

IN THE SUPREME COURT OF FLORIDA

RALPH CORTEZ WILLIAMS,
Petitioner,

vs.

CASE NO. 67,217

STATE OF FLORIDA,
Respondent.

_____ /

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By [Signature]
Chief Deputy Clerk



PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
ARGUMENT	2
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES CITED

<u>CASES:</u>	<u>Page</u>
<u>Ivory v. State,</u> 351 So.2d 26 (Fla. 1977)	3,4

PRELIMINARY STATEMENT

RALPH CORTEZ WILLIAMS was the defendant in the lower court and will be referred to as Petitioner or the Defendant. The State of Florida was the prosecution in the court below and will be referred to as Respondent or the State.

The following symbols will be used in this brief followed by the appropriate page number(s) in parentheses:

"R" - Record on Appeal

"RB" - Respondent's Brief on the Merits

ARGUMENT

I. A TRIAL JUDGE'S DENIAL OF A JURY REQUEST FOR A COPY OF INSTRUCTIONS IS WITHIN THE EXPRESS NOTICE REQUIREMENTS OF FLA.R.CRIM.P. 3.410.

Respondent argues that the jury did not request additional instructions in the case at bar. (RB-6). It is undisputed, however, that after the jurors began deliberations, the jury requested a copy of the jury instructions. (R-421). Petitioner submits that it is virtually inconceivable that a request of a jury could fall more squarely within the scope of Fla.R.Crim.P. 3.410 as a request for additional instructions than the request made in the instant case.

Additionally, Respondent argues that the communication between the judge and jury amounted to neither compliance with nor denial of a jury request for additional instructions or the reading of testimony. (RB-8-9). A review of the record clearly reveals that the judge, through the bailiff, flatly denied the jury's request without ever notifying counsel of such request. (R-420-441). The record further reveals that the jury was never conducted into the courtroom upon making such request. (R-420-441).

Moreover, counsel was clearly deprived of the right to make argument as to the reasons why the jury's request should or should not be honored. Petitioner submits that the actions of the trial judge

in response to the jury's request obviously violates the clear intent of Fla.R.Crim.P. 3.410. Respondent's argument, if accepted, would render the requirements of Fla.R.Crim.P. 3.410 meaningless. Thus, the first certified question must be answered in the affirmative.

A. APPLICATION OF A HARMLESS ERROR RULE TO A TRIAL JUDGE'S DENIAL OF A JURY REQUIRE FOR COPY OF INSTRUCTIONS DURING DELIBERATIONS WITHOUT NOTICE TO COUNSEL IS PRECLUDED BY THE RULE OF IVORY V. STATE, 351 So.2d 26 (FLA. 1977).

B. IF NOT SO PRECLUDED, THE ERROR CANNOT BE HELD HARMLESS WHERE THE JURY ALTERS THE VERDICT FORM PROVIDED BY THE COURT AND RETURNS AN AMBIGUOUS VERDICT.

For reasons in Petitioner's brief on the merits, the second certified question should be answered in the affirmative. Respondent's brief offers no reasoning or support for now retreating from the well-reasoned principles enunciated by this Honorable Court in Ivory v. State, 351 So.2d 26 (Fla. 1977). Furthermore, Petitioner submits that the facts of this case glaringly reflect the soundness of the reasoning of the Court in Ivory, and the need to require compliance with the notice requirements of Fla.R.Crim.P. 3.410.

Further, there can be no doubt that the error in the instant case was not harmless and was, in fact, injurious to the rights of Petitioner. In light of the conflicting opinions of the psychologists

and the jury's express "with mercy" verdict, it is obvious that the failure of the trial judge to comply with the requirements of Fla.R.Crim.P. 3.410 injuriously affected Petitioner. Under no circumstances can it be said beyond a reasonable doubt that the error complained of was harmless.

Petitioner submits that the opinion in Ivory and the adoption of Fla.R.Crim.P. 3.410 was intended to be given meaning and can only be given meaning by reversal in the case at bar.


CONCLUSION

WHEREFORE, based on argument, reasoning and citations of authority presented, Petitioner respectfully requests that the decision of the First District Court of Appeal be quashed and the Defendant's conviction be reversed and the case remanded to the lower court for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been delivered by mail to GREGORY G. COSTAS, Assistant Attorney General, The Capitol, Tallahassee, Florida, on this 26th day of August, 1985.

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