

IN THE SUPREME COURT OF FLORIDA

TROD BUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO:

INDIGENT

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APPEAL FROM THE DISTRICT COURT  
FIFTH DISTRICT, FLORIDA

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**MR. BUGGS' BRIEF ON JURISDICTION**

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**I**  
**PROCEDURE**

On direct appeal, the Fifth District Court of Appeal affirmed Mr. Buggs' conviction. *Buggs v. State*, 693 So.2d 57 (Fla. 5<sup>th</sup> DCA 1997). A motion for post-conviction relief was filed and a two-day evidentiary hearing was held in November, 2000. Fifteen months later the trial court entered its order denying relief and Mr. Buggs appealed. Again, the Fifth District Court of Appeal affirmed. *Buggs v. State*, \_\_\_ So.2d \_\_\_, (Fla. 5<sup>th</sup> DCA 2003), [28 Fla. L. Weekly D 667, opinion issued March 7, 2003], **Appendix A**. A request for rehearing and certification was denied.

**II**  
**FACTS**

The factual scenario presented in Mr. Buggs' case is identical to *Merricks v. State*, 831 So.2d 156 (Fla. 2002). During deliberations, the jury had a question and requested that testimony be "read back." The bailiff answered the jury's question and told them they would have to rely upon their own recollection (TRI/152). Later, the question was brought to the court's attention but it was too late, the jury had rendered its verdict. After the fact, the judge instructed the jury that he would not allow the read bac

After Mr. Buggs' conviction was affirmed, a lengthy 3.850 motion was filed alleging numerous errors--many of which focused upon ineffective assistance of counsel. For instance, the police tracked another suspect from the rape scene. Upon being apprehended by the police, this suspect blurted out that he "did not commit no B & E." (PRXII/2113-2114). In investigating his 3.850 motion, Mr. Buggs learned of a witness who would have testified that this man, Larry Scott, was picked up near the scene of the crime sweaty

and acting very nervous (PRX/1890). As she reported to the police on the night of the rape, Mr. Scott made a number of incriminating statements while in her car. Mr. Buggs' defense counsel failed to call her to testify. Likewise, he failed to call Larry Scott, the police dog handler, and other police witnesses on Mr. Buggs' behalf.

On the Friday before the Monday trial, the state disclosed highly exculpatory DNA (statistical) evidence that changed the statistical values in the case from one out of fifteen million to one out of 50,925 (PRXI/1993; PRX/1822). Not only did defense counsel fail to ask for a continuance, he never mentioned this lower statistic to the jury or attempted to cross examine the state's expert with this exonerative evidence. Additionally, Mr. Buggs' defense attorney failed to make numerous objections, including the *Ivory/Merricks* issue at hand.

Mr. Buggs' attorney had been the subject of several Florida Bar complaints. Prior to Mr. Buggs' case, his attorney had completed a two-year probationary sentence. Actually, he ran into trouble again and, at the time of Mr. Buggs' trial, was serving another two-year probationary period. In other words, he had two back-to-back probationary punishments by the Florida Bar (PRX/1768, 1772).

The number of errors which occurred in this case is incredible. Defense counsel was overwhelmed at trial and candidly admitted to being unaware that it was improper for the bailiff to answer the jury's question. He testified that had he been aware of the law, he would have objected and moved for a mistrial (PRX/1732).

This case is further compounded by the curious relationships entangled herein. The victim's father, J.T. Williams, was a former deputy of the Lake County Sheriff's Office (the investigative authorities) and, at the time, worked at the public defender's office in the Lake County Courthouse (RI/18; T21/1032). His companion, now the victim's stepmother, was a Lake County court reporter assigned to the judge who presided over the case. The victim's mother previously worked for the Fifth District state attorney's office in Lake County (the prosecuting authorities) and, at the time, worked for a local police department.

As part of the 3.850 motion, allegations were made that Mr. Williams may have been involved in illegal drug activity and was attempting to deflect attention from another suspect in the case, Larry Scott (PRX/1895, 1897-1898). Mr. Williams put extreme pressure on the sheriff's office to rap up its investigation and further pressured the state attorney's office to take the investigation away from the sheriff. He was outraged that Buggs was not immediately arrested. Ultimately, the sheriff became upset and instructed his staff to turn over the incomplete investigation to the prosecutor's office (PRX/2085, 2096-2097).

The 3.850 investigation revealed numerous and extremely exculpatory state attorney memorandums which document this chain of events. The notes memorialize several private meetings between the prosecutor and the sheriff's office chronicling the pressures placed on them by Williams. Even though the investigation was incomplete, Buggs was arrested and the other two suspects were sent on their way. Much of this evidence was not disclosed by the state

and was not used at trial on Mr. Buggs' behalf.

Defense counsel also failed Mr. Buggs with regard to pretrial depositions. Despite the fact that Buggs was insolvent, defense counsel never requested that numerous depositions be transcribed. After his conviction, this attorney had them transcribed. A comparison of the deposition testimony to the trial testimony reveals numerous inconsistencies. Also, defense counsel failed to depose the victim's seven year old sister, an eyewitness who shared the victim's bed. Defense counsel could not explain any of his tactics other than to say that he "made a pig's lunch of the case" (PRX/1795).

This is just a general and cursory summary of the facts and issues related to Mr. Buggs' case. However, at oral argument it became clear that the Fifth District was only interested in the *Ivory/Merricks* issue. The other issues raised in Mr. Buggs' case were not addressed by the court. Based upon the court's comments and the statements in its opinion, the panel clearly disagreed with *Merricks*.

### III SUMMARY OF THE ARGUMENTS

*Merricks v. State* reaffirmed a long-standing principal that unauthorized communications between court personnel and the jury constitute per se reversible error. In Mr. Buggs' case, the Fifth District stated just the opposite, that in 1995 such communications were subject to harmless error analysis. Because of this facial conflict (expressed and direct), discretionary jurisdiction is appropriate.

IV  
ARGUMENT

THE DISTRICT COURT'S OPINION IS IN EXPRESS AND  
DIRECT CONFLICT WITH *IVORY, MERRICKS AND THIEFAULT*

For nearly twenty years prior to Mr. Buggs' 1995 trial, Florida law has held that it is per se reversible error for court personnel to communicate with a jury or answer their questions. *Ivory v. State*, 351 So.2d 26 (Fla. 1977). That is not to say that per se reversible errors cannot be waived. Perhaps all errors can be waived--but this connotes an intelligent and voluntary waiver. There is no dispute that Buggs' counsel did not know the law. That is not the bone of contention presented in this appeal. Here, the district court held that this issue was subject to harmless error analysis at the time of Buggs' 1995 trial.

In *Merricks v. State*, 831 So.2d 156 (Fla. 2002), this court made it clear that *Merricks* was a reaffirmation of the *Ivory* (prophylactic) rule that such communications constitute per se reversible error. In other words, they are not subject to harmless error analysis. How the Fifth District reached the conclusion that *Merricks* created new law is a mystery.

What makes Mr. Buggs' conclusion even more inescapable is the fact that the Fourth District Court followed *Ivory* (and its progeny) several months before Mr. Buggs' trial finding that such communications were not subject to harmless error. *Thiefault v. State*, 655 So.2d 1277, 1278 (Fla. 4<sup>th</sup> DCA 1995). Although this opinion was brought to the panel's attention, and was further cited in *Merricks*, it was not discussed in the *Buggs'* opinion.

The law must be applied even-handedly. Mr. Buggs received nothing

close to a fair trial. Further, even if *Merricks* constituted a clarification in the law (rather than a reaffirmation of a long-standing principal), this court has held that clarifications in the law are entitled to retroactive application. See, *State v. Klayman*, 835 So.2d 248 (Fla. 2002) and *Fiore v. White*, 531 U.S. 225 (2001). These opinions were likewise brought to the attention of the court but again were not discussed.

Mr. Buggs would request that this Court accept his case for review and consider all of the errors presented in his 3.850 petition--not just the *Merricks* issue. Unquestionably, this Court has been presented with a great number of cases involving the denial of due process and the denial of a defendant's right to a competent lawyer--but this case raises the bar. Mr. Buggs' case deserves review.

**V**  
**CONCLUSION**

For the reasons expressed herein, the petitioner, Trod Buggs, respectfully requests that this Honorable Court exercise its discretionary review powers and accept jurisdiction over this matter.

Respectfully submitted this 12<sup>th</sup> day of May, 2003.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Belle Schumann, Esquire**, Office of the Attorney General, 444 Seabreeze Blvd., Suite 500, Daytona Beach, Florida 32118; and the original and five copies via UPS Overnight delivery to **THOMAS D. HALL**, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925 this 12<sup>th</sup> day of May, 2003.

**CERTIFICATE OF COMPLIANCE**

I **HEREBY CERTIFY** that this brief is formatted in Courier, 12 point type  
which does not exceed ten characters per inch.

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