

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

DANIEL AARON NICHOLSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D09-4497

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Opinion filed June 13, 2011.

An appeal from the Circuit Court for Santa Rosa County.  
Gary L. Bergosh, Judge.

Nancy A. Daniels, Public Defender, and Glen P. Gifford, Assistant Public  
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant challenges criminal convictions which were obtained in a joint  
trial with a codefendant. In this appeal, the appellant contends that there was  
insufficient evidence to support the convictions for trafficking in hydrocodone, and

for possession of cocaine and drug paraphernalia. The appellant also contends that the use of a jury instruction with an “and/or” conjunction between his name and the codefendant’s name was fundamental error. These same issues were addressed by this court in the codefendant’s separate appeal in Nicholson v. State, 33 So. 3d 107 (Fla. 1st DCA 2010), where the codefendant’s trafficking conviction was reversed, and his possession of cocaine and paraphernalia convictions were affirmed. Nicholson is controlling authority as to these matters, and the appellant’s conviction for trafficking is likewise reversed, while his convictions for possession of cocaine and paraphernalia are affirmed. In light of the reversal of the trafficking conviction, the appellant’s sentences are vacated and the case is remanded for resentencing under a corrected scoresheet. See Vroom v. State, 48 So. 3d 82 (Fla. 2d DCA 2010); Smith v. State, 687 So. 2d 308 (Fla. 1st DCA 1997).

ROBERTS, CLARK, and WETHERELL, JJ., CONCUR.