

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

DANNY EARL JACKSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-4711

[August 9, 2006]

ON MOTION FOR CLARIFICATION

TAYLOR, J.

The state has moved for clarification as to the effect of our reversal of appellant's conviction for possession of cocaine upon the order finding a violation of probation. Appellant's probation was revoked upon the trial court's finding that appellant violated Condition 5 of his probation: to remain at liberty without violating the law. Pursuant to stipulation, the trial court used the evidence presented during the jury trial as the basis for the violation of probation.

In reversing appellant's conviction for possession of cocaine, we concluded that the trial court erred in permitting the prosecutor to shift the burden of proof to the defense during cross-examination of appellant and during closing argument. Because the record does not indicate whether the trial court was influenced by these trial tactics in finding that appellant violated his probation, we clarify that our reversal for a new trial on the possession of cocaine charge includes directions to the trial court, on remand, to reconsider appellant's probation revocation consistent with our opinion. In determining whether appellant violated his probation, the trial court may reconsider the same testimony and argument presented at trial, excluding those portions we found improper. Alternatively, the court may, in its discretion, defer consideration of the probation violation charge until after re-trial of the substantive charge of possession of cocaine.

STEVENSON, C.J. and GUNTHER, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Marc A. Cianca, Judge; L.T. Case Nos. 562004CF002061A and 561991CF002389A.

Carey Haughwout, Public Defender, and Jeffrey N. Golant, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellee.