IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

DENISE WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 1D19-0498

L.T. Case No. 2018-CF-001592

ON APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

PHILIP J. PADOVANO
Florida Bar No. 157473
ppadovano@bhappeals.com
JOSEPH T. EAGLETON
Florida Bar No. 98492
jeagleton@bhappeals.com
BRANNOCK & HUMPHRIES
131 N. Gadsden Street
Tallahassee, Florida 32301
Tel: (850) 692-5255
Secondary Email:
eservice@bhappeals.com

ETHAN ANDREW WAY
Florida Bar No. 148199
ethan@waylawfirm.com
WAY LAW FIRM, PA
P.O. Box 10017

Tallahassee, Florida 32302
Tel: (850) 412-0142
Secondary Email:
ethanandrewway@gmail.com

Attorneys for Appellant/Defendant,
Denise Williams

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The State's answer brief is more bluster than it is black-letter law. For instance, the State notes, incredulously, that the defendant "makes a sweeping assertion that no Florida court has ever affirmed a conviction under principle [sic] liability for words alone." Answer Brief ("AB"), p.20. But whether it is "sweeping" or not, the fact remains: the State has failed to cite a single case in which a court has upheld a conviction as a principal to a crime based on words alone. Affirmance of the murder conviction here would thus be a dramatic expansion of principal liability, a result that is not supported by either the existing case law or the facts of this case.

Similarly, the State criticizes the initial brief's statement of facts as "unduly argumentative." AB, p.2. But the State points to no specific statements from the initial brief that are unsupported by the record, nor does the State identify any facts that were improperly cited.

The State's brief is also imprecise. The State claims, for example, that two "acts" support the murder conviction: paying the premium on the victim's life-insurance policy and securing the victim's attendance on the hunting trip. AB, pp.22-23. But the State's argument that these "acts" are sufficient to uphold the first-degree murder conviction is belied by the record. The life-insurance renewal, attenuated to the murder as it is, was not even argued by the State in the trial court

as a basis to sustain the conviction. T.619-20,672. And the "fair inference" of securing the victim's attendance—phrasing that acknowledges the lack of actual evidence on this point—is contradicted by Winchester's own testimony, which demonstrates that he was the one who called the victim to arrange the plan for the second hunting trip. T.224-26,290. Simply put, there is no evidence that the defendant facilitated, assisted, or even encouraged the victim to go hunting, or that the victim required her permission to go in the first place. That the State can do no better than these post-hoc justifications shows how weak the State's case really is.

Another example of the State's imprecision is its response to the fourth issue raised in the initial brief, pertaining to the denial of the defendant's motion to compel an election between inconsistent charges. On this issue, the State's brief fails to even address the binding Florida Supreme Court case law cited on pages 46-47 of the initial brief. The best the State can do is note that some of those cases involved "theft related crimes" and that Florida law imposes a "special rule" for "cases that charge theft and dealing in stolen property." AB, p.59. But none of the cases say anything about the "special rule" the State refers to; instead, those cases broadly hold that the denial of a timely motion to compel an election "constitutes reversible error warranting a new trial." *Mayers v. State*, 171 So. 824, 824 (Fla. 1936). The Supreme Court's pronouncement, which this Court has dutifully

followed (also without limiting it to "theft related crimes"), compels a new trial here. *See Johnson v. State*, 333 So. 2d 505, 505-06 (Fla. 1st DCA 1976).

These are just a few examples of the weaknesses in the State's arguments. The bottom line is that nothing in the answer brief changes the inescapable conclusion that the State did not establish that the defendant committed an act in furtherance of the murder, did not prove the existence of a conspiracy beyond a reasonable doubt, and cannot overcome the myriad other errors that infected the fairness of the trial. The State's bluster and imprecision do not provide a basis to affirm.

I. The trial court erred in denying the defendant's motion for judgment of acquittal because the evidence was legally insufficient to demonstrate that she was a principal to first-degree murder.

A. There is no evidence the defendant committed any act in furtherance of the crime.

The State's argument that an act is not required to support principal liability misses the mark. It is true that the standard jury instruction, parroted by some cases, is broadly worded to include both acts and words. We acknowledged as much in the initial brief. Initial Brief ("IB"), p.19. Our point, though, is that this instruction does not accurately state the law, as reflected in the precedents set by the Supreme Court and by this Court. IB, pp.19-21.

None of the cases cited by the State prove otherwise. For example, the State cites *Garzon v. State*, 980 So. 2d 1038 (Fla. 2008), AB, p.16, but in that case the

defendant, who had worked in the victim's home and was familiar with the layout of the home, directed other defendants in a 39-minute cell-phone call made in real time during the commission of a home invasion robbery. Likewise, in *T.B. v. State*, 732 So. 2d 1163 (Fla. 1st DCA 1999), AB, p.16, this Court affirmed a conviction for false imprisonment because the defendant knowingly participated in an abduction and then refused to allow the victim to get out of his car. In other words, despite reciting the broad language of the jury instruction, neither of those cases involved a conviction based solely on something the defendant said.

Neither did *Banks v. State*, 610 So. 2d 514 (Fla. 1st DCA 1992), notwithstanding the State's protestations to the contrary. AB, p.21. In *Banks*, this Court stated that the evidence was sufficient to convict the defendant as a principal to the crime of perjury because the defendant "went as far as actually preparing a script to be utilized in coaching the witnesses" who were to testify in his sexual battery trial. *Id.* at 516. Thus, contrary to the State's claim, *Banks* clearly involved an "act" in furtherance of the crime of perjury: preparing a script and giving it to a witness.

Ironically, given the State's mischaracterization of *Banks*, the State accuses us of misconstruing this Court's decision in *Ammons v. State*, 253 So. 3d 130 (Fla. 1st DCA 2018). AB, pp.23-34. As with *Garzon* and *T.B.*, though, the State's problem with respect to *Ammons* is that it treats broad language in the opinion the

same as the holding of the case. Although the *Ammons* opinion did refer to the broadly stated rule in the jury instruction that purports to allow a conviction based on words alone, this Court nevertheless reversed the conviction because "there was not sufficient evidence that [the defendant] did some act to assist in the commission of the crime." *Id.* at 130. In doing so, this Court even emphasized the rule from *Staten v. State*, 519 So. 2d 622, 624 (Fla. 1988), that the State must prove that the defendant "intend that the crime be committed and do some act to assist the other person in actually committing the crime." *Ammons*, 253 So. 3d at 130. There is thus nothing to misconstrue about the holding in *Ammons*: this Court correctly applied the categorical statement by the Supreme Court in *Staten* that a conviction as a principal requires proof that the defendant committed an "act" in furtherance of the crime.

The State counters, for the first time on appeal, that if an "act" is required, then the defendant's decision to pay the premium on the victim's $500,000 life insurance policy so that it would not lapse qualifies as such an "act." AB, p.22. For starters, there is no evidence that the defendant procured the life insurance policy or encouraged the victim to purchase it in the first place. So at best, the State's claim that the defendant prevented the policy from lapsing, which derives solely from the testimony of Winchester, is evidence that the defendant may have

at some point considered a plan to kill her husband. It is not evidence that she actually participated in the murder.

Stated differently, renewing the life insurance policy may have been an "act" that tends to show the existence of a motive, but it was not an "act" that facilitated the commission of the crime, akin to buying a gun or serving as a lookout or hiring a hit-man. Indeed, if an action so far attenuated to the actual crime itself could be considered an "act" in furtherance of the crime, the requirement that the defendant "do some act to assist the other person in actually committing the crime" would be meaningless.

Of note, none of the participants in the trial considered the insurance renewal to be an act supporting the murder. The prosecutor argued that a "verbal act" was enough, conceding that there was no physical act. T.672. The trial court agreed, stating that the "act" requirement in *Staten* and *Ammons* was just dicta. T.674. If the prosecutor thought that Winchester's claim that the defendant paid the premium on the policy was an "act" in furtherance of the crime, he surely would have tried to corroborate that claim—after all, it would have been easy enough to find out who wrote the check to the insurance company. But no one even thought to ask, because no one considered it to be an act in furtherance of the murder.

Moreover, the agent in charge of the investigation testified that he was not aware of any evidence that the defendant actually did anything to help Winchester

commit the murder. T.188. Like everyone else on the prosecution team, he did not consider the insurance payment to be an act in furtherance of the crime.

Nor did anyone consider it sufficient that the defendant "ensured that [the victim] met Winchester as planned." AB, p.23. In fact, as we noted in the initial brief, the prosecutor was forced to back off his argument that the defendant "gave [the victim] permission to go hunting" because there was no evidence to support that theory. IB, p.17. Perhaps that's why the answer brief now describes this as a "fair inference" from the evidence—because there's no actual evidence in support. The most that could be said of the evidence is that the defendant did not do anything to prevent her husband from going hunting. Surely the absence of an action is not an act in support of the crime.

B. There is no evidence that could qualify as a "verbal act."

The State argues that the defendant's words incited, caused, encouraged, assisted, or advised Winchester to commit the crime. AB, pp.18-21. The State's arguments on this point fail for two reasons: (1) the conversations the State refers to relate to the planning of the offense, not the commission of the offense; and (2) there is nothing in the State's brief, or the transcript of the trial for that matter, to show what, if any, "words" were actually spoken by the defendant.

Planning. The State argues that Winchester and the defendant planned the murder, allegedly discussing three ways to kill Mike. AB, pp.19-20. On its face,

this argument relates to the planning, not the commission, of the offense. If, as the State contends, a "verbal act" is sufficient to support the defendant's conviction as a principal to the completed act of murder, then at the very least the "verbal act" would have to be an act that assisted Winchester in some way in committing the murder. But the only evidence cited by the State is evidence that relates to the conspiracy charge. The State cites no "verbal act" that assisted Winchester in carrying out the murder. Under the State's theory, every conspiracy would automatically become a completed criminal offense as well. That is not the law.

Nor could it be the case that some vague "counsel," unrelated to the actual commission of the offense, could suffice. AB, pp.17-18. If a defendant can be convicted as a principal based on words alone, as the State contends, then surely those words must at least be uttered contemporaneously with the commission of the crime itself—that is, the "counsel" still requires participation in the offense. *See Horton v. State*, 442 So. 2d 1064, 1065 (Fla. 1st DCA 1983). Otherwise, every solicitation would automatically become chargeable as the underlying offense.

Verbal Act. More importantly, the State fails to address the argument we actually made on this point. As we stated in the initial brief, Winchester related the series of events in a conclusory way. IB, p.21-23. He repeatedly used phrases like "we decided" and at some points even described the events in the passive voice, saying "it was decided." IB, p.22. But at no point did he testify to anything the

appellant actually said in relation to the crime. The essential point of our argument is this: if a "verbal act" is sufficient standing alone, then surely the State has an obligation to present some evidence of what the defendant said. IB, pp.21-23.

The State's brief does not address this argument at all. Instead, the State merely repeats all the conclusory statements we acknowledged in the initial brief as if they were proof of a "verbal act." AB, pp.18-21. This is simply not good enough. Although the State says we ignored a "mountain of evidence," AB, p.27, there is not a single line anywhere in the answer brief that reveals anything the defendant said to Winchester. Not one. And the Court will not find such a statement if it scours the trial transcript, either. Despite proceeding on the theory that the defendant committed a "verbal act," the prosecutor did not ask Winchester a single question about what the defendant said to him. In the absence of that evidence, the defendant's conviction as a principal cannot stand.

C. There is no evidence the defendant intended to participate in the commission of the crime.

The State's entire argument on this point treats the planning of a crime and the knowledge that someone else was about to commit it the same as participating in the crime. Of course, there is a big difference. And in this case, there is no evidence that the defendant did—or even said—anything to indicate that she intended to participate in the actual commission of the murder.

II. The trial court erred in denying the defendant's motion for judgment of acquittal because the evidence was legally insufficient to demonstrate that she conspired to commit first-degree murder.

Waiver. As an initial matter, the State asserts that, by arguing below that she renounced the conspiracy, the defendant waived any claim that the evidence of a conspiracy was insufficient. AB, pp.29-30. This argument takes the defendant's point out of context, isolating one part of the judgment of acquittal motion while ignoring another. Contrary to the State's characterization, the defendant did argue that the evidence was insufficient to show that she intended to commit the crime—the same argument raised on appeal. R.1026-27,1056-57. She simply argued, in the alternative, that if the trial court disagreed, then the evidence also showed that she renounced any plan to commit the crime. R.1026-27. The State's brief improperly tells only one side of the story.

A. The State failed to prove the existence of an agreement.

Once again, the State's brief fails to address the argument made in the initial brief. It is true that Winchester claimed that the defendant was involved in the plan. We acknowledged that and cited numerous passages from his testimony in which he asserted that claim. IB, pp.26-29. The point of our argument, though, is that Winchester's recitation of the events was merely a characterization that the defendant had agreed to a plan. It was not evidence, and certainly not "substantial

evidence," as required by *Baxter v. State*, 586 So. 2d 1196, 1199 (Fla. 2d DCA 1991), to sustain a conspiracy conviction. IB, pp.27-28.

As noted in the initial brief and explained in connection with the discussion of the State's "verbal act" theory above, Winchester's testimony was vague and conclusory. He related every alleged conversation by stating what he said to Denise and then simply concluding that she agreed. IB, pp.26-27. Not once did he attribute any direct statement to Denise. Winchester badgered Denise about the plan, prompting even the prosecutor to say, "it sounds like you were pressuring her into that." T.220. Still, Winchester did not relate anything that Denise said to him at that time. He simply added his own conclusion that "at some point during the next week it was decided" that they would go ahead with the plan. T.220.

When asked if Denise was there with him when he murdered Mike, Winchester replied, "She was in my head. Behind me." T.289. This revealing statement, taken together with Winchester's admission that he was "obsessed" with Denise, T.289, is enough to lead one to wonder whether the whole thing was in his head. In any event, the defendant's argument that Winchester's testimony is too conclusory to meet the substantial evidence requirement for a conspiracy conviction remains unrefuted. It was not addressed at all in the answer brief.

B. There is no evidence the defendant intended to take part in the alleged plan to commit the crime.

Here again, the State relies on a conclusion, not a fact. Winchester testified that "Denise really didn't have to do a whole lot, other than come up with an alibi for herself and make sure Mike went." T.218. But it is not clear why Denise would have to "come up with an alibi." Even by Winchester's own account, she was not going anywhere or doing anything. More to the point, Winchester testified that he never even told Denise that he had murdered Mike. T.299. That begs the question: how could Denise help plan a murder she didn't even know had been committed?

Further, as we noted above, the notion that Denise somehow agreed to participate in the murder by allowing Mike to go hunting does not hold up, either. There was no evidence that Mike needed Denise's permission to go hunting. In fact, the trip was planned entirely in phone calls between Brian and Mike. T.224-25,290. There is no evidence that Denise facilitated the hunting trip or even that she encouraged Mike to go hunting that day. All we have is Brian's conclusion.

If the Court were to accept this as "substantial evidence" of a conspiracy, it would have to assume that Denise actually said something to Brian that led him to conclude that she agreed to make sure Mike went hunting. But again, there is no evidence of that. Simply put, there is no evidence of <u>anything</u> Denise said to Brian. Brian's characterizations of Denise's motives and intentions are not enough to sustain the conspiracy conviction.

III. The trial court erred in denying the defendant's motion for a new trial.

A. The trial court erred in failing to grant a new trial based on the admission of irrelevant and unduly prejudicial photographs.

We make two brief points on this issue. First, the State suggests that defense counsel thought his own objection was "foolish." AB, pp.35-37. This is a distorted view of the record. Defense counsel's comment was made in reference to a set of photos that, due to the prosecutor's inadvertence, did not include the objectionable pictures of the defendant and Winchester's wife, naked and embracing each other in bed. Once the error was discovered and the prosecutor acknowledged that the "illicit" photos had been omitted from the stack given to the judge, defense counsel noted offhandedly that his objection must have seemed foolish "in light of what [the judge was] actually looking at." T.319-20. After the "illicit" photos were properly before the Court, counsel renewed his objection on the ground of relevance. T.320. Nothing about this objection was foolish.

Second, the State argues that the photos were relevant to show that Denise was, in fact, having an affair with Brian before the murder. AB, pp. 38-39. But the photos don't show that at all. Photos of two naked women embracing each other in bed do not prove or even tend to prove that one of the women was having an affair with the other woman's husband. Ironically, Kathy Thomas, the other woman in the pictures, agreed. She was called as a witness for the State and she testified that she suspected the defendant was having an affair with Brian but had no evidence of

that. T.589. Obviously, then, Ms. Thomas did not think that the photos of the defendant embracing her in bed were evidence that the defendant was having an affair with her husband.

B. The trial court erred in failing to grant a new trial based on the prosecutor's improper and prejudicial comments regarding the defendant's appearance and demeanor in the courtroom.

We make two brief points on this issue, as well. First, the State argues that we could have moved for a mistrial. AB, pp.40-41. Of course that's true, but it is equally irrelevant. The defendant did present this issue in her motion for a new trial. R.1095,1250-66. And if the trial court had granted that motion, the case would have been in the same posture as if the court had granted a mistrial. Either way, the case would have to be tried again. The failure to move for a mistrial is meaningless, particularly when we acknowledged, in the initial brief, that the comments must be measured by the fundamental error standard.

Second, the State claims that the prosecutor's comments were invited by defense counsel's own closing. AB, pp.41-44. But defense counsel's closing merely attempted to narrow the issues by identifying several things the case was not about. T.734-35. And the case undeniably was not, and is not, about how the defendant looked in the courtroom. Defense counsel's statements were correct as a matter of law. Telling the jury to follow the law and not consider the emotional aspects of the case in no way invited the State to tell the jury to disregard the law

and conclude that the defendant must be a cold-blooded killer because she sat there emotionless during the gruesome description of her husband's death. To put a finer point on it: If a defense lawyer tells the jurors that they cannot consider the fact that the defendant did not testify, that does not open the door for the prosecutor to then make an argument that the defendant must have something to hide because he did not testify. Either way, the prosecutor's comment is improper.

C. The trial court erred in failing to grant a new trial based on demonstrated juror misconduct.

Again, we make several brief points. First, the State's articulation of the standard of review as abuse of discretion overgeneralizes the issue. As set forth in *Devoney v. State*, 717 So. 2d 501, 504 n.3 (Fla. 1998), the question presented—whether the misconduct at issue inheres in the verdict—is a legal question. Although the State suggests in a footnote that "numerous cases" apply the abuse of discretion standard anyway, the State fails to cite them. AB, p.49 n.8. In any event, legal questions are reviewed de novo.

Second, the State is incorrect in asserting that the defendant is really challenging the denial of her motion to interview the jurors. AB, p.49. When that motion was denied, the defendant assigned the underlying juror misconduct as a ground for a new trial and used the news article and the sworn affidavit as an independent ground for a new trial. R.1095-96 ¶¶ 9-14. As explained in the initial

brief, the juror affidavit can support a new trial and not just a juror interview. IB, p.41.

Third, the State is wrong that the alleged misconduct inheres in the verdict. AB, pp.49-53. The fallacy of the State's argument is that it assumes the issue relates to the jury's decision. But whether the jury decided the case based on the defendant's display of emotion is immaterial. The only thing that matters is that the jury considered facts not in evidence. *See Norman v. Gloria Farms*, 668 So. 2d 1016 (Fla. 4th DCA 1996) (explaining that merely exposing the jury to information outside the record is presumptively harmful). Once it is shown that the extrinsic facts were considered by the jury, the burden shifts to the opposing party to show a lack of prejudice. *See State v. Hamilton*, 574 So. 2d 124 (Fla. 1991); *Baptist Hospital v. Mahler*, 579 So. 2d 97 (Fla. 1991). Here, the State did not make such a showing.

IV. The trial court erred in denying the defendant's motion to compel an election between the principal and accessory charges.

A. The charges were mutually exclusive.

The State concedes that the charges "are legally incompatible." AB, p.54.

B. The only proper remedy is to grant a new trial.

The State claims that the defendant "abandoned" her argument on this point by suggesting that the trial court could send both the principal and accessory charges to the jury with an instruction that it could find the defendant guilty of one

or the other, but not both. AB, p.57. The defendant would have accepted this as an alternative to an order compelling an election, T.614-15, but the point overlooked in the State's argument is that the trial judge declined to offer either remedy. He did not require the State to pick one of the two inconsistent charges. T.616. Nor did he instruct the jurors that they could pick only one of the charges. T.704-19. Instead, he allowed the State to present both charges to the jury at the same time and to ask for a conviction on both. T.616.

The State now concedes that it had no right to seek a conviction on both the principal and accessory charges but insists that no harm was done because the accessory charge was dismissed after the trial. AB, pp.54-60. As we explained at the beginning of this brief, *infra*, pp.2-3, the State's argument fails to reckon with the binding Florida Supreme Court case law holding that a new trial is the proper remedy when a timely motion to compel an election is improperly denied.

The Supreme Court precedents we cited in the initial brief, IB, pp.46-48, are controlling on this issue, and they cannot be brushed aside simply by declaring, as the State has in the answer brief, that they are limited to the mutually inconsistent crimes of theft and dealing in stolen property. AB, pp.59-60. There is nothing in the text of any of those opinions to suggest that the Supreme Court meant to limit the rule to the specific crimes of theft and dealing in stolen property. In fact, some of the cases in this line of Supreme Court precedents have applied the rule in

contexts other than theft and dealing in stolen property. *See, e.g.*, *Mayers v. State*, 171 So. 824, 824-25 (Fla. 1936) (applying the rule to mutually inconsistent embezzlement counts).

Moreover, the Florida courts have drawn a direct parallel between the principal and accessory cases and the theft and dealing in stolen property cases. This point is most evident in the following passage of the opinion in *Bazemore v. State*, 79 So. 3d 828, 830 (Fla. 2d DCA 2011):

> It is well-established that a defendant cannot be convicted both as a principal to an offense and as an accessory after the fact for the same offense. [citing *Staten*] Even though there is no standard instruction for this circumstance, [the defendant] was entitled to an instruction explaining that the jury could convict him of only one of these offenses.

Of course, this is precisely the same remedy that applies to the mutually inconsistent crimes of theft and dealing in stolen property. And the quotation from *Bazemore* shows that the State's obligation to choose between two mutually inconsistent crimes is not limited to theft and dealing in stolen property, as the State erroneously contends.

The point the State cannot escape here is that the Supreme Court has held that the proper remedy for an error in denying a timely motion to compel an election is to grant a new trial. IB, pp.45-48. It is not for us to question the rule, but simply to apply it to our facts.

But there are good reasons for it. After the jury has found the defendant guilty of two mutually inconsistent charges, it is impossible to determine what might have happened had the State been required to select only one of them for the jury's consideration. And, if the trial judge had submitted both charges to the jury with an instruction to select not more than one of them (the alternative suggested by defense counsel in this case), there is no way of knowing which one the jury would have chosen. If the jury had selected the accessory charge over the principal charge, this would be a completely different case (not to mention the drastic impact on the defendant's sentence). The point here is that we simply cannot go back in time and speculate about what might have happened had the law been applied correctly.

In these circumstances, the only fair remedy is to grant a new trial. If, as the State claims, vacating one of the convictions is the cure, then there would be no point in giving the defendant a right to compel an election in the first place. Yet the Supreme Court precedents clearly give the defendant such a right. And once she has exercised that right, the State is not entitled to send both charges to the jury, hope the jury will convict on at least one, and then "cure" any problem by dismissing the less serious offense if the jury convicts on both. By that point, the State has forfeited its right to elect. *See Manata v. State*, 226 So. 3d 1027 (Fla. 1st

DCA 2017) (holding that a prosecutor has no authority to nolle pros a charge after the jury has returned a verdict).

Importantly, none of the cases cited by the State where the appellate court vacated one of the convictions without ordering a new trial involved a timely motion to compel an election. AB, pp.58-60. In those cases, the right to compel an election had been waived, and the only possible issue the court could address was whether the two convictions could stand together.

By contrast, the defendant in this case did make a timely motion to compel an election, both orally and in writing, at the close of the State's case. R.1028-30; T.612. So the issue here is not whether the principal and accessory convictions can stand together—everyone agrees they cannot—but whether the State is simply allowed to pick its preferred charge after getting the benefit of allowing the jury to decide them both.

And as the series of cases cited in the initial brief shows, both the Florida Supreme Court and this Court have made clear that erroneously denying a timely motion to compel an election requires a new trial. IB, pp.42-48. Courts have granted a new trial on all counts even when the jury found the defendant not guilty on one of the mutually inconsistent charges, *Williams v. State*, 357 So. 2d 740 (Fla. 5th DCA 1978), and even when one of the convictions has been vacated, *Johnson v. State*, 333 So. 2d 505 (Fla. 1st DCA 1976). Per se reversal is required.

V. The sentence imposed by the trial court violates the defendant's constitutional right to equal protection under the law.

We stand on the argument made in the initial brief. The difference between the defendants—that Brian Winchester cooperated with the authorities and Denise Williams did not—cannot possibly justify giving immunity to the killer while sending the passive accomplice to prison for the rest of her life.

CONCLUSION

The evidence in this case was not sufficient to support the defendant's convictions for first-degree murder and conspiracy to commit murder, and thus this Court should vacate those convictions and enter a judgment of acquittal. Alternatively, if the Court concludes that the evidence was sufficient to sustain either or both of these charges, it must, nonetheless, reverse and remand for a new trial on one or more of the grounds set out in the remaining parts of this brief.

/s/Philip J. Padovano
PHILIP J. PADOVANO
Florida Bar No. 157473
ppadovano@bhappeals.com
JOSEPH T. EAGLETON
Florida Bar No. 98492
jeagleton@bhappeals.com
BRANNOCK & HUMPHRIES
131 N. Gadsden Street
Tallahassee, Florida 32301
Tel: (850) 692-5255
Secondary Email:
eservice@bhappeals.com

ETHAN ANDREW WAY
Florida Bar No. 148199
ethan@waylawfirm.com
WAY LAW FIRM, PA
P.O. Box 10017
Tallahassee, Florida 32302
Tel: (850) 412-0142
Secondary Email:
ethanandrewway@gmail.com

Attorneys for Appellant/Defendant,
Denise Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by email to Benjamin L. Hoffman (benjamin.hoffman@myfloridalegal.com), Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399, on this 13th day of September 2019.

/s/Philip J. Padovano
PHILIP J. PADOVANO
Florida Bar No. 157473

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/Philip J. Padovano
PHILIP J. PADOVANO
Florida Bar No. 157473