

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed July 16, 2008.

No. 3D06-1733
Lower Tribunal No. 97-33314

Kanisky Evans,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction – Habeas Corpus.

Kanisky Evans, in proper person.

Bill McCollum, Attorney General, and Paulette R. Taylor, Assistant Attorney General, for respondent.

Before COPE and WELLS, JJ., and SCHWARTZ, Senior Judge.

On Motion for Rehearing

COPE, J.

In the defendant's motion for rehearing he argues that by virtue of the reversal of the conspiracy counts, there must also be a new trial on count one, the violation of the Florida RICO Act. See § 895.01, Fla. Stat. (1995).

The State concedes that under the circumstances of this case, the defendant's point is well taken. With the reversal of the conspiracy counts, only two substantive offenses remain, armed trafficking (count twenty-one) and theft (count twenty-two). Because those two offenses arose out of the same transaction, they do not satisfy the "two incidents" requirement of the Florida RICO Act. Watts v. State, 558 So. 2d 142, 143-44 (Fla. 3d DCA 1990); State v. Russo, 493 So. 2d 504 (Fla. 4th DCA 1986). It follows that the conviction on count one must be vacated and that count will be included in the new trial previously ordered.

We reject the defendant's argument that convictions on counts twenty-one and twenty-two, the substantive offenses, must be vacated. We do not disturb the defendant's convictions on those two counts.

For the stated reasons, the defendant's motion for rehearing is granted in part and denied in part. The State's motion for rehearing was previously denied by unpublished order.