

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2450

ANDERSON LEE NIEVES NIEVES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Linda F. McCallum, Judge.

November 30, 2018

B.L. THOMAS, C.J.,

Appellant challenges the final judgment of his convictions and sentences, arguing that: 1) the jury rendered inconsistent verdicts; 2) improper comments by the prosecutor denied Appellant a fair trial; and 3) the trial court illegally imposed consecutive minimum mandatory sentences. We reject Appellant's arguments on the first two issues.

As to Appellant's claim that the trial court could not impose consecutive minimum mandatory sentences, we reverse and remand with instructions for the trial court to enter an amended order providing that Appellant's sentences are to be served concurrently, consistent with the supreme court's recent decision in *Miller v. State*, 43 Fla. L. Weekly S426 at *1 (Fla. Oct. 4, 2018) ("our caselaw reflects that the crimes stemming from a single

criminal episode involving a single victim or a single injury may not be sentenced consecutively”).

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

WINSOR, J., concurs; MAKAR, J., concurs with opinion.

MAKAR, J., concurring with opinion.

I concur fully, noting that the issue of whether the many improper prosecutorial comments cumulatively denied Nieves a fair trial would be a close one had contemporaneous objections been made; affirmance is required, however, under the fundamental error rule. *Spencer v. State*, 842 So. 2d 52, 74 (Fla. 2003).

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, Danielle Jordan, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Daniel Krumbholz, Assistant Attorney General, Tallahassee, for Appellee.