

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D21-1689

---

KYNORRI AKEAL MORRIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

On appeal from the Circuit Court for Alachua County.  
Aymer L. Curtin, Judge.

October 6, 2022

PER CURIAM.

Appellant, Kynorri Akeal Morris, challenges his judgment and sentence for first-degree felony murder. The jury found that Appellant unlawfully killed the victim while engaged in the perpetration of, or an attempt to perpetrate, a robbery, yet found him not guilty of the separately charged offense of attempted robbery with a firearm upon the victim. We reject two of Appellant's three arguments without discussion. However, we agree with Appellant that the trial court erred by denying his motion for arrest of judgment based on legally inconsistent verdicts. Accordingly, we reverse and remand with instructions for the trial court to enter judgment and resentence Appellant on the lesser-included offense of second-degree murder.

Appellant was charged with first-degree felony murder and attempted robbery with a firearm.<sup>1</sup> The State alleged that Appellant unlawfully killed the victim while engaged in the perpetration of, or in an attempt to perpetrate, a robbery, and further alleged that Appellant attempted to commit robbery with a firearm upon the same victim. It was alleged in both counts that during the course of the offense, Appellant, who was fifteen years old at the time, actually possessed and discharged a firearm, resulting in the victim's death. A jury found Appellant guilty of first-degree felony murder and specifically found that during the commission of the offense, he actually possessed and discharged a firearm, resulting in death or great bodily harm.<sup>2</sup> The jury, however, found Appellant not guilty of attempted robbery. After denying Appellant's motion for arrest of judgment based on a truly inconsistent verdict, the trial court adjudicated him guilty of first-degree felony murder and sentenced him to forty years of imprisonment, with a mandatory minimum term of twenty-five years. This appeal followed.

We review a claim of inconsistent verdicts *de novo*. *Hollings v. State*, 336 So. 3d 802, 803 (Fla. 1st DCA 2022). While factually inconsistent verdicts are permissible in Florida because they result from a jury's inherent authority to acquit, a legally inconsistent verdict cannot stand. *Nettles v. State*, 112 So. 3d 782, 783 (Fla. 1st DCA 2013). A legally inconsistent verdict occurs when a finding of not guilty on one count negates a necessary element for conviction on another count. *Id.*; see also *Brown v. State*, 959 So. 2d 218, 220–21 (Fla. 2007) (explaining that consistent verdicts are required when the underlying felony is part of the crime charged because the charge could not stand without the underlying felony and holding that the jury's verdicts for first-degree felony murder and petit theft, a lesser-included misdemeanor of the separately charged underlying felony, were truly inconsistent because the jury effectively acquitted the appellant of the essential felony element of first-degree felony

---

<sup>1</sup> A third charge was dismissed by the State.

<sup>2</sup> The jury was also instructed on the lesser-included offenses of second-degree murder and manslaughter.

murder); *Gerald v. State*, 132 So. 3d 891, 896 (Fla. 1st DCA 2014) (reversing and remanding to the trial court to reduce the conviction from aggravated assault to simple assault and resentencing the appellant because the jury’s verdict finding him guilty of aggravated assault was truly inconsistent with its specific finding that he did not possess a firearm); *Zelaya v. State*, 257 So. 3d 493, 497 (Fla. 4th DCA 2018) (finding that the legally inconsistent verdicts constituted fundamental error and remanding for the trial court to enter judgment on the lesser-included offense).

As the State concedes on appeal, the jury returned true inconsistent verdicts by finding Appellant guilty of felony murder, but acquitting him of the underlying felony. Therefore, we reverse Appellant’s conviction for first-degree felony murder and remand to the trial court to adjudicate him guilty of the lesser-included offense of second-degree murder and resentencing him accordingly.

REVERSED and REMANDED with instructions.

LEWIS, MAKAR, and BILBREY, JJ., concur.

---

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

---

Stephen N. Bernstein, Gainesville, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.