

FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

Dimitric Tyrese Ellis v. State of Florida

No. 5D2024-2053, Fifth District Court of Appeal of Florida (July 3, 2025)

SUMMARY

The Fifth District Court of Appeal held that Dimitric Tyrese Ellis’s convictions for possession of a firearm and possession of ammunition by a convicted felon under section 790.23(1), Florida Statutes, violated double jeopardy because the possessions were simultaneous and not clearly separate in time and space. The court affirmed the denial of Ellis’s motions for judgment of acquittal, vacated the ammunition conviction as the lesser offense, and remanded.

CASE DETAILS

COURT	Fifth District Court of Appeal of Florida
WRITING FOR THE COURT	KILBANE, J.; HARRIS, J.; SOUD, J.
JURISDICTION	Fifth District Court of Appeal of Florida
DECIDED	July 3, 2025
DOCKET	5D2024-2053
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from convictions for possession of a firearm by a convicted felon and possession of ammunition by a convicted felon.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review. The judgment-of-acquittal ruling was affirmed without comment, and the double-jeopardy issue was reviewed as a legal issue.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Dimitric Tyrese Ellis v. State of Florida

TOPICS

- double jeopardy
- criminal procedure
- appellate procedure
- statutory interpretation
- remedies

PRACTICE AREAS

- criminal procedure
- appellate procedure
- constitutional law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Ellis's motions for judgment of acquittal.
2. Whether separate convictions for possession of a firearm and possession of ammunition by a convicted felon under section 790.23(1), Florida Statutes (2023), violated double jeopardy when the firearm and ammunition were possessed simultaneously or were not clearly separate in time and space.
3. If the dual convictions violated double jeopardy, which conviction should be vacated.

HOLDINGS

1. The denial of Ellis's motions for judgment of acquittal was affirmed without further comment.
2. Separate convictions for possession of a firearm and possession of ammunition under section 790.23(1), Florida Statutes (2023), violate double jeopardy when the felon simultaneously possesses the firearm and ammunition, or when the items are not clearly separate in both time and space.
3. The conviction for possession of ammunition, Count 2, must be vacated as the lesser offense, while the conviction for possession of a firearm, Count 1, remains affirmed.

KEY QUOTATIONS

“As the statute uses the word “any” before a disjunctive list of items a felon may not possess, more than one conviction for possession under section 790.23(1) would violate double jeopardy principles.” (2)

“Where the gun and the magazine were found within the vehicle in which Ellis was detained, we cannot say that the items were “clearly separate in both time and space.”” (3)

“Thus, we remand to the trial court solely to vacate Ellis’s conviction on Count 2 for possession of ammunition by a convicted felon—the lesser offense.” (3)

FACTUAL BACKGROUND

Law enforcement detained Ellis after responding to a suspicious-persons report and finding him outside a vacant residence. After Ellis was taken to the Jacksonville Sheriff's Office, officers found a firearm with a 9mm round in the chamber and a loaded 9mm magazine in two locations in the backseat of the patrol vehicle where Ellis had been detained. Officers also found 9mm ammunition among Ellis's personal items in the vacant residence.

PROCEDURAL HISTORY

A jury found Ellis guilty of both offenses, and the circuit court entered convictions on both counts. The trial court sentenced Ellis only on Count 1 but declined to vacate Count 2 after Ellis moved to vacate it on double-jeopardy grounds. Ellis appealed, challenging the denial of his motions for judgment of acquittal and asserting that the dual convictions violated double jeopardy.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand solely for the trial court to vacate Ellis's conviction on Count 2 for possession of ammunition by a convicted felon. Count 1 and the denial of the motions for judgment of acquittal are affirmed.

CASES CITED

- Perri v. State, 154 So. 3d 1204, 1205 (Fla. 2d DCA 2015)
- Boyd v. State, 17 So. 3d 818 (Fla. 4th DCA 2009)
- Francis v. State, 41 So. 3d 975, 975 (Fla. 5th DCA 2010)
- Haskins v. State, 43 So. 3d 876 (Fla. 5th DCA 2010)
- Bell v. State, 122 So. 3d 958, 961 (Fla. 2d DCA 2013)
- Strain v. State, 77 So. 3d 796, 797 (Fla. 4th DCA 2011)
- Nicholson v. State, 757 So. 2d 1227, 1228 (Fla. 4th DCA 2000)
- Olivard v. State, 831 So. 2d 823, 824 (Fla. 4th DCA 2002)
- Hatcher v. State, 401 So. 3d 571, 572 (Fla. 2d DCA 2025)
- State v. Shelley, 176 So. 3d 914, 919-20 (Fla. 2015)

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