

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

JANUARY TERM 2010

REUBEN SENIOR,

Appellant,

v.

Case No. 5D09-144

STATE OF FLORIDA,

Appellee.

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Decision filed January 29, 2010

Appeal from the Circuit Court
for Seminole County,
Debra S. Nelson, Judge.

Allan Campbell, Lake Mary, for Appellant.

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

PER CURIAM.

AFFIRMED.

TORPY and EVANDER, JJ., concur.

COHEN, J., concurs specially, with opinion.

COHEN, J., concurring specially.

This court, albeit another panel, has reversed the conviction of one of Appellant's codefendants, Brian Harvey. Harvey also questioned the trial court's denial of a requested independent act jury instruction. These opinions are not inconsistent because the evidence established that Appellant, unlike Harvey, was aware of the third codefendant's plan to steal the victim's money under the guise of a drug deal and was also aware that his codefendant was in possession of a firearm.

As in Roberts v. State, 4 So. 3d 1261 (Fla. 5th DCA 2009), there was uncontroverted evidence that Appellant knew of the planned robbery, participated in it, and was aware that one of his codefendants was armed. The trial court did not err in failing to instruct on independent act.