

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

DARROW GRACEY,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-5609

STATE OF FLORIDA,

Appellee.

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Opinion filed December 15, 2009.

An appeal from the Circuit Court for Suwannee County.  
David W. Fina, Judge.

Nancy A. Daniels, Public Defender, and Paula S. Saunders, Assistant Public  
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Heather Flanagan Ross, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Darrow Gracey, entered an open plea to the court on all charges  
in case numbers 06-515, 06-597, and 07-088. In case number 06-515, Appellant  
was convicted of possession of more than twenty grams of marijuana with the

intent to sell on count one and possession of more than twenty grams of marijuana on count two. Appellant argues, and we agree, that these convictions violate double jeopardy because they are based on the same quantum of marijuana. Keene v. State, 600 So. 2d 513 (Fla. 2d DCA 1992). Although the arrest report references a second baggie of marijuana, there was no indication in the record that the second baggie contained more than twenty grams of marijuana; thus, the second baggie could not provide the factual basis for the charge of possession of more than twenty grams of marijuana. Accordingly, we reverse and remand with directions to vacate Appellant's conviction and sentence for possession of more than twenty grams of marijuana in case number 06-515. We affirm all of Appellant's remaining convictions.

AFFIRMED in part, REVERSED in part, and REMANDED.

HAWKES, C.J., WOLF and DAVIS, JJ., CONCUR.