, ARMED KIDNAPPING, AND ARMED ROBBERY CONSTITUTE IMPERMISSIBLE MULTIPLE PUNISHMENTS IN THAT ALL THREE CRIMES WERE RECLASSIFIED DUE TO THE USE OF A SINGLE FIREARM IN A SINGLE BRIEF CONTINUING CRIMINAL INCIDENT INVOLVING A SINGLE VICTIM.

Petitioner Brien Allen's initial brief breaks the issue into three distinct subissues, all of which are necessarily part of

the double jeopardy claim. The State in its answer brief does not contest two of those subissues. Specifically, the State does not contest the fact that the double jeopardy issue is properly before this Court, see subissue A, IB7-8, and that a double jeopardy violation requires giving relief as to both the conviction and sentence, not just the sentence, see subissue C, IB13-18.

The State fails to demonstrate clear legislative authorization for multiple felony reclassifications based on a single core act. The multiple reclassification makes this case distinct from others heretofore decided. None of the authorities cited by the State, either statutes or cases, demonstrate that the Legislature clearly authorized multiple reclassifications based on a single use of a firearm in a single brief criminal episode. In particular, the State misrelies on section 775.087, Florida Statutes (1991) as proof of the Legislature's intent to authorize multiple reclassifications based on a single fact. AB9. If anything, that statute implicitly supports petitioner's claim because it shows that the Legislature did not intend the single use of a firearm to be counted twice (or three times, as here) against an accused. At best, the law is unclear. When legislative authorization for multiple criminal punishment is unclear, the law must be strictly construed favoring the accused.

The State misplaces its reliance on Palmer v. State, 438 So. 2d 1 (Fla. 1983). AB14-15. That case did not address the

precise issue presented in this case, so it cannot and does not support the State's position.

The State also invites speculation as to what may or may not have occurred factually in this case, subjectively deciding with "no doubt" what may have been in petitioner's mind, and exaggerating the facts. AB12. The issue here is one of law, not fact, especially when no contest to the basic facts had been presented below in a plea. It is neither proper nor necessary for this Court to indulge in speculation to decide this case.

#### **CONCLUSION**

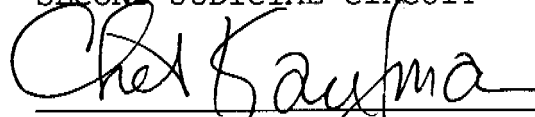
For the reasons stated above and in the initial brief, this Court should answer the certified question in the negative as applied to the facts in this case, quash the decision under review, and remand with instructions to grant Allen leave to withdraw his pleas, or to reduce the convictions and resentence him on all charges.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing reply brief has been furnished by delivery to Amelia L. Beisner, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301, and by mail to petitioner Brien Allen, on this 1st day of October, 1996.

Respectfully submitted,

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