FILED
SID J. WHITE
AUG 17 1998
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

JOHN J. CONNELLY,

Respondent.

CASE NO. 93,507

DISTRICT COURT OF APPEAL
5th DISTRICT - No. 97-668

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT
AND THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

Robert A. Butterworth
Attorney General

Steven J. Guardiano
Senior Assistant Attorney General
FL Bar # 0602396
444 Seabreeze Blvd. 5th Floor
Daytona Beach, FL 32118
(904) 238-4990

Counsel for Petitioner

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STATEMENT OF THE CASE AND OF THE FACTS

On April 22, 1996, the State of Florida filed a two-count information charging John J. Connelly ("Connelly") with one count of introducing into or possessing a controlled substance in a county jail facility[1] and one count of possession of a controlled substance not in excess of 20 grams[2] (Vol. I, R 27-28). A jury trial was held on February 14, 1997 (Vol. II, TT 1-197).

Officer William White testified that he was working as the booking officer at the Brevard County Detention Facility, processing "weekenders," i.e., those people who are serving time on weekends (Vol. II, TT 103). Officer White collected Connelly's personal belongings and took him to the shower room. The area is well lit, kept clean and prisoners are processed one at a time (Vol. II, TT 103, 111, 118).

As Connelly removed his underwear, Officer White observed a "baggy" and lighter fall to the floor (Vol. II, TT 104, 113, 117, 133-134). Connelly acted surprised, claiming they were only cigarettes (Vol. II, TT 104). The detention facility is smoke-free; that not even cigarettes are allowed to be brought into the jail by inmates (Vol. II, TT 104-105). The baggy contained three hand-rolled cannabis cigarettes (Vol. II, TT 105-106, 113-114).

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[1]§951.22, Fla. Stat. (1995).

[2]§893.13(6)(a)&(b), Fla. Stat. (1995).

Connelly dressed and was placed into a holding cell. The field test performed by Deputy Moss confirmed that the contraband was cannabis, although defense counsel challenged the lack of formal laboratory testing (Vol. II, TT 115, 123-126, 129).

At the jury charge conference, defense counsel requested that the second count be included as a lesser included offense of possession of contraband in a detention facility (Vol. II, TT 139). The trial court agreed that Connelly could not be found guilty of two "possessions" and that if the jury came back "that way" then she would have to strike one of the counts (Vol. II, TT 139). The trial court recognized that each offense contained distinct elements: introduction and possession (Vol. II, TT 139-141).

Defense counsel cited to Turner v. State, 661 So. 2d 93 (Fla. 5th DCA 1996), for the proposition that Connelly could not be convicted of both (1) introduction or possession of cannabis in a county detention facility and (2) possession of cannabis (Vol. II, R 141). The State argued that there were two distinct crimes: the "introduction of contraband into a county jail facility" and the "possession of cannabis" (Vol. II, TT 143). Because of the separate possession count, defense counsel objected to the inclusion of both "introduction or possession" on the first count (Vol. II, TT 146). Defense counsel expressly accepted the resolution that the alternative possession element in the

introduction or possession count be removed from the jury instruction, thereby allowing the possession count to be submitted to the jury (Vol. I, R 51-52, Vol. II, TT 146-147).

Accordingly, the trial court instructed the jury that in order to find Connelly guilty of Count I they had to find that Connelly introduced contraband into the county detention facility (Vol. II, TT 178). Contraband was broadly defined. In contrast, the trial court instructed the jury on Count II that they had to find that Connelly knowingly possessed cannabis (Vol. II, TT 179). This distinction also is reflected in the verdict forms: Count I Introducing Contraband Upon the Ground of a Correctional or Penal Institution (with no alternative possession element) and Count II Possession of not more than 20 grams of Cannabis (Vol. I, R 62-67; Vol. II, R 186-187). The jury found Connelly guilty of Count I: Introducing Contraband Upon the Ground of a Correctional or Penal Institution, but not guilty of Count II: Possession of Not More than 20 Grams of Cannabis (Vol. I, R 62-63; Vol. II, TT 189-190).

On February 21, 1997, defense counsel moved for an arrest of judgment on the grounds that the verdict was "uncertain" (Vol. I, R 67-68). A hearing on the motion (and other motions for new trial and renewed judgment of acquittal) was held on February 28, 1997 (Vol I, R 1-25). Trial counsel argued that the verdict was uncertain, but candidly admitted that this was not a case of inconsistent verdicts, presumably because the possibility of truly

inconsistent verdicts was resolved at the jury charge conference (Vol. I, R 10-11). The trial court granted the motion for arrest of judgment on the grounds that the verdicts were inconsistent (Vol. I, R 23-24, 76).

On appeal, the State argued that the verdicts were not truly inconsistent as the jury was instructed solely on introduction of contraband on Count I, but possession of cannabis on count II. Specifically, the State argued that the jury could have found Connelly guilty of Count I: introducing contraband, but acquit Connelly on Count II because Connelly did know that the contraband he was introducing into the detention facility was cannabis.

On appeal, the Fifth District Court of Appeal affirmed the trial court, but certified the following question to the Florida Supreme Court:

> WHEN A JURY REFUSES TO CONVICT ON ONE COUNT OF A TWO COUNT INFORMATION IN A SITUATION IN WHICH A CONVICTION FOR BOTH COUNTS WOULD CONSTITUTE DOUBLE JEOPARDY, DOES ITS ACQUITTAL ON THE ONE COUNT, WHEN THAT COUNT DUPLICATES AN ESSENTIAL ELEMENT OF THE OTHER, REQUIRE AN ACQUITTAL ON THE OTHER COUNT?

The Fifth District rejected the State's argument that the two verdicts, as the charges were instructed to the jury, were not truly inconsistent. Connelly v. State, 23 Fla. L. Weekly D1610 n.1 (Fla. 5th DCA July 2, 1998).

The State timely filed a notice to invoke the discretionary jurisdiction of this Honorable Court. See Art. V, §3(b)(4), Fla. Const; Fla. R. App. P. 9.030(a)(2)(A)(v).

SUMMARY OF ARGUMENT

The verdicts were not truly inconsistent. As instructed by the trial judge, introduction (but not possession) of contraband into a county detention facility and possession of cannabis contain separate elements. The jury legally and factually distinguished the charges in this case by concluding that while Connelly was guilty of introducing contraband into the detention facility he did not know it was cannabis. Accordingly, the Fifth District's decision directly conflicts with this Court's recent opinions on inconsistent verdicts and this Court should rephrase the certified question.

Alternatively, it is respectfully submitted that this Court should interpret the acquittal as jury lenity and answer the certified question in the affirmative. This Court could adopt a harmless error test to avoid the possibility of wrongful conviction in truly inconsistent verdict cases.

ARGUMENT

THE VERDICTS WERE NOT TRULY INCONSISTENT AS THE ACQUITTAL ON ONE COUNT DID NOT NEGATE A NECESSARY ELEMENT FOR CONVICTION ON ANOTHER COUNT.

Initially, the State points out that the certified question should be rephrased to fit the facts in this case:

> WHEN A JURY REFUSES TO CONVICT ON ONE COUNT OF A TWO COUNT INFORMATION IN A SITUATION IN WHICH A CONVICTION FOR BOTH COUNTS WOULD NOT CONSTITUTE DOUBLE JEOPARDY, DOES ITS ACQUITTAL ON THE ONE COUNT, WHEN THAT COUNT DOES NOT DUPLICATE AN ESSENTIAL ELEMENT OF THE OTHER, REQUIRE AN ACQUITTAL ON THE OTHER COUNT?

The answer to the rephrased question is a resounding "No" in light of recent cases from this Court.

As a general rule, inconsistent verdicts are permitted in Florida. See e.g., Fayson v. State, 698 So. 2d 825 (Fla. 1997)(jury's rejection of aggravating factor of battery to find defendant guilty of burglary as lesser included offense of burglary of a dwelling with battery was not legally inconsistent with conviction of aggravated battery); State v. Powell, 674 So. 2d 731 (Fla. 1996)(acquittal of all jointly tried accused conspirators but one does not require acquittal of remaining conspirator). Inconsistent verdicts are allowed because verdicts can be the result of "jury lenity" or "jury nullification" and therefore do not always speak to the guilt or innocence of the defendant. Id. at 732.

This Court has recognized only one exception to the general rule allowing inconsistent verdicts. This exception, referred to as the true inconsistent verdict exception, comes into play when verdicts against one defendant on legally interlocking charges are truly inconsistent. Id. at 732. This Court has repeatedly approved Justice Anstead's explanation, writing for the Fourth District court of appeal in Gonzalez v. State, 440 So. 2d 514, 515 (Fla. 4th DCA 1983), rev. dism'd, 444 So. 2d 417 (1983), that true inconsistent verdicts are "those in which an acquittal on one count negates a necessary element for conviction on another count." Fayson, 698 So. 2d at 827; Powell, 674 So. 2d 733.

The record in the instant case reflects that the charges, as instructed to the jury, were not legally interlocking and therefore the verdicts were not truly inconsistent. This is because the trial judge and the attorneys fashioned the jury instructions to preclude a true inconsistent verdict (Vol. II, TT 139-150). On Count I, the trial court dropped the alternative possession element on the charge of introduction of contraband into a county detention facility (Vol. II, TT 178). On Count II, the trial court instructed the jury on possession of cannabis, not just contraband (Vol. II, TT 179). By virtue of the agreed to amended instructions on the two charges, the trial judge avoided any double jeopardy claims. See e.g., Wilcott v. State, 509 So. 2d 261 (Fla. 1987). See also Turner v. State, 661 So. 2d 93 (Fla. 5th DCA 1995).

Accordingly, the jury's acquittal on the "possession of cannabis" charge did not negate a necessary element for conviction on the "introduction of contraband" count. This is because the possession of cannabis charge required a finding by the jury that Connelly knowingly possessed cannabis. See Chicone v. State, 684 So. 2d 736 (Fla. 1996). "Introduction of contraband in a county detention facility," does not have this necessary knowledge element, merely requiring that Connelly introduce contraband of some nature into the county detention facility.

As in Fayson, it is apparent that the jury could have factually distinguished the charges by concluding that while Connelly was guilty of introducing contraband into the county detention facility, he did not have the knowledge that the contraband was cannabis. This is supported by the evidence adduced at the trial, wherein Officer White testified that when the baggy fell out of Connelly's underwear, Connelly acted surprised, claiming they were only cigarettes (which also would qualify as contraband)(Vol. II, TT 104). Also, during the trial, defense counsel repeatedly challenged that the contraband was cannabis because of the lack of formal laboratory testing (Vol. II, TT 115, 123-126, 129).

Accordingly, it is respectfully submitted that this Court rephrase the certified question and hold that the verdicts were not truly inconsistent. Review by this Court also is demonstrated by

the fact that the Fifth District's opinion expressly and directly conflicts with this Court's opinions in Fayson and Powell. See Art. 5, §3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

As an alternative to the argument above, the State submits that this Court should answer the Fifth District's actual certified question in the negative. The Fifth District, certified the following question:

> WHEN A JURY REFUSES TO CONVICT ON ONE COUNT OF A TWO COUNT INFORMATION IN A SITUATION IN WHICH A CONVICTION FOR BOTH COUNTS WOULD CONSTITUTE DOUBLE JEOPARDY, DOES ITS ACQUITTAL ON THE ONE COUNT, WHEN THAT COUNT DUPLICATES AN ESSENTIAL ELEMENT OF THE OTHER, REQUIRE AN ACQUITTAL ON THE OTHER COUNT?

When a jury produces logically inconsistent verdicts of acquittal and conviction, federal courts and 45 state courts do not apply not a rule of automatic reversal, but of affirmance where sufficient evidence exists to sustain the conviction. See United States v. Powell, 469 U.S. 57 (1984); Dunn v. United States, 284 U.S. 390 (1932); Eric L. Muller, The Hobgoblin of Little Minds? Our Foolish Law of Inconsistent Verdicts, 111 Harv. L. Rev. 772, 787 n.80 (1998)(listing other state court opinions which do not require consistency in multiple counts against a single defendant). Florida is one of only four states[3] which continue to require

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[3]The other States are Alaska, Illinois, and New York. See DeSacia v. State, 469 P.2d 369, 378 (Alaska 1970); People v. Klingenberg, 665 N.E.2d 1370, 1374-75 (Ill. 1996); Marsh v. State, 393 N.E.2d 757, 761 (Ind. 1979); People v. Tucker, 431 N.E.2d 617, 618-19 (N.Y. 1981).

consistency on legally interlocking jury verdicts against a single defendant.

The underlying rationale for the federal courts and vast majority of state courts is that consistency in a verdict should not be necessary because of jury lenity or jury nullification. Each count in an indictment or information should be regarded as it were a separate indictment. See Dunn, 284 U.S. at 393. As pointed out by the Fifth District in its opinion below, this view is expressly stated in every instruction to a Florida jury that "[a] finding of guilty or not guilty as to one count must not affect your verdict as to the other crimes charged."

"[I]nconsistencies, often are a product of jury lenity," and lenity is part of "the jury's historic function . . . as a check against arbitrary or oppressive exercises of government power. Powell, 469 U.S. at 65. A rule that allows the trial court or the appellate court to disturb inconsistent verdicts risks endangering this important feature of the jury system. Furthermore, this feature uniquely benefits criminal defendants because [t]he burden of the exercise of lenity falls only on the Government." Id., at 66. This is because the Double Jeopardy Clause prevents the Government from appealing any jury acquittal, regardless of its basis.

As pointed out by the Fifth District, "it is almost certain that the jury exercised lenity. It is highly doubtful that if the

jury truly believed that Connelly did not posses the cannabis it would have convicted him of its introduction or possession upon the grounds of the detention facility." Connelly. There was sufficient evidence that Defendant introduced contraband into the county detention facility. Accordingly, it is submitted that this Court should adopt the rule adopted by the federal courts and the vast majority of state courts and allow truly inconsistent verdicts even where the acquittal on one count negates an element in the other count.

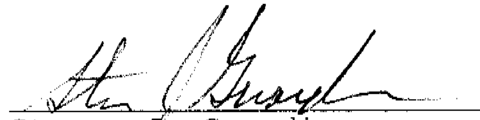
The State acknowledges that this Court may be opposed to overruling its prior case law on the matter. Accordingly, the State suggests that the court adopt a "harmless error rule" approach to truly inconsistent jury verdicts. See Eric L. Muller, The Hobgoblin of Little Minds? Our Foolish law of Inconsistent Verdicts, 111 Harvard Law review 772, 822-826 (1998). By utilizing a harmless error rule doctrine on truly inconsistent verdicts, a reviewing court would afford real protection to the criminal defendant, while at the same time, protect the State and the public from the inequity of a per se reversal rule regarding truly inconsistent verdicts.

CONCLUSION

The Petitioner, State of Florida, respectfully requests this Honorable Court to quash the decision of the Fifth District Court of Appeal and direct that the order of the Circuit Court granting an arrest of judgment be reversed.

Respectfully submitted,

Robert A. Butterworth
Attorney General

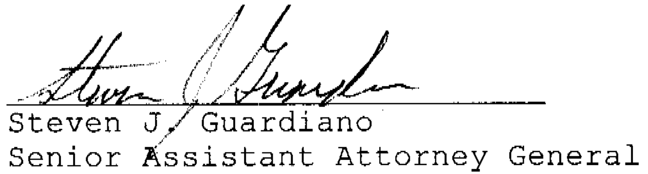


Steven J. Guardiano
Senior Assistant Attorney General
FL Bar # 0602396
444 Seabreeze Blvd. 5th Floor
Daytona Beach, FL 32118
(904) 238-4990

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petitioner's Initial Brief on the Merits has been furnished to Susan A. Fagan, Assistant Public Defender by hand delivery to the Public Defender's Box at the Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114, this 14th day of August, 1998.



Steven J. Guardiano
Senior Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

JOHN J. CONNELLY,

Respondent.
______________________________/

CASE NO. 93,507

DISTRICT COURT OF APPEAL
5th DISTRICT - No. 97-668

APPENDIX

Robert A. Butterworth
Attorney General

Steven J. Guardiano
Senior Assistant Attorney General
FL Bar # 0602396
444 Seabreeze Blvd. 5th Floor
Daytona Beach, FL 32118
(904) 238-4990

Counsel for Petitioner

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Item:

State v. Connelly, 23 Fla. L. Weekly D1610 (Fla. 5th DCA July 2, 1998)

Accordingly, we reverse and remand for entry of an order reinstating Adickes's ten-year probation term in Case No. CR91-11617, with credit for time Adickes was previously on probation in that case.

SENTENCE VACATED; REVERSED AND REMANDED. (GRIFFIN, C.J., and PETERSON, J., concur.)

* * *

Criminal law—Verdicts—Inconsistencies—Where jury convicted defendant of charge of introduction or possession of cannabis upon grounds of county detention facility but acquitted defendant of charge of possession of same cannabis, verdicts were inconsistent, and trial court properly granted defendant's motion for arrest of judgment—Question certified: When a jury refuses to convict on one count of a two count information in a situation in which a conviction for both counts would constitute double jeopardy, does its acquittal on the one count, when that count duplicates an essential element of the other, require an acquittal on the other count?

STATE OF FLORIDA, Appellant, v. JOHN J. CONNELLY, Appellee. 5th District. Case No. 97-668. Opinion filed July 2, 1998. Appeal from the Circuit Court for Brevard County, Tonya Rainwater, Judge. Counsel: Robert A. Butterworth, Attorney General, Tallahassee, and Steven J. Guardiano, Senior Assistant Attorney General, Daytona Beach, for Appellant. James B. Gibson, Public Defender, and Susan A. Fagan, Assistant Public Defender, Daytona Beach, for Appellee.

(HARRIS, J.) Connelly was charged with introduction or possession of cannabis upon the grounds of a county detention facility and, in a separate count, possession of that same cannabis. The jury convicted on the first count but acquitted on the second. The defense urged, and the trial court agreed, that the verdicts are inconsistent. The trial court granted the motion for arrest of judgment as follows:

> I think that when the jury finds [the appellee] not guilty on the possession, which is admittedly a lesser-included offense of the introduction or possession on the correctional or penal institution, and they find him guilty of the higher offense, I think they are inconsistent.

The State appeals.[1] We affirm but certify the issue.

The problem that faces the courts when considering inconsistent verdicts is in determining whether the jury is truly inconsistent in its findings or has merely granted the defendant a jury pardon or partial jury pardon on one count believing that it has convicted him or her on the other count. This was the problem that faced the United States Supreme Court in *Dunn v. United States,* 284 U.S. 390, 393 (1932), in which Justice Holmes, writing for the court, explained:

> Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment. (Citations omitted.) . . . As was said in *Steckler v. United States,* (C.C.A.) 7 F. (2d) 59, 60:
>
> > 'The most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity.'

Thus, *Dunn* upheld the conviction for maintaining a common nuisance by keeping for sale at a specified place intoxicating liquor even though the jury acquitted the defendant of the charges of possession and sale of such liquor.

This court followed the *Dunn* analysis in *Bufford v. State,* 473 So. 2d 795, 796 (Fla. 5th DCA 1985), *rev. denied*, 482 So. 2d 347 (Fla. 1986):

> The jury pardon concept is a well-accepted principle throughout the majority of jurisdictions. [Citations omitted]. In Florida, courts have observed that an inconsistency in verdicts is the price for investing the jury with mercy dispensing powers. [Citations omitted]. Further, the preservation of the jury "pardon power" is the basis for the rule that the jury must be charged on all necessarily lesser included offenses.

In our case, the trial court acknowledged that the principle of double jeopardy would prevent the defendant from being convicted of both the possession required for the first count and separately for possession of the same cannabis as alleged in the second count. Is it unreasonable, therefore, to assume that the jury also believed that a double conviction would be unjust under the facts of this case and elected to "pardon" the defendant on Count II believing that Connelly would be adequately punished under his conviction on Count I? The question before us is, assuming the jury pardoned the defendant on Count II, does the law require that the defendant be acquitted on Count I because Count II involved possession of the same cannabis?

In *Redondo v. State,* 403 So. 2d 954 (Fla. 1981), our supreme court held that a conviction for unlawful possession of a firearm while engaged in the commission of a felony could not stand when the jury, instead of convicting the defendant for committing the alleged felony, found that he had committed only a misdemeanor.[2] At first blush, it appears only logical that if the predicate felony is rejected, then the compound charge of possession of a firearm during the felony must fail.[3] But the jury in convicting on the possession of a firearm during the commission of a felony count must have found that a felony existed *for that count*. If the jury believed that only one felony conviction was justified in this case and elected a lesser included offense as an alternative to the second felony charge, must the defendant be cleared of the felony conviction? *Redondo* does not discuss the possibility that the felony count may have been reduced to a misdemeanor because of lenity. It does hold, however, that the failure of the jury to convict for the predicate felony precludes it from having found the necessary felony in the compound charge. Even so, in *Redondo* there would have been no apparent injustice in convicting for both counts since a conviction on both counts would not have created a double jeopardy problem.

From a review of the cases in other jurisdictions, Florida seems to stand in the minority in not recognizing that a jury's acquittal on one count should not affect the jury's conviction on another count even in compound charge cases in which the predicate offense is charged as a separate count.[4] But even in Florida the jury is instructed that "[a] finding of guilty or not guilty as to one count must not affect your verdict as to the other crimes charged." In the case before us,[5] it is almost certain that the jury exercised lenity. It is highly doubtful that if the jury truly believed that Connelly did not possess the cannabis it would have convicted him of its introduction or possession upon the grounds of the detention facility. Since the evidence of possession was the same, did the jury suddenly become confused before considering the second count or did it merely believe, as does the law, that one conviction is sufficient under the circumstances of this case? In this situation, should we not interpret, as did the court in *Steckler* as cited in the *Dunn* opinion, the acquittal as jury lenity?

We affirm because of *Redondo* but certify the following question to the supreme court:

> WHEN A JURY REFUSES TO CONVICT ON ONE COUNT OF A TWO COUNT INFORMATION IN A SITUATION IN WHICH A CONVICTION FOR BOTH COUNTS WOULD CONSTITUTE DOUBLE JEOPARDY, DOES ITS ACQUITTAL ON THE ONE COUNT, WHEN THAT COUNT DUPLICATES AN ESSENTIAL ELEMENT OF THE OTHER, REQUIRE AN ACQUITTAL ON THE OTHER COUNT?

(GRIFFIN, C.J., concurs. DAUKSCH, J., concurs in result only without opinion.)

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[1]We reject the State's contention that Connelly could have "introduced" the cannabis onto the grounds of the detention facility without actually possessing it.

[2]The court in *Streeter v. State,* 416 So. 2d 1203 (Fla. 3d DCA 1982), interprets *Redondo* as creating an exception to the general rule that separate counts must be viewed independently by holding that what the jury *fails* to find in one count vitiates a guilty verdict in another count if the jury makes a contrary find-

ing on the same evidence.

[3]There was a movement by some federal appellate courts to engraft an exception to the *Dunn* rule which would have had bearing on the *Redondo* decision. The exception would hold that if one is acquitted of a predicate offense, then a conviction for the compound offense cannot stand because the acquittal shows that there must have been insufficient evidence to convict on either charge. This reasoning was rejected by the United States Supreme Court in *United States v. Powell*, 469 U.S. 57, 63, 67-68 (1984), in which the court, although receding from a portion of the reasoning of Dunn, nevertheless rejected the proposed exception and reaffirmed the *Dunn* rule:

> Fifty-three years later most of what Justice Holmes so succinctly stated retains its force . . . This court noted that *Dunn* . . . establish[ed] "the unreviewable power of a jury to return a verdict of not guilty for impermissible reasons."
>
> . . . [T]his is not a case where a once-established principle has gradually been eroded by subsequent opinions of this Court. Nevertheless, recent decisions in the Courts of Appeals have begun to carve exceptions out of the *Dunn* rule.
>
> * * *
>
> Respondent contends, nevertheless, that an exception to the *Dunn* rule should be made where the jury acquits a defendant of a predicate felony, but convicts on the compound felony. Such an "exception" falls almost on its own weight. . . .
>
> Second, respondent's argument that an acquittal on a predicate offense necessitates a finding of insufficient evidence on a compound felony count simply misunderstands the nature of the inconsistent verdict problem. Whether presented as an insufficient evidence argument, or as an argument that the acquittal on the predicate offense should collaterally estop the Government on the compound felony offense, the argument necessarily assumes that the acquittal on the predicate offense was proper—the one the jury "really meant."

[4]It might well be a better decision if the State elected not to file lesser included offenses as separate charges in separate counts. But that is a filing decision.

[5]Our case does not involve a predicate offense; it does, however, involve a predicate element—possession. Should it matter?

* * *

COLEMAN v. BELL. 5th District. #97-1383. July 2, 1998. Appeal from the Circuit Court for Orange County. AFFIRMED. *See Holsworth v. Florida Power & Light Co.*, 700 So. 2d 705 (Fla 4th DCA 1997), *rev. dismissed*, 705 So.2d 901 (Fla. 1998); *Lake Parker Mall, Inc. v. Carson*, 327 So. 2d 121 (Fla. 2d DCA 1976), *cert. denied*, 344 So.2d 323 (Fla. 1977).

A. W. v. STATE. 5th District. #97-1631. July 2, 1998. AFFIRMED. *See Meyers v. State*, 704 So. 2d 1368 (Fla. 1997), *cert. denied*, 1998 WL 248960 (U.S. June 26, 1998) (No. 97-8980); *Dunn v. State*, 454 So. 2d 641 (Fla. 5th DCA 1984); *see also J.B. v. State*, 705 So. 2d 1376 (Fla. 1998).

CHAMBERS v. STATE. 5th District. #97-2310. July 2, 1998. Appeal from the Circuit Court for Orange County. AFFIRMED. *See Whren v. United States*, 517 U.S. 806 (1996); *Holland v. State*, 696 So. 2d 757 (Fla. 1997); *Green v. State*, 530 So. 2d 480 (Fla. 5th DCA 1988); *rev. denied*, 539 So. 2d 475 (Fla. 1989); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985), *rev. denied*, 482 So. 2d 345 (Fla. 1986).

LANGLOIS v. STATE. 5th District. #97-343. July 2, 1998. Appeal from the Circuit Court for Brevard County. AFFIRMED. *Maddox v. State*, 708 So. 2d 617 (Fla. 5th DCA 1998).

LANE v. STATE. 5th District. #98-1326. July 2, 1998. 3.800 Appeal from the Circuit Court for Seminole County. AFFIRMED. *See Davis v. State*, 661 So. 2d 1193 (Fla. 1995); *Judge v. State*, 596 So. 2d 73 (Fla. 2d DCA 1991).

IRVIN v. STATE. 5th District. #98-1458. July 2, 1998. 3.800 Appeal from the Circuit Court for Volusia County. AFFIRMED. *See Williams v. State*, 667 So. 2d 914 (Fla. 3d DCA 1996); *Houser v. State*, 666 So. 2d 158 (Fla. 5th DCA 1995).

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B.M.K. v. STATE. 1st District. #97-4095. July 1, 1998. Appeal from the Circuit Court for Duval County. DISMISSED. *See Robinson v. State*, 373 So. 2d 898 (Fla. 1979); *L.L. v. State*, 429 So. 2d 347 (Fla. 5th DCA 1983).

TAYLOR v. STATE. 1st District. #98-1100. July 1, 1998. Appeal from the Circuit Court for Bay County. We grant the state's motion to dismiss, and dismiss this appeal on the authority of *State v. Gurican*, 576 So. 2d 709 (Fla. 1991), and *Griffis v. State*, 703 So. 2d 522 (Fla. 1st DCA 1997).
APPEAL DISMISSED.

ANSLEY v. STATE. 1st District. #98-910. July 1, 1998. Appeal from the Circuit Court for Duval County. DISMISSED. *See, e.g., Daniels v. State*, 568 So. 2d 63 (Fla. 1st DCA 1990); *Alexander v. State*, 553 So. 2d 312 (Fla. 1st DCA 1989).

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RELIANCE INSURANCE COMPANY vs. HOOLIGAN'S PUB AND OYSTER BAR, LTD. 3rd District. #s 97-3151 & 97-2128. July 1, 1998. Appeals from the Circuit Court for Dade County. Affirmed. *See Tiedtke v. Fidelity & Cas. Co. of New York*, 222 So. 2d 206 (Fla. 1969); *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA), *review denied*, 536 So. 2d 246 (Fla. 1988); *Auto Owners Ins. Co. v. Allen*, 362 So. 2d 176 (Fla. 2d DCA 1978); *Hartford Accident & Indem. Co. v. Phelps*, 294 So. 2d 362 (Fla. 1st DCA 1974). *See also Island Breakers v. Highlands Underwriters Ins. Co.*, 665 So. 2d 1084, 1085 (Fla. 3d DCA 1995) (Cope, J., concurring).

ROLLE vs. STATE. 3rd District. #97-1185. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Bruton v. State*, 220 So. 2d 669 (Fla. 3d DCA 1969) (positive identification by one witness sufficient to support a conviction); *Yant v. State*, 192 So. 2d 297 (Fla. 3d DCA 1966); *Vitiello v. State*, 169 So. 2d 339 (Fla. 3d DCA 1964).

DIXON vs. STATE. 3rd District. #97-1731. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Burgin v. State*, 623 So. 2d 575 (Fla. 1st DCA 1993); *McLaurin v. State*, 585 So. 2d 473 (Fla. 3d DCA 1991).

CRUZ vs. DIEGUEZ. 3rd District. #97-1758. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Chiusolo v. Kennedy*, 614 So. 2d 491 (Fla. 1993).

MELGARES vs. STATE. 3rd District. #97-2007. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Bertolotti v. Dugger*, 514 So. 2d 1095, 1096-97 (Fla. 1987); *Mingo v. State*, 680 So. 2d 1079, 1080 (Fla. 3d DCA 1996); *overruled on other grounds by Greene v. State*, 702 So. 2d 510, 512 n.4 (Fla. 3d DCA 1997); *see also* Fla. R. Crim. P. 3.380(b); *State v. Pennington*, 534 So. 2d 393, 395 (Fla. 1988); *Morris v. State*, 689 So. 2d 1275, 1276 (Fla. 5th DCA) *review granted*, 698 So. 2d 848 (Fla. 1997).

PARKER vs. STATE. 3rd District. #97-2935. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986); *Salvatore v. State*, 366 So. 2d 745 (Fla. 1978), *cert. denied*, 444 U.S. 885 (1979); *Lynch v. State*, 293 So. 2d 44 (Fla. 1974); *Mutcherson v. State*, 696 So. 2d 420 (Fla. 2d DCA), *review denied*, 700 So. 2d 686 (Fla. 1997).

R.A.C. vs. STATE. 3rd District. #97-3030. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Jones v. State*, 666 So. 2d 960 (Fla. 3d DCA 1996); *Jones v. State*, 466 So. 2d 301 (Fla. 3d DCA 1985).

WOODING vs. STATE. 3rd District. #98-100. July 1, 1998. Appeal from the Circuit Court for Dade County. Affirmed. *See Brock v. State*, 688 So. 2d 909, 911 (Fla. 1997) (holding that trial court may validly impose upon a defendant special condition of probation that is rationally related to State's need to supervise defendant); *Rodriguez v. State*, 378 So. 2d 7 (Fla. 2d DCA 1979).

FISHER vs. STATE. 3rd District. #98-1353. July 1, 1998. Appeal from the Circuit Court for Dade County. Dismissed. *See Bourjolly v. State*, 623 So. 2d 870 (Fla. 3d DCA 1993), *rev. denied*, 634 So. 2d 622 (Fla. 1994).

MIAMI ELEVATOR COMPANY vs. LANGILL. 3rd District. #98-261. July 1, 1998. Appeal from the Circuit Court for Monroe County. Affirmed. *Frosti v. Schaefer*, 675 So. 2d 181 (Fla. 2d DCA 1996); *Burns v. Otis Elevator Co.*, 550 So. 2d 21 (Fla. 3d DCA 1989); *Young v. Curgil*, 358 So. 2d 58 (Fla. 3d DCA 1978).

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TOOMBS v. STATE. 4th District. #97-2288. July 1, 1998. Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County. Affirmed. *See Hyden v. State*, No. 97-0935 (Fla. 4th DCA June 3, 1998).

WAGONER v. STATE. 4th District. #97-3635. July 1, 1998. Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County. Affirmed. *See State v. Kuntsman*, 643 So. 2d 1172 (Fla. 3d DCA 1994).

KOTEL TRANSPORT, INC. v. FORT LAUDERDALE COLLECTION, INC. 4th District. #97-3967. July 1, 1998. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County. We affirm the final order of dismissal entered by the trial court against appellee, Michael Gordon. *See Alsup v. Your Graphics Are Showing, Inc.* 531 So. 2d 222 (Fla. 2d DCA 1988).
AFFIRMED.

KELLER v. UNEMPLOYMENT APPEALS COMMISSION. 4th District. #97-4333. July 1, 1998. Appeal from the State of Florida, Unemployment Appeals Commission. Affirmed. See *Leon v. Unemployment Appeals Comm'n*, 476 So. 2d 761 (Fla. 3d DCA 1985).

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BOEKENOOGEN v. STATE. 2nd District. #96-03711. June 26, 1998. Appeal from the Circuit Court for Hillsborough County. Affirmed. *See Collie v. State*, 23 Fla. L. Weekly D1102 (Fla. 2d DCA May 1, 1998).

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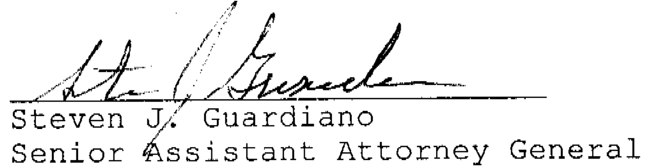
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petitioner's Appendix has been furnished to assistant public defender, Susan A, Fagan, by hand delivery to the Public Defender's Box at the Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114, this 14th day of August, 1998.



Steven J. Guardiano
Senior Assistant Attorney General