

Supreme Court of Florida

No. 93,499

STATE OF FLORIDA,
Petitioner,

vs.

JEREMIAH BUTLER,
Respondent.

[April 29, 1999]

PER CURIAM.

We have for review Butler v. State, 711 So. 2d 1183 (Fla. 1st DCA 1998), which expressly and directly conflicts with the opinion in Garvin v. State, 685 So. 2d 17 (Fla. 3d DCA 1996), regarding whether the "open to the public" defense is a complete defense to the charge of burglary. See § 810.02(1), Fla. Stat. (1995). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution.

This case is controlled by our recent decision in Miller v. State, 24 Fla. L. Weekly S155 (Fla. July 16, 1998). In Miller, we held that if a defendant can

establish that the premises were open to the public, then this is a complete defense to the charge of burglary. We do not find any merit to the State's argument in this case that the area behind the counter was not open to the public. Accordingly, we approve the decision of the First District Court of Appeal. We disapprove Garvin to the extent that it is inconsistent with our decision in Miller.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

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

Application for Review of the Decision of the District Court of Appeal
Direct Conflict

First District - Case No. 96-4871

(Duval County)

Robert A. Butterworth, Attorney General, James W. Rogers, Tallahassee Bureau Chief, Criminal Appeals, and L. Michael Billmeier, Assistant Attorney General, Tallahassee, Florida,

for Petitioner

Nancy A. Daniels, Public Defender, and Phil Patterson, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Respondent