

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2008

LUIS ALFREDO LUCIANO,

Appellant,

v.

Case No. 5D07-601

STATE OF FLORIDA,

Appellee.

Opinion filed June 13, 2008

Appeal from the Circuit Court
for Orange County,
Jeffrey M. Fleming, Judge.

James S. Purdy, Public Defender, and
Marvin F. Clegg, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Brigid E. Collins,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant raises three points on appeal, only two of which merit discussion. Appellant challenges his convictions for shooting from a vehicle¹ and shooting into an occupied vehicle² on double jeopardy grounds. The State concedes that our panel

¹ § 790.15(2), Fla. Stat. (2006).

² § 790.19, Fla. Stat. (2006).

decision in *Lopez-Vazquez v. State*, 931 So. 2d 231 (Fla. 5th DCA 2006), compels reversal, although the State urges that we recede from this precedent. The State also concedes Appellant's second point -- the lack of evidentiary support for the award of investigative costs.

Accordingly, we remand this cause with instructions that the trial court vacate one of the shooting convictions and the award of investigative costs. Upon remand, the trial court may re-impose such costs upon appropriate motion and proof.

We certify conflict with *Valdes v. State*, 970 So. 2d 414 (Fla. 3d DCA 2007) , *rev. granted*, 975 So. 2d 430 (Fla. 2008).

AFFIRMED IN PART AND REMANDED; CONFLICT CERTIFIED.

LAWSON and COHEN, JJ., concur.

TORPY, J., concurs and concurs specially with opinion.

TORPY, J., concurring and concurring specially.

I concur on the double jeopardy issue only because we are bound by the panel decision in *Lopez-Vazquez v. State*, 931 So. 2d 231 (Fla. 5th DCA 2006). If we were not so bound, I would affirm. I agree with the decision of our sister court in *Valdes v. State*, 970 So. 2d 414 (Fla. 3d DCA 2007), which certified conflict with *Lopez-Vazquez* and is currently on review. In my view these are separate offenses for which separate punishment is authorized. Although I admit that the decisional law on this point is confusing and difficult to reconcile, I think the statutory exception on which the panel relied in *Lopez-Vazquez* is not applicable here. It prohibits separate punishments when the two offenses are “degrees of the same offense **as provided by statute.**” § 775.021(4)(b)(2), Fla. Stat. (2007) (emphasis supplied). Here, we are dealing with two separate offenses contained within two separate statutes. The fact that they are both part of the same chapter is of no consequence in my view. Section 790.15(2) punishes the discharge of a firearm from a vehicle within 1000 feet of any person. Section 790.19 relates to shooting or throwing a deadly missile into a building or conveyance. Neither is a **statutory** degree variant of the other. They are entirely different crimes.