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IN THE FLORIDA SUPREME COURT

TARVIS M. WILSON,

APPELLANT,

VS.

STATE OF FLORIDA,

APPELLEE.

CASE NO. 4D11-4553
L.T. NO. 2008CF012010AXX

JURISDICTIONAL BRIEF OF APPELLANT

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF THE STATE OF FLORIDA,
IN AND FOR PALM BEACH COUNTY
(CRIMINAL DIVISION)

TARVIS M. WILSON
APALACHEE CORRECTIONAL INSTITUTION
35 APALACHEE DRIVE
SNEADS, FL 32460

PRELIMINARY STATEMENT

APPELLANT IS ON REVIEW FROM INITIAL BRIEF AND APPELLEE IS THE DISTRICT COURT OF APPEAL FOURTH DISTRICT AND PROSECUTION IS IN THE CRIMINAL DIVISION OF THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA.

IN THE BRIEF, THE PARTIES WILL BE REFERRED TO AS THEY APPEAR BEFORE THIS COURT.

THE SYMBOL "A" WILL DENOTE RECORD ON APPEAL.

THE SYMBOL "T" WILL DENOTE TRIAL TRANSCRIT ON APPEAL.

STATEMENT OF THE CASE AND FACTS

ON AUGUST 25, 2008, APPELLANT WAS CHARGED WITH TEN COUNT INFORMATION ON CAPITAL OFFENSE. A. VOL. 1 PG. 7-10. PRIOR TO TRIAL, APPELLANT PROVIDED HIS TIMELY NOTICE OF HIS INTENT TO RELY ON THE DEFENSE OF INSANITY AND NAMED DR. ALLAN RISNER AS HIS WITNESS TO PROVIDE EVIDENCE OF LEGAL INSANITY. A. VOL. 2 PG. 336-37. ADDITIONALLY, THE TRIAL COURT ENTERED AN ORDER BIFURCATING THE APPELLANTS TRIAL AS TO COUNT (9). A. VOL. 3 PG. 539. COUNT TEN WAS SEVERANCE THEN DROPPED AFTER CONVICTION OF APPELLANT. A. VOL. 1 (COURT PAPER 9-22-2011) I. VOL. 18 PG. 1091. COUNT(4) WAS DROPPED DUE TO CONFLICTING STATEMENTS OF OFC. MATTHEW MEDEIROS AND PRIMARY VICTIM SGT. RICHARD MCNEVIN ALSO SGT. JOHN L. CRANE-BAKER. I. VOL. 14 AND 15 PG. 382, 465, 631-35. COUNT (6) WAS DROPPED BECAUSE OF OFC. MICHEAL ARCO CRIMINAL CHARGES, (WHO IN CAR CAMERA) WAS PUBLISHED IN TRIAL, ("WITH-OUT HIS TESTIMONY"). A. VOL. 3 PG. 534-35. I. VOL. 15 PG. 617-18. DNA MATERIAL SWABBED FROM APPELLANT WAS USED TO DETERMINE THE IDENTITY OF THE BLOOD ON THE ALLEGED WEAPON IN THIS CASE, AND THE TEST INDICATED APPELLANT WASN'T THE CONTRIBUTOR. I. VOL. 15 PG. 658, 667.

BEFORE THE PARTIES BEGAN VOIR DIRE AND JURY SELECTION, APPELLANT REQUESTED THAT THE TRIAL COURT INSTRUCT THE JURY AS TO IN CRIMINAL CASES 3.6(C). THIS TOGETHER WITH EVIDENCE THAT HE WAS RECEIVING PSYCHOTROPIC MEDICATION THROUGHOUT TRIAL, ENTITLED APPELLANT, UNDER FLORIDA SUPREME COURT RULE, TO STANDARD JURY INSTRUCTION - CRIMINAL 3.6(C); TO ALERT THE JURY OF THE FACT THAT, IN LIGHT OF HIS DEFENSE OF INSANITY, HE WAS BEING ADMINISTERED PSYCHOTROPIC (MEDS) AND PROVIDE IT WITH THE DEFINITION OF PSYCHOTROPIC (MEDS). PURSUANT TO JAIL AUTHORIZATION, HE WAS CURRENTLY BEING ADMINISTERED PSYCHOTROPIC MEDICATION AND, AS A RESULT, HE WAS ENTITLED TO THE INSTRUCTION, BASED ON ITS PLAIN LANGUAGE. I. VOL. PG. 7-8.

THE STATE, OBJECTED TO THIS INSTRUCTION AND IN SUPPORT TO THIS OPPOSITION CITED FLA. R. CRIM. P. 3.215, WHICH CONCERNED INSTRUCTING THE JURY REGARDING PSYCHOTROPIC MEDICATION BEING ADMINISTERED TO A CRIMINAL DEFENDANT IN ORDER TO MAINTAIN THE DEFENDANTS COMPETENCY DURING A TRIAL, THE PROSECUTOR CONTENDED THAT SINCE THE TRIAL COURT HAD FOUND APPELLANT COMPETENT TO STAND TRIAL AND HIS CURRENT COURTROOM BEHAVIOR WAS NOT ERRATIC HE WAS NOT ENTITLED TO THE INSTRUCTION. I. VOL. 11 PG. 8-18.

APPELLANT REMAINED SOLID ON THE PLAIN MEANING OF 3.6(C) WHICH REQUI-

RED THE GIVING OF THIS INSTRUCTION WHEN THE INSANITY DEFENSE WAS INVOKED AND WHEN PSYCHOTROPIC (MEDS) WERE ADMINISTERED TO A DEFENDANT DURING THE COURSE OF THE CRIMINAL TRIAL x I x VOL x 11 PG x 14 x

THE TRIAL COURT FOUND THAT WHILE THE PLAIN LANGUAGE OF THE INSTRUCTION 3x6 (C) DID NECESSITATE IT'S CHARGE TO THE JURY, IT FOUND THE STATE'S CITATIONS TO CASE AUTHORITY CONCERNING RULE 3x215, REGARDING MAINTENANCE OF COMPETENCY DURING TRIAL, PERSUASIVE AND DENIED THE GIVING OF THE INSTRUCTION AS PART OF THE PRELIMINARY, PRE-TRIAL CHARGE TO THE JURY, WITH-OUT PREJUDICE TO READDRESS THE ISSUE IN THE EVENT CIRCUMSTANCES CHANGED x I x VOL x 11 PG x 16, 18 x.

AT THE CLOSE OF EVIDENCE, APPELLANT RENEWED HIS REQUEST FOR THE TRIAL COURT TO CHARGE THE JURY WITH STANDARD JURY INSTRUCTION FOR CRIMINAL CASES 3x6(C), WITH REGARD TO THE FACT THAT APPELLANT, AS THE DEFENDANT, WAS BEING ADMINISTERED PSYCHOTROPIC (MEDS), RISPERDOL, DURING THE COURSE OF THE TRIAL, AS THE RECORD SUPPORTED, THE ENTITLEMENT, UNDER FLORIDA SUPREME COURT RULE, TO STANDARD JURY-INSTRUCTION-CRIMINAL 3x6(C) x I x VOL x 17 PG x 9-25-27 x THE PROSECUTOR REARGUED ITS POSITION THAT THERE WAS NO LINK BETWEEN APPELLANT'S APPEARANCE IN THE COURTROOM DURING TRIAL AND THE ADMINISTRATION OF PSYCHOTROPIC MEDICATION DURING THE COURSE OF TRIAL x I x VOL x 11 PG x 7-8, 14 x SHE COMPLAINED THAT IT WOULD BE "BIZARRE" FOR THE TRIAL COURT TO GIVE A PSYCHOTROPIC MEDICATION INSTRUCTION, BECAUSE SUCH AN INSTRUCTION WOULD IMPLY THAT APPELLANT WAS ALREADY ADJUDICATED INSANE AND THAT WOULD BE UNFAIRLY PREJUDICIAL TO THE STATE x I x VOL x 17 PG x 917 x

APPELLANT MAINTAINED THAT THE AUTHORITY RELIED ON BY THE PROSECUTOR CONCERNED COMPETENCY AND NOT THE INSANITY DEFENSE (ITSELF) AND THE STANDARD INSTRUCTION 3x6(C) PROVIDED THAT A JURY BE CHARGED WITH THIS INSTRUCTION WHEN A DEFENDANT IS BEING ADMINISTERED PSYCHOTROPIC (MEDS) WITH-IN THE CONTEXT OF ADVANCING THE DEFENSE OF INSANITY x I x VOL x 11 AND 17 PG x 7-8, 926 x THE TRIAL COURT AGREED WITH THE STATE AND DENIED APPELLANT'S REQUEST x I x VOL x 17 PG x 927 x IT THEN CHARGED THE JURY, PRIOR TO THE PARTIES CLOSING ARGUMENTS, WITHOUT INCLUDING STANDARD INSTRUCTION 3x6(C) x I x VOL x 17 PG x 962-64 x AT THE CLOSE OF THE JURY CHARGE, APPELLANT OBJECTED TO THE INSTRUCTIONS WITH-OUT THE PSYCHOTROPIC (MEDS)

CHARGE x Tx Vol x 17 Pg x 975 x

THE JURY RETURNED VERDICTS OF GUILTY, WITH REGARD TO COUNT 1, ATTEMPTED FIRST DEGREE MURDER OF SGT. McNEVIN WITH A FIREARM; COUNT 2, AGGRAVATED ASSAULT ON SGT. McNEVIN WITH A FIREARM; COUNT 5, AGGRAVATED ASSAULT ON OFC. CROWELL WITH A FIREARM; AND COUNT 8, FLEEING OR ATTEMPTING TO ELUDE, HIGH SPEED RECKLESS; COUNT 3, IMPROPER EXHIBITION OF A WEAPON; AND COUNT 7 AS 3, WAS A LESSER INCLUDED OFFENSE, IMPROPER EHIBITION OF A WEAPON x Tx Vol x 17 Pg x 1033-35 x IN THE SECOND PHASE OF THE BIFURCATED TRIAL ON COUNT 9, POSSESSION OF A FIREARM BY CONVICTED FELON, THE JURY FOUND APPELLANT GUILTY AS CHARGED x Tx Vol x 17 Pg x 1055 x THE TRIAL COURT ADJUDICATED APPELLANT GUILTY AS PER THE JURY'S VERDICTS AND SENTENCED HIM AS FOLLOWS x x AS TO COUNT 1, LIFE; COUNT 2, 20 YEARS IMPRISONMENT, CONCURRENT WITH COUNT 1; COUNT 3, TIME SERVED; COUNT 5, 15 YEARS; CONSECUTIVE TO COUNT'S 1 AND 2, CONCURRENT WITH 3; COUNT 7, TIME SERVED; COUNT 8, 15 YEARS, CONSECUTIVE TO COUNT 7; COUNT 9, 15 YEARS, CONSECUTIVE TO COUNT 8; ALL THIS FOR SAME CRIMINAL EPISODE x Tx Vol x 17 AND 18 Pg x 1058-59, 1089-91 x

Summary Of The Argument

The District Court errored and abused its discretion by denying Initial Brief without opinion citing Alston v. State, 723 So. 2d 148 (Fla. 1998), giving the Florida Supreme Court jurisdiction to rule according to applicable law. This Florida Supreme Court standard of review is the clear legal issue of the giving of jury instructions to a defendant who presents evidence to enact an defense see Matthews v. U.S., 485 U.S. 58 (1988). Appellant is deserving resolution on this argument to prevent the Florida Supreme Court from constantly taking jurisdiction in circuit court pleadings and district court of appeals rulings and or opinion's. That could be handled by circuit court judges in given jury-instructions on defense theory of defense even if it is flimsy, weak or headed for a guilty verdict, which will prevent reason on appeal for review Quick v. State, 46 So. 3d 1159, 1160 (Fla. 4th DCA 2010); and Gregory v. State, 937 So. 2d 180, 182 (Fla. 4th DCA 2006). Yet the Florida Supreme Court has jurisdiction in this case because the proper procedures have been meet by appellant and the claim is a matter of justice already upheld by the 4th District of Appeal more than once, and the United States Supreme Court has mandated in Matthews v. U.S.; that generally a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor see Stevenson v. U.S., 162 U.S. 313, 16 S.Ct. 839, 40 L.Ed. 980 (1896). This Argument of facts directly conflict the case cited by 4th District Court of Appeal who didn't apply the essential only a predicate concerning Alston v. State, 723 So. 2d 148 (Fla. 1998). Whereas Alston and Matthews are singular in values of like that can visibly be seen they are different. Were Matthews was advancing an affirmative defense as Rosales v. State, 547 So. 2d 221 (Fla. 3d DCA 1989) an Alston was asking for

INSTRUCTION BASED ON STRADEGY AND NOT DEFENSE AS IN MATTHEWS AND ROSALES, WHICH IN FACT ITS NOT THE JUDGES JOB TO ASSIST COUNSEL ON STRADEGY WHICH IS ULTIMATELY COUNSEL'S DECISION; YET TO INSTRUCT JURY OF PLAUSIBLE DEFENSE, WITH EVIDENCE THAT APPELLANT WAS RECEIVING PSYCHOTROPIC MED'S THROUGH-OUT TRIAL, ENTITLED APPELLANT, UNDER FLORIDA SUPREME COURT RULE STD. INSTR. CRIM. 3.6(C); TO ALERT THE JURY OF THE FACT THAT, IN LIGHT OF HIS DEFENSE OF INSANITY, HE WAS BEING ADMINISTERED PSYCHOTROPIC (MED'S) AND PROVIDE IT WITH DEFINITION OF PSYCHOTROPIC (MED'S). STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (93-1), 636 SO.2D 502 (FLA. 1994). PRE-TRIAL MOTION TO RELY ON INSANITY DEFENSE WAS TIMELY FILED 2-18-2011 A. VOL. 2 PG. 336-37. PERTAINING TO CASE AT HAND PERHAPS THERE'S NO "INSANITY DEFENSE" CASE LAW THAT EXISTS WITH REGARD TO JURY INSTRUCTIONS 3.6(C) BECAUSE TRIAL JUDGES, BY AND LARGE, UNDERSTAND THAT THEY HAVE LITTLE DISCRETION TO NOT GIVE IT WHEN ASKED BY A DEFENDANT AND UPON THE CONDITION PRECEDENT, AND BECAUSE, IN AN INSANITY DEFENSE TRIAL THE ACCUSED STATE OF MIND IS THE ULTIMATE ISSUE FOR THE JURY TO DECIDE. THE PROMULGATION OF STANDARD JURY INSTRUCTION 3.6(C) WAS BASED IN PART, UPON DECISION IN ROSALES-V. STATE, 547 SO.2D 221 (FLA. 3D DCA 1989). IN FINDING LOST OF JURISDICTION THE TEST TO DETERMINE IS NOT WHETHER THE COURT IS PROCEEDING IN MATTERS RELATED TO THE FINAL JUDGMENT. RATHER, THE PROPER TEST IS WHETHER THE COURT IS PROCEEDING IN A MATTER WHICH AFFECTS THE SUBJECT MATTER ON APPEAL, WHICH IS PRESENT IN THIS CLAIM ON PLEADINGS. SEE BAILEY V. BAILEY, 392 SO.2D 49 (FLA. 3D DCA 1981).

ARGUMENT

THE DISTRICT COURT ERRORED BY DENYING INITIAL BRIEF WITH-OUT OPINION CITING A CASE NEITHER SIMILAR OR CONTRARY TO APPELLANT'S CASE; WHICH IS COMPLETELY DIFFERENT x YET UPHOLDED TRIAL COURTS ABUSE OF DISCRETION BY DENYING THEORY OF DEFENSE ENTITLED TO APPELLANT, UNDER FLORIDA SUPREME COURT RULE STANDARD JURY-INSTRUCTION-CRIMINAL 3x6(C) x STANDARD REVIEW OF JURY INSTRUCTIONS ARE PERTAINING TO IT'S BIRTH; NOT WHAT CAN BE A PREDICATE x GIVING THE FLORIDA SUPREME COURT JURISDICTION TO RULE ACCORDINGLY TO APPLICABLE LAW x

APPELLANT, TARVIS M. WILSON, ADVANCED A DULY NOTICE OF INSANITY (A x VOL x 2 PG x 336-37) x THIS TOGETHER WITH THE EVIDENCE THAT HE WAS RECEIVING PSYCHOTROPIC (MED'S) THROUGH-OUT TRIAL, ENTITLED HIM, UNDER FLORIDA SUPREME COURT RULE, STANDARD JURY INSTRUCTION-CRIMINAL 3x6(C) x; TO ALERT THE JURY OF THE FACT THAT, IN LIGHT OF HIS DEFENSE OF INSANITY, HE WAS BEING ADMINISTERED PSYCHOTROPIC (MED'S) AND PROVIDE IT WITH THE DEFINITION OF PSYCHOTROPIC (MED'S) x STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (93-1), 636 SO x 2D 502 (FLA x 1994) x THIS COURT STANDARD OF REVIEW IS WHETHER THE DISTRICT COURT ERRORED IN DENYING APPELLANTS INITIAL BRIEF WITH-OUT OPINION AND REHEARING; WHILE ENFORCING THE TRIAL COURTS ABUSED DISCRETION SEE MCKENZIE V. STATE, 830 SO x 2D 234, 236 (FLA x 4TH DCA 2002) x; MATTHEWS V. U x S x, 485 U x S x 58 (1988) x; AND QUICK V. STATE, 46 SO x 3D 1159 (FLA x 4TH DCA 2010) x. WHEREAS ROSALES V. STATE, 547 SO x 2D 221 (FLA x 3D DCA 1989) IS APPLICABLE IN THE ABOVE MENTIONED FACTS x

PRIOR TO COMMENCEMENT OF TRIAL, AT BAR, WHEN APPELLANT REQUESTED THE PSYCHOTROPIC MEDICATION-INSTRUCTION 3x6(C), AND REPRESENTED THAT HE HAD BEEN GIVEN PSYCHOTROPIC (MED'S) THE MORNING OF TRIAL, THE ARGUMENT OF GIVING THE INSTRUCTION BY THE STATE WAS INAPPOSITE x (T x VOL x 11 PG x 7-8) x THE TRIAL COURT, WHILE NOTING THAT THE PLAIN LANGUAGE OF THE INSTRUCTION 3x6(C) DID NECESSITATE IT'S CHARGE TO THE JURY, IT WAS PERSUADED BY THE AUTHORITY CITED BY

THE STATE AND DENIED APPELLANTS REQUEST WITH-OUT PREJUDICE TO RE-ADDRESS THE MATTER AT THE CLOSE OF EVIDENCE (T x VOL x II PG x 16-18) x

YET, THE AUTHORITY CITED BY THE STATE IN SUPPORT OF ITS CONTENTION CONCERNED APPEALS OF CONVICTIONS WHERE THE DEFENDANTS DID NOT PURSUE THE DEFENSE OF INSANITY AND THE ONLY ISSUE WITH REGARD TO THE GIVING OF A RULE 3 x 215 (C)(2) OR 3 x 6 (C) INSTRUCTION CONCERNED LEGAL COMPETENCY TO STAND TRIAL x ALSTON V x STATE, 723 SO x 2D 148 157-158 (FLA x 1998) x; CARDENAS V x STATE, 993 SO x 2D 546, 549-550 (FLA x 1ST DCA 2008) x; PEAVY V x STATE, 766 SO x 2D 1122, 1124 (FLA x 2D DCA 2000) x ANOTHER CASE CITED BY THE STATE, JONES V x STATE, 949 SO x 2D 1021 (FLA x 2007), PROVIDED NO GUIDANCE OR AUTHORITY, BECAUSE THE ISSUE, RAISED AS A MATTER OF ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL IN A POST CONVICTION PROCEEDING, WAS MOOT, BECAUSE WHETHER THE DEFENDANTS COMPETENCY WAS RESTORED BY MEANS OF PSYCHOTROPIC (MED'S) OR WHETHER THOSE (MED'S) CAUSED THE DEFENDANT TO OVERTLY EXHIBIT ADVERSE SIDE EFFECTS WAS RESOLVED BECAUSE THE TRIAL JUDGE GAVE THE JURY THE 3 x 6 (C) INSTR x I x D x AT 1129-1130 x [2]

AT THE CLOSE OF EVIDENCE, WHEN APPELLANT RENEWED HIS REQUEST FOR THE INSTRUCTION 3 x 6 (C) AND CITED TO TRIAL TESTIMONY BY BOTH HIS AND THE STATES EXPERT WITNESSES THAT HE WAS CURRENTLY BEING ADMINISTERED PSYCHOTROPIC - (MED'S), RISPERDOL, DURING TRIAL (T x VOL x 16 AND 17 PG x 773, 881, 888-89, 925), THE STATE ECHOED ITS PRIOR OBJECTIONS AND REPEATED ITS SAME GROUNDS (T x VOL x 17 PG x 926-27) THE TRIAL COURT, AGAIN, AGREED WITH THE STATES POSITION AND DENIED THE INSTRUCTION (T x VOL x 17 PG x 927) x

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED BY SUSTAINING STATES OBJECTIONS, TO APPELLANTS TIMELY REQUEST FOR THE JURY TO BE INSTRUCTED THAT HE WAS BEING ADMINISTERED PSYCHOTROPIC MEDICATIONS AT THE TIME OF TRIAL, IN LIGHT OF DEFENSE OF INSANITY; THE DISTRICT COURT OF APPEAL ERRED IN UPHOLDING TRIAL COURTS ERROR AND ABUSE OF DISCRETION x THE ERROR PREJUDICE APPELLANT DEFECTIVELY, WARRANTING RELIEF, BECAUSE IT DENIED APPELLANT HIS RIGHT TO INSTRUCTIONS IN SUPPORT OF HIS AFFIRMATIVE DEFENSE SEE GREGORY V x STATE, 937 SO x 2D 180, 182 (FLA x 4TH DCA 2006) x; QUICK V x STATE, 46 SO x 3D 1159 (FLA x 4TH DCA 2010) x; AND MATTHEWS V x US, TO THE CRIMES CHARGED AND WOULD LIKELY CAUSE THE JURY TO DISBELIEVE

APPELLANTS INSANITY DEFENSE BECAUSE OF HIS "NON-BIZARRE" COURTROOM BEHAVIOR. SEE STATE V. DIGUILIO, 491 SO.2D 1129 (FLA. 1986). DISTRICT COURT DEFAULTY CONSIDERED ALSTON. IN USING TO DENY APPELLANTS DIRECT APPEAL WHEREAS ALSTON IS IN A DIFFERENT FIELD OF LAW, MAKING THE INITIAL OBJECTION, SUSTAINING AND DENIAL WITH-OUT OPINION IMPROPER, WHICH APPELLANT'S CASE AND CLAIM IS SIMILAR TO THE FACTS IN ROSALES AND THE SAME PREJUDICE TO APPELLANT WAS APPREHENDED TO ROSALES IN THE SAME CIRCUMSTANCES; WHICH MAKES ALSTON NOT APPLICABLE, ALSO FAR IN DISTANCE; YET ROSALES IS CLOSER TO APPELLANTS ESSENTIAL FOR SAME JURISDICTION/IN AUTHORITY; COMPELLING ATTENTION FROM THE FLORIDA SUPREME COURT TO RULE ACCORDINGLY. THE TRIAL COURTS ENCROACHMENT ON THE SUBJECT MATTER OF APPEAL VIOLATED APPELLANTS 5TH, 6TH AND 14TH AMEND. TO U.S. CONST.; YET THE 4TH DISTRICT COURT OF APPEAL TURNING IT'S BLIND EYE TO APPELLANTS CLAIM HAS APPELLANT APPEALING FURTHER ADVERSE RULINGS ON APPEAL SEE BAILEY V. BAILEY, 392 SO.2D 49 (FLA. 3D 1981).

THIS ARGUMENT PRESENTED IN ITS FACTS DIRECTLY CONFLICT THE CASE CITED BY THE 4TH DISTRICT COURT OF APPEAL, WHO DIDN'T APPLY THE ESSENTIAL ONLY A PREDICATE CONCERNING ALSTON WHO WASN'T ADVANCING AN AFFIRMITIVE DEFENSE OR INTENDED TO. THE AUTHORITY RELIED ON BY THE STATE AND THE TRIAL COURT, IN DENYING APPELLANT'S REQUEST FOR THE 3.6(C) INSTRUCTION (T. VOL. II PG. 16-18), ALL CONCERNED MATTERS INVOLVING A DEFENDANTS COMPETENCY TO STAND TRIAL. TYPICALLY, ISSUES REVOLVING AROUND LEGAL COMPETENCY, I.E., MENTAL ILLNESS OR MENTAL RATARDATION, DO NOT HAVE A BEARING ON THE ACTUAL TRIAL DYNAMIC, EXCEPT WHEN THE DEFENDANT WERE TO RAISE THE AFFIRMATIVE DEFENSE OF INSANITY. OTHER WISE, A DEFENDANTS DIFFICULTY OR INABILITY TO UNDERSTAND THE NATURE AND CONSEQUENCES OF A CRIMINAL TRIAL PROCEEDING IS NOT A MATTER OF WHICH THE JURY WOULD NEED TO KNOW, UNLESS HE OR SHE WERE TO EXHIBIT A TYPICAL COURTROOM BEHAVIOR THAT THE JURY MAY OBSERVE WHICH COULD ADVERSELY AFFECT THE ACCUSED ABILITY TO RECEIVE A FAIR TRIAL. RULE 3.215 (C)(2) SEEKS TO ALLEVIATE THIS ADVERSE AFFECT AND THE INSTRUCTION TO BE GIVEN, SIMILAR TO 3.6(C), IS TO PROTECT THE DEFENDANTS RIGHT TO PROCEDURAL DUE PROCESS BY INFORMING THE JURY THAT THEIR LIKELY OBSERVATIONS OF SEEMINGLY PECULIAR BEHAVIOR BY THE ACCUSED IS DUE TO THE MEDICATION, NOT HIS PRESUMPTIVE GUILT. HOWEVER, A TRIAL WHERE THE DEFENDANT ELECTS TO ESTABLISH THE DEFENSE OF INSANITY IS A WHOLLY DIFFERENT

DYNAMIC, BECAUSE THE ISSUE OF THE ACCUSED'S STATE OF MIND AT THE TIME OF THE CRIME IS OFTEN LINKED TO MATTERS OF MENTAL HEALTH. THESE ARE ISSUES PRESENTED TO THE JURY AND, UNLIKE MERE COMPETENCY MATTERS, REQUIRE THE JURY'S DELIBERATIVE ACTIONS TO RESOLVE THEM AS MATTERS OF FACT TO ARRIVE AT A VERDICT. THERE NEED NOT BE ANY NEXUS BETWEEN A DEFENDANT'S COURT ROOM DECORUM, EVEN THOUGH HE IS BEING ADMINISTERED PSYCHOTROPIC (MEDS) IN ORDER FOR INSTRUCTION 3.6(C) TO BE CHARGED TO THE JURY. FIRST, THE RULE NEITHER THE INSTRUCTION REQUIRE ANY NEXUS. SEE FLA. R. CRIM. P. 3.215 (C)(2); STD. INSTR. CRIM. 3.6(C). SECOND, THE LACK OF UNUSUAL OR PECULIAR BEHAVIOR FROM MEDICATION WOULD ALARM THE JURY AND MIGHT UNFAIR PREJUDICE THE ACCUSED, BECAUSE THEY WOULD BE EXPECTING AND LOOKING FOR OUTBURST, OBJECTIONS, ETC. BY DEFENDANT NOT WELL-MANNERED BEHAVIOR.

APPELLANT HAS CLEARLY SHOWED DEFECT AND REASON FOR THIS FLORIDA SUPREME COURT TO TAKE JURISDICTION OF MATTER THAT IS PLAIN AND RECOGNIZABLE FROM AFAR. BASED ON FACTS OF THE CASE AND RECORD; TRANSCRIPT SIGHTINGS AND THE LAW IN GENERAL. APPELLANTS CONVICTION SHOULD BE REVERSED AND REMANDED FOR NEW TRIAL UNLESS THE FINDING OF "EVIDENCE WAS INSUFFICIENT" TO CONVICT.

CONCLUSION

BASED ON THE FOREGOING ARGUMENTS AND THE AUTHORITIES CITED THEREIN, APPELLANT RESPECTFULLY REQUESTS THIS COURT TO REVERSE THE JUDGMENT AND SENTENCE OF THE TRIAL COURT AND TO REMAND THIS CAUSE WITH PROPER DIRECTIONS.

RESPECTFULLY SUBMITTED,

TARVIS M. WILSON #801216
APALACHEE CORRECTIONAL INSTITUTION
35 APALACHEE DRIVE
SNEADS, FL 32460

TARVIS WILSON #801216

APPENDIX

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2013

TARVIS WILSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D11-4553

[April 24, 2013]

PER CURIAM.

Affirmed. See Alston v. State, 723 So. 2d 148 (Fla. 1998).

STEVENSON, DAMOORGIAN and CONNER, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard L. Oftedal, Judge; L.T. Case No. 2008CF012010AXX.

Carey Haughwout, Public Defender, and Ian Seldin, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

June 07, 2013

CASE NO.: 4D11-4553
L.T. No.: 2008CF012010AXX

TARVIS WILSON v. STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellant's rehearing filed May 10, 2013, to reconsider initial brief *pro se* is hereby denied; further,

ORDERED that appellant's *pro se* first amended motion for clarification, rehearing and or rehearing en banc filed May 20, 2013, is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

cc: Attorney General-W.P.B. Public Defender-P.B. Tarvis Wilson

kb

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

DISTRICT COURT OF APPEAL FOURTH DISTRICT [SAT CITO SI RECTE] STATE OF FLORIDA