

IN THE SUPREME COURT OF FLORIDA

FILED

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JOHNNY WILLIAMSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

CASE NO. CF-130
68800

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR DIXIE COUNTY, FLORIDA.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

	PAGE(S)
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II STATEMENT OF THE CASE	2
III STATEMENT OF THE FACTS	4
IV SUMMARY OF ARGUMENT	7
V ARGUMENT	
<u>ISSUE I</u>	
THE COURT ERRED IN DENYING WILLIAMSON'S MOTION FOR MISTRIAL WHEN THE STATE SAID IN CLOSING ARGUMENT THAT THE CO-DEFENDANT HAD PLED GUILTY TO FIRST DEGREE MURDER AND THAT FACT WAS EVIDENCE THAT WILLIAMSON ALSO COM- MITTED A FIRST DEGREE MURDER.	10
<u>ISSUE II</u>	
THE COURT ERRED IN SENTENCING WILLIAM- SON TO DEATH AS HIS CO-DEFENDANT, OMER WILLIAMSON, WAS EQUALLY CULPABLE BUT RECEIVED A LIFE SENTENCE.	15
<u>ISSUE III</u>	
THE COURT ERRED IN FINDING THAT WILLIAM- SON COMMITTED THIS MURDER IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION AS WILLIAMSON HAD AT LEAST A PRETENSE OF MORAL OR LEGAL JUSTIFICATION.	18
VI CONCLUSION	22
CERTIFICATE OF SERVICE	22

TABLE OF CITATIONS

CASES:	PAGE(S)
Bassett v. State, 449 So.2d 803 (Fla. 1983)	11
Bolender v. State, 442 So.2d 833 (Fla. 1982)	12
Brown v. State, 473 So.2d 1260, 1268 (Fla. 1985)	12
Cannady v. State, 427 So.2d 723 (Fla. 1983)	15
Ferguson v. State, 419 So.2d 639 (Fla. 1982)	8
Harris v. State, 414 So.2d 557 (Fla. 3d DCA 1982)	9
Marek, 492 So.2d 1055 (Fla. 1986)	12
McCaskill v. State, 334 So.2d 1276, 1280 (Fla. 1977)	11
McCray v. State, 416 So.2d 804 (Fla. 1982)	15
Moore v. State, 186 So.2d 56 (Fla. 3d DCA 1966)	8
Muhammad v. State, Case No. 63,343 (Fla.opin.filed 7/7/86)	16
Mungin v. State, 458 So.2d 293 (Fla. 1st DCA 1984)	17
Richardson v. State, 335 So.2d 835 (Fla. 4th DCA 1976)	9
Ryan v. State, 457 So.2d 1084 (Fla. 4th DCA 1984)	9
Thomas v. State, 202 So.2d 883 (Fla. 3d DCA 1967)	8
Thompson v. State, 235 So.2d 354 (Fla. 3d DCA 1970)	9
Troedel v. State, 462 So.2d 392 (Fla. 1984)	12
Witt v. State, 342 So.2d 497 (Fla. 1977)	12
STATUTES:	
Section 921.141(5)(i), Florida Statutes	14
MISCELLANEOUS:	
Webster's Third International Dictionary	14
Webster's Dictionary of Synonyms	15

II STATEMENT OF THE CASE

An indictment filed in the circuit court for Dixie County on October 22, 1985, charged Johnny Williamson, Omer Williamson (no relation), and James Robertson with first degree murder and the unlawful possession of a knife while inmates at Cross City Correctional Institution (R.1). Williamson pled not guilty to these charges, and for purposes of this appeal he filed only one pre-trial motion, a Motion to Sever (Def.R.33), which the court denied (R.119).

Williamson was tried from April 7-10, 1986, before the Honorable Judge Arthur Lawrence and found guilty of both counts (R.137). Omer Williamson had earlier pled guilty to first degree murder with the condition that he would be sentenced to life in prison without the possibility of parole for 25 years (R.582). The State agreed with this plea and sentence on the condition that Omer Williamson cooperate with the State against Williamson and Robertson (R.581).

Robertson was found guilty only of the possession charge (R.838).

Williamson proceeded to the penalty phase of the trial at which he testified. After hearing the evidence, argument, and law, the jury returned a recommendation of death by a vote of 11-1 (R.138).

The Court accordingly sentenced Williamson to death (R.143-144). In aggravation the Court found:

1. The capital felony was committed while Williamson was under Sentence of imprisonment.
2. Williamson has been previously convicted of a felony involving the use or threat of violence to the person of another.

3. The murder was committed in a cold, calculated and premeditated manner without a pretense of justification.

R.148-149.

The Court found nothing in mitigation (R.150).

The Court also sentenced Williamson to 15 years in prison for the possession conviction (R.143) to be served concurrently with the death sentence (R.143).

This appeal follows.

III STATEMENT OF THE FACTS

Daniel Drew was an inmate drug dealer at Cross City Correctional Institution (R.503). He also made knives for inmates (R.518, 525-526), and was a chronic gambler (R.872). Williamson and Omer Williamson (no relation to Appellant) were also inmates at the prison and were "partners" (R.502). This meant they covered each other's backs and looked after each other (R.502). They also were selling marijuana Drew brought into the prison (R.503).

Omer Williamson owed Drew \$15.00 for marijuana he had bought from him (R.504-505), but he had no intention of repaying him because Drew was lying to him (R.505). He told Williamson that he did not intend to repay Drew, and Williamson asked Omer Williamson if he was going to do anything. Omer replied that he was only going to "Bust him in the head or something." (R.511). Williamson said he could not do that because Drew was a "country boy" who would stab him (R.511). Instead, Williamson said they would have to kill Drew (R.511). Omer Williamson, after thinking about what Williamson said, agreed (R.512).

They needed a knife, but neither man had one (R.513). Robertson, who was known as "chickenhead" (R.501-502), learned of the plan, and he said that he would find a knife for them (R.513). He talked to several people, but none of them had a knife he could use (R.517-518). Omer Williamson, however, went to his cell and got a metal rod from the sink that Drew had sharpened for him some time earlier (R.518).

Williamson and Omer Williamson then went to the shop where Drew worked and asked someone there to send Drew outside (R.524). When Drew came outside, Omer Williamson stood behind him while Williamson stood

in front (R.525). Williamson gave Drew \$5.00 and said that they would get the rest of the money Omer Williamson owed him (R.525). Drew apparently had made a knife for Williamson and he gave it to him at that time (R.525-526). Williamson then signaled Omer Williamson, and Omer grabbed Drew by the throat and pulled him towards him (R.527). Williamson struck Drew, and he began screaming. Omer Williamson then threw Drew to the ground, and he kicked Drew "a couple of times" in the head (R.527). Omer tried to stop Drew from screaming by putting his hand over Drew's mouth to muffle the screams (R.527). Williamson struck Drew in the thigh, and he began to bleed profusely (T.528). Omer Williamson said he was "grossed-out" and he left (T.528). According to Omer Williamson, Williamson had straddled Drew and continued stabbing him with the knife and metal rod (R.528).

When Williamson left Drew, he gave Omer the metal rod, and Williamson replaced it in the sink in his cell (R.530). Chickenhead, who had been acting as a lookout (R.524), was given the knife (R.613), and he eventually buried it (R.629).

Williamson denied that he had any intent to kill Drew (R.890). Instead, he approached Drew only to ask him for more time so that Omer Williamson could raise the money he owed Drew (R.892-893). He did this because he was a friend. Apparently, he mollified Drew, especially when he gave him \$5 in payment of the \$15 debt (R.894).

As he talked with Drew, he noticed that Drew had his hand in his pocket which caused him grave concern because the way he had his hand in his pocket was unnatural (R.895). In any event, as Williamson turned to leave, Omer Williamson jumped Drew (R.895). When he turned around

Drew had taken a knife out of his pocket and at that point Williamson joined the fight "as some kind of primitive instinct [took] over"(R.896).

Corrections officers quickly arrested Williamson, Omer Williamson, and Robertson.

Drew had several wounds to the face, abdomen, back, and knee (R.691-697), and he died as a result of those stab wounds (R.706).

IV SUMMARY OF ARGUMENT

I ISSUE I

Williamson and Omer Williamson were both charged with the first degree murder of Daniel Drew. Omer Williamson pled guilty to that charge in exchange for a sentence of life in prison and an agreement to assist the state in its prosecution of Williamson.

During closing arguments, counsel for Williamson argued that this homicide could be a manslaughter. The State responded by saying that it must be 1st degree murder because Omer Williamson had pled guilty to 1st Degree Murder. Such argument was error as Omer Williamson's plea was irrelevant to prove Williamson's guilt of 1st degree murder. That is, the state's guilt by association argument unfairly disparaged Williamson's argument that this was not a 1st degree murder by arguing that if Omer Williamson pled guilty to 1st degree murder, than Williamson must also be guilty of that crime.

Such argument was not harmless error as Omer Williamson was the state's key witness, yet he had significant credibility problems. The credibility of his story, however, was artificially bolstered by the State's argument that Williamson was guilty of 1st degree murder because Omer Williamson had pled guilty to that crime. After all, confessing guilt to this offense certainly was against his penal interests, and only guilty people plead guilty to the crimes charged then with committing. Yet for Omer Williamson the plea was not as significant as the State's promise that he would not be sentenced to death, a benefit of far more significance in light of the real possibility that had he gone to trial and been convicted of 1st degree murder he could have received a sentence of death. Thus, for Omer Williamson the life sentence was of far more importance than his guilty plea, and rather than reflecting

a conscious admission of guilty, his plea may have been only a prerequisite to avoiding the electric chair, the real object of his plea.

II ISSUE II

In sentencing Williamson to death, the court made no mention of the fact that his co-defendant, Omer Williamson, received a life sentence. This was error as the sentence equally culpable co-defendant receives is relevant evidence in mitigation.

The evidence, moreover, indicates that Omer Williamson was at least as culpable as Williamson in committing this murder. While Williamson suggested that Drew had to be killed to protect themselves, both men actively sought weapons to commit the crime. Moreover, Omer Williamson initiated the assault by throwing Drew to the ground and kicking him. There is also evidence that Omer Williamson stabbed Drew.

The trial court made no mention of Omer Williamson's equal culpability in this murder, and there is thus no evidence that he considered it in sentencing Williamson to death.

III ISSUE III

Assuming that this murder was committed in a cold, calculated, and premeditated manner, does not mean that the aggravating factor defined in Section 921.141(5)(i), Florida Statutes (1985), applies to this case as the court said it did in its sentencing order. This is true because Williamson had at least a pretense of legal justification for killing Drew: self-defense. Moreover, the evidence was conflicting about the facts of the murder with Williamson admitting joining the fight only after Omer Williamson had unexpectedly started a fight with Drew.

The self-defense justification arose from Omer Williamson's refusal to pay a \$15 debt he owed Drew for some marijuana he had bought from him. Williamson knew that Drew would not tolerate non-payment of this debt, and Omer Williamson's simple idea of beating Drew would be inadequate because Drew would kill him. As Omer Williamson's "partner," Williamson realized that an attack on Omer Williamson would also involve an attack on him. Thus, the only way to protect themselves was to attack Drew before he could choose the time and place to attack them. While such a defense may have been insufficient to justify a self-defense instruction, it does at least present a pretense of legal justification. As such, the aggravating factor defined in Section 921.141(5)(i), Florida Statutes (1985), was inapplicable.

V ARGUMENT

ISSUE I

THE COURT ERRED IN DENYING WILLIAMSON'S MOTION FOR MISTRIAL WHEN THE STATE SAID IN CLOSING ARGUMENT THAT THE CO-DEFENDANT HAD PLED GUILTY TO 1ST DEGREE MURDER AND THAT FACT WAS EVIDENCE THAT WILLIAMSON ALSO COMMITTED A 1ST DEGREE MURDER.

During the State's closing argument, the State alleged that Williamson must be guilty of 1st Degree Murder because his co-defendant, Omer Williamson had pled guilty to First Degree Murder:

Now, Mr. Slaughter said that looking at Presley's testimony and looking at what Chickenhead said after the killing to Bishop, that nobody knew there was going to be a killing ahead of time. That Omer said he was just going in there to collect a knife--or to get a knife to collect on his debts. Well, I find that very interesting. When Alabama was out earlier in the morning, looking for a knife, saying, "I'm going to kill him." When they told him, when Omer--if that's the case, then we're talking about a manslaughter case, maybe? What did Omer do? He pled guilty to first-degree murder. Now, does that make any sense? If it wasn't premeditated, why would Omer have subjected himself to first-degree murder?

MR. McKEEVER (counsel for Williamson):
Objection. May we approach the bench?

THE COURT: You may.

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH, OUT OF THE HEARING OF THE JURY, AS FOLLOWS:)

MR. McKEEVER: I make a motion for a mistrial based on the prosecutor's statements, because the obvious inference from his statements is that in light of the co-defendant's plea to the charge, these defendants must also be guilty of the charge.

MR. PHELPS: No, that's not it at all. This is an argument in direct rebuttal to Mr. Slaughter's argument that they didn't know, that Omer's own statement was they didn't know there was going to be a killing. And both he and Mr. McKeever talked about manslaughter.

pleading guilty to that offense. Thus, if Omer Williamson had pled guilty to 1st Degree Murder, Williamson must also be guilty of 1st Degree Murder. Said another way, Omer Williamson would not have pled guilty unless he was in fact guilty of 1st Degree Murder, and because he did so, Williamson must also be guilty of 1st Degree Murder. See, Moore v. State, 186 So.2d 56 (Fla. 3d DCA 1966); Thomas v. State, 202 So.2d 883 (Fla. 3d DCA 1967).

In every criminal case, a defendant's guilt must be established by relevant evidence of his guilt of the crime charged. Evidence or arguments of a co-defendant's guilt are irrelevant as the reasons one person pleads guilty may have little to do with the guilt of the defendant.

In this case, Williamson had argued that this killing was manslaughter. The State's response was that it was 1st Degree Murder. Why? Because Omer Williamson had already pled guilty to 1st Degree Murder, and as he was a co-defendant of Williamson, Williamson must also be guilty of 1st Degree Murder. Such argument was not a fair comment on Williamson's argument as the evidence of Omer Williamson's plea was irrelevant to prove Williamson's guilt. See, Ferguson v. State, 419 So.2d 639 (Fla. 1982).

This argument, however, was understandable in light of the witnesses the State had to use to present its case. Omer Williamson was its key witness, and he was an acknowledged liar (T.574-576,584), who (in light of his plea agreement with the State) had a motive to lie on the stand (T.580-582). He also had made threats to get back at Williamson (T.723).¹

¹While awaiting trial, Omer Williamson told another inmate that he would "fix [Williamson's] ass" (R.723). Williamson apparently had learned that Omer Williamson was in prison for committing child sexual batteries instead of 2d Degree Murder as he had claimed, and Williamson was calling him a child molester (R.723).

Now, what we're talking about here--all I'm saying is that it doesn't make sense for him to plead guilty to first-degree murder if all it was was manslaughter that he did. That's what I'm saying, and that's not a mistrial.

THE COURT: It's denied.

(T.809-809).

What the state was referring to, was Williamson's closing argument where counsel for Williamson had said:

The portions of the law that I think are critically important in this case, and these facts that you have heard, are what is murder in the first degree? First and foremost, what are we talking about when we are talking about murder in the first degree? And the critical part, if you haven't already figured it out, because Omer James Williamson figured it out, is the premeditation. We make it murder in the first degree, and somebody else has got to die.

(T.749).

* * *

Let's talk about the law--I am sorry, but the teacher is going to keep teaching for a few minutes--of manslaughter. The judge will tell you that manslaughter can be committed--let me be clear about something here, and I hope you are, because it wasn't clear when the State talked to you. When there is a killing, quote, his words, "It's not murder every time." The judge will tell you that. It can be murder in the second degree. It can be attempted murder. It can be manslaughter. It can be several different things.

(T.751).

The State's theory seemed to be that if Williamson could argue that this crime was not 1st Degree Murder, he could rebut it by pointing out that Omer Williamson had already admitted it was 1st Degree Murder by

Other important witnesses were also inmates with obvious credibility problems. (See, e.g., T.598,608.) Omer Williamson's credibility, however, was unfairly bolstered by the argument of the state which focused on his guilty plea to 1st Degree Murder. The jury's attention was diverted from those significant weaknesses in the State's witnesses' credibility, and instead of evaluating their credibility, the State in essence told the jury that it could avoid that problem altogether by simply inferring Williamson's guilt from the fact that Omer Williamson had already pled guilty to 1st Degree Murder.

Omer Williamson admitted that he was guilty of 1st Degree Murder, an offense charged by the State and obviously against his penal interests. Such a damning admission made for a potent argument that Williamson was also guilty of 1st Degree Murder as the State did not have to discuss Omer Williamson's credibility; instead, if the State believed Omer Williamson was guilty of 1st Degree Murder and he agreed with them, then Johnny Williamson was also guilty of 1st Degree Murder.

But, personal beliefs of the prosecutor are irrelevant to prove a charged crime. Harris v. State, 414 So.2d 557 (Fla. 3d DCA 1982). Likewise, for the prosecutor to argue that the State does not charge or try innocent people, or that the police would have cleared a defendant if he was innocent, is improper argument. Ryan v. State, 457 So.2d 1084 (Fla. 4th DCA 1984); Thompson v. State, 235 So.2d 354 (Fla. 3d DCA 1970); Richardson v. State, 335 So.2d 835 (Fla. 4th DCA 1976). The State's references to Omer Williamson's admission of guilt is a variation of this theme. Would a witness, particularly a state witness, for whose credibility the State has vouched, "subject himself to 1st Degree Murder" if he did not believe he was in fact guilty of 1st Degree Murder? If he was innocent of 1st Degree Murder, then he would not have pled guilty to that crime.

In this case where the most damaging evidence of Williamson's guilt of premeditated murder came from inmates, especially Omer Williamson, it can not be said that the State's guilt by association argument was harmless beyond all reasonable doubt, as the credibility of the inmate witnesses was the key issue. This is especially true in light of Williamson's argument admitting committing the homicide, but denying that it was 1st Degree Murder (T.762). On that crucial point, the State's argument concerning Omer Williamson's plea to 1st Degree Murder had a significant, unfair prejudicial impact upon the jury and was reversible error.

ISSUE II

THE COURT ERRED IN SENTENCING WILLIAMSON TO DEATH AS HIS CO-DEFENDANT, OMER WILLIAMSON, WAS EQUALLY CULPABLE BUT RECEIVED A LIFE SENTENCE.

The State's key witness in this case was Omer Williamson. He admitted participating in killing Drew, yet he received a life sentence on condition that he testify at Williamson's trial (T.560, 581). Williamson, on the other hand, was sentenced to death, and this was error as both shared the same culpability for this murder.

The sentence Omer Williamson received is, of course, a relevant mitigating circumstance the trial court should have considered in sentencing Williamson to death. Bassett V. State, 449 So.2d 803 (Fla. 1983) persons who participate in committing a murder and share the same culpability should receive similar sentences. McCaskill v. State, 344 So.2d 1276, 1280 (Fla. 1977). In this case, Williamson and Omer Williamson shared similar culpability in the murder of Drew, yet they received dissimilar sentences.

Omer Williamson admitted starting the fight in which Drew was killed when he grabbed Drew by the throat, threw him to the ground, and began kicking him in the head (R.527). Although he did not say he stabbed Drew, others said Omer Williamson admitted stabbing him (R.614).² Moreover, while Williamson stabbed Drew, Omer Williamson continued to kick him (R.527). Thus, unlike other cases this court has faced, Omer Williamson

²Omer Williamson said he gave Williamson the rod he had taken from his sink to use as a knife. That story is hard to believe, as it required Williamson to stab Drew with two knives then return one of them to Omer Williamson. A more believable account is that Omer Williamson kept the rod and used it during the attack while Williamson used the knife Drew gave him.

played a major role in committing this murder. Brown v. State, 473 SO.2d 1260, 1268 (Fla. 1985); Brown v. State, 367 So.2d 616 (Fla. 1977). Omer Williamson did not stand silent or remain passive during the commission of this crime, Marek, 492 So.2d 1055 (Fla. 1986); Bolender v. State, 422 So.2d 833 (Fla. 1982), and both men had similar roles. Troedel v. State, 462 So.2d 392 (Fla. 1984). Omer Williamson certainly was not a follower in committing this murder. Witt v. State, 342 So.2d 497 (Fla. 1977). Once Williamson gave the signal, Omer Williamson initiated the fight.

The only distinction between Williamson and Omer Williamson occurred during their activities before their assault on Drew. Omer Williamson refused to pay Drew the \$15.00 he owed him; Williamson believed they had to kill Drew because if they did not Drew would kill them (R.511). Once Omer Williamson agreed with Williamson (and it apparently did not take much to convince him (R.512-513)) Omer Williamson was as active as Williamson in trying to find a knife (R.605). Moreover, during this search, both men said they needed a knife to kill Drew (R.516, 605), and both men used knives or weapons Drew had fashioned for them (R.614).

Thus, the single distinction between Williamson and Omer Williamson was Omer Williamson's claim that Williamson said they had to kill Drew. The credibility of that claim, however, was weakened because it came only from Omer Williamson. That is, Omer Williamson certainly had lied before (R.574), had a motive to lie on the stand to protect himself (R.579-582), and also had a motive and expressed intent to lie to "fix [Williamson's] ass" (R.723). Contradicting Omer Williamson's story, Williamson denied any premeditated intent to kill Drew (R.890), and his sole purpose in approaching Drew that afternoon was to act as a peacemaker between Omer Williamson

and Drew.³

A couple of these motives to lie in court was Omer Williamson's motive to kill Drew, and his equal culpability in committing this murder, and it was clear for the trial court to sentence Williamson to death. The error is compounded by the fact that, although the court was aware of Omer Williamson's sentence, there's absolutely no evidence it ever considered much less found Omer Williamson's plea at sentence as mitigation of Williamson's death sentence. Bassett v. State, 449 So.2d 803 (Fla. 1984).

This court, therefore, should reverse the trial court's sentence of death in this case or remand for imposition of a life sentence.

³For a man who is supposed to have spent a considerable amount of time planning this crime, it seems incredible that Williamson would commit it at 3 p.m. on a normal work day in a yard where many people were about (see e.g., R.470, 480). For a well planned crime, it seems incredible that both Williamsons would go to other inmates in search of a knife (especially when Omer Williamson already had a weapon (R.518)), and tell them they needed one to kill someone (R.516, 605). It also seems incredible that immediately before the murder Williamson would ask another inmate to tell Drew that he needed to talk to him outside the shop (R.468), thereby virtually creating an eye witness to this crime. Williamson's story that he went to Drew to reconcile Drew and Omer Williamson, on the other hand, squares better with the facts presented at the trial.

ISSUE III

THE COURT ERRED IN FINDING THAT WILLIAMSON COMMITTED THIS MURDER IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION AS WILLIAMSON HAD AT LEAST A PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

If we assume that this was a cold, calculated, and premeditated murder, that does not mean that the aggravating factor defined in Section 921.141(5)(i), Florida Statutes (1985), applies.³ This case is unusual in that it is one of the few 1st degree murders that had at least a pretense of moral or legal justification for being committed. In this Case, Williamson murdered Drew because if he did not, Drew would have killed Omer Williamson and perhaps himself for not repaying a \$15 drug debt Omer Williamson owed to Drew (R.511). Moreover, when Williamson confronted Drew, Drew kept his hand in his pocket (R.893), an act which worried Williamson because it was unnatural and merited watching (R.894).

Of course, the evidence justifying Williamson's acts may be weak, but the cold, calculated . . . aggravating factor requires only a pretense of moral or legal justification. Williamson needed to have only a slight reason or claim to justify his acts even though the facts presented by the state (chiefly through Omer Williamson) may not have been legally sufficient to support a claim of self-defense. See Webster's Third International Dictionary.

³This argument is predicated upon the State's version of the facts as presented during the guilt phase of Williamson's trial. The key witness who presented these facts was Omer Williamson, a man whose credibility has severe problems. Under those facts, this was a cold, calculated, and premeditated murder. During the penalty phase, however, Williamson strongly and repeatedly denied killing Drew with any premeditation (R.890, 905).

A pretense also denotes a hope that a statement will convince others of the truth of something that is false. Webster's Dictionary of Synonyms. Under such a relaxed or meager standard surely the evidence supporting the self-defense claim is sufficient to prevent application of this factor. In other cases decided by this court, weak and conflicting evidence provided the requisite pretense to prevent application of the cold, calculated, and premeditated aggravated factor.

In Cannady v. State, 427 So.2d 723 (Fla. 1983), Cannady robbed a motel clerk, kidnapped him, drove him to a remote spot, and then shot him five times. The trial court said the murder was cold, calculated, and premeditated, but this Court rejected that finding because when he confessed, Cannady claimed the victim (a quiet, unassuming minister) jumped at him, prompting him to shoot him five times. There was, this Court said, at least a pretense of moral or legal justification, presumably self-defense.

The evidence in McCray v. State, 416 So.2d 804 (Fla. 1982), was conflicting over whether McCray or his victim fired the first shot. Because of that conflict, the murder had at least a pretense of legal justification.

But, was Drew's murder in any way justifiable in light of the fact that Omer Williamson said Drew was killed because he refused to pay Drew \$15.

For persons not in prison, a \$15 debt would not be any justification for murder. Most people would ignore the non-payment and merely count it as an annoying disappointment. Prison, however, is different from a free and open society as this Court and others have recognized, and petty annoyances to a free person may assume major importance to a prison inmate. See Bowker, Prison Victimization, Elsevier, 1981. Chapter 2,5; Sylvester, Reed,

Prison Homicide, Spectrum Publications, 1977, Chapters 2,3. In Muhammad v. State, Case No. 63,343 (Fla. opinion filed July 7, 1986), counsel for Muhammad argued to this Court on appeal that evidence of Muhammad's lack of competence to stand trial or represent himself came from his repeated insistence upon being addressed as Askari Abdullah Muhammad rather than as Thomas Knight the name the state had used in charging him with murder. Rejecting this argument, this court said:

What may appear to be minor annoyances to a free person, can easily take on far greater significance to a person to whom a shaving pass may constitute a victory of will amid multitudinous defeats.

Slip opinion at pg. 12.

Similarly here, what may appear to be a small debt, may in a prison setting, be a major obligation and refusing to pay it may be a crisis of major proportions.

That is, according to Omer Williamson, Williamson believed it necessary to kill Drew only because Drew would kill Omer Williamson first for failing to pay his debts (R.511). Drew obviously would not complain to the prison officials because Omer Williamson would not pay for the marijuana he had given him. Likewise, Williamson could not seek assistance from the administration because of the illegal nature of what he, Omer Williamson, and Drew were involved in.

Williamson was attuned to the realities of prison life (R.894), and realized that Drew could not tolerate the "loss of face" that would have resulted from the non-payment of the \$15 or being "busted in the head or something." (R.511). Instead Drew, being a "country boy" (R.511), would stab Omer Williamson, an act particularly ominous to Williamson as Omer William-

son was his "partner" (R.512). Each had promised to "look after each other" and "cover each other's back" (R.502). Thus, Williamson was concerned about Omer Williamson, and because Drew must have known of their relationship (see e.g. R.503), Williamson may have feared for his safety as well. In any event, the peculiar dynamics of the prison environment, Williamson's long-term acclimatization to the realities of that setting, and the building life-threatening crisis between himself, Williamson, and Drew at least presented a pretense that they needed to strike back at Drew before he attacked them.

The evidence also was conflicting regarding Williamson's intent. Williamson denied planning to kill Drew (T.890), and the fact that he and Omer Williamson killed Drew in the middle of the day while many people were about shows this lack of intent. As argued in Issue II, the evidence supports the argument that Williamson wanted only to buy some time for Omer Williamson when he met with Drew. Moreover, it was Omer Williamson who initially jumped Drew, starting the fight, and it was Omer Williamson who had the rod (R.527). At first, Drew had a knife and Williamson may very well have joined the fight because he felt threatened and believed he needed to defend himself. That he killed Drew does not diminish the fact that under this scenario, as supported by the evidence, Williamson had at least a pretense of moral or legal justification. That it was insufficient to justify his acts, see Mungin v. State, 458 So.2d 293 (Fla. 1st DCA 1984), should in no way alter the fact that this murder may have been committed in a cold, calculated, and premeditated manner, but for which there was also at least a pretense of moral or legal justification for it.

IV CONCLUSION

Based upon the arguments presented here, Williamson respectfully asks this Court to either reverse the trial court's judgment and sentencing remand for a new trial or reverse the trial court's sentence or remand for an imposition of a life sentence without the possibility of parole for 25 years.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

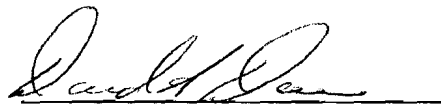


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Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Assistant Attorney General ANDREA S. HILLYER, The Capitol, Tallahassee, FL, 32301, this 30 day of October, 1986.



David A. Davis
Assistant Public Defender