

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2483

JASON TREVON WHARTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Alachua County.
William E. Davis, Judge.

January 21, 2021

PER CURIAM.

Jason Trevon Wharton appeals his judgment and sentence for burglary of a dwelling with a battery. Wharton argues that the trial court erred when it denied his motion for a mistrial based on the State's violation of *Haliburton v. State*, 561 So. 2d 248 (Fla. 1990), as well as when it denied his motion for a new trial based on cumulative fundamental error. With respect to Wharton's *Haliburton* claim, we conclude that the State's questioning concerning the absence of certain potential alibi witnesses falls within the narrow "special relationship" exception as explained in *Jackson v. State*, 575 So. 2d 181, 188 (Fla. 1991). We further conclude that, cumulatively, the alleged errors identified by Wharton do not amount to reversible fundamental error.

AFFIRMED.

ROWE, WINOKUR, and NORDBY, JJ., concur.

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

Jessica J. Yeary, Public Defender, Kevin P. Steiger, Assistant Public Defender, and Greg Caracci, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Robert "Charlie" Lee, Assistant Attorney General, Tallahassee, for Appellee.