

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

JANUARY TERM 2009

JERMAINE RICHARDSON,

Appellant,

v.

Case No. 5D07-3503

STATE OF FLORIDA,

Appellee.

/

Opinion filed February 13, 2009

Appeal from the Circuit Court
for Lake County,
G. Richard Singeltary, Judge.

William R. Ponall and Michael J. Snure,
of Kirkconnell, Lindsey, Snure and Yates,
P.A., Winter Park, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

We conclude that Appellant's challenge to the erroneous verdict form was not preserved and was invited. *Morris v. State*, 658 So. 2d 155 (Fla. 1st DCA 1995). The Fourth District's decision in *Wilson v. State*, 566 So. 2d 36 (Fla. 4th DCA 1990), is distinguished in that it did not address an unpreserved, invited error. This Court's decision in *Mashburn v. State*, 745 So. 2d 453 (Fla. 5th DCA 1999), likewise did not

address an invited error. It addressed the State's failure to include on the verdict form a special finding required to enhance the defendant's penalty. Unlike this case, the State had the burden to procure the special finding.

We affirm as to the other points on appeal without discussion.

AFFIRMED.

PALMER, C.J., TORPY and EVANDER, JJ., concur.