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

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

JESSIE JAMES JOHNSON,

Appellant,

v.

CASE NO. 1D09-1177

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed October 14, 2009.

An appeal from the Circuit Court for Columbia County.
Julian E. Collins, Judge.

Nancy A. Daniels, Public Defender, and Barbara J. Busharis, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Meredith Charbula, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED.

ROBERTS, and CLARK, JJ., CONCUR; BROWNING, JR., EDWIN B., SENIOR JUDGE, CONCURS WITH SEPARATE OPINION.

BROWNING, JR., EDWIN B., SENIOR JUDGE, concurs.

I concur based on the dictates of Garzon v. State, 980 So. 2d 1038 (Fla. 2008). However, I do so with a caveat: The use of "and/or" in informations and jury instructions is now clearly established as error. Trial judges, prosecutors, and defense counsel no longer have a plausible reason to allow a trial to be based on such a semantical "monstrosity." Accordingly, I, as one appellate judge, will look very closely at future transgressions relating to "and/or" usage and I believe, at some point in time, its continued usage should be considered fundamental error. I base this statement on a belief that its continued usage in the face of numerous well-published cases' condemnation supports a strong conclusion that it is deliberate or involves such ineptness that it should not be sanctioned, as a matter of fundamental procedure.