

IN THE SUPREME COURT OF FLORIDA

EDWARD PRITCH WALSH,

Petitioner,

vs.

CASE NO. SC00-622

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

PETITIONER'S BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

W. C. McLAIN  
ASSISTANT PUBLIC DEFENDER  
LEON COUNTY COURTHOUSE  
SUITE 401  
301 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32301  
(850) 488-2458

ATTORNEY FOR PETITIONER  
FLA. BAR NO. 201170

**TABLE OF CONTENTS**

	<b><u>PAGE (S)</u></b>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF FONT SIZE	2
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS	7
SUMMARY OF ARGUMENT	19
ARGUMENT	20
<u>ISSUE I</u>	
THE DECISION OF THE DISTRICT COURT HAS IMPROPERLY SHIFTED THE BURDEN OF PROOF FROM THE STATE TO THE DEFENSE ON THE ISSUE OF THE DEFENDANT'S SANITY AT THE TIME OF THE OFFENSE BY REQUIRING THE DEFENSE TO PRESENT CONCLUSIVE EVIDENCE OF THE DEFENDANT'S INSANITY TO REBUT THE PRESUMPTION OF SANITY, RATHER THAN MERELY REQUIRING COMPETENT EVIDENCE SHOWING A DOUBT AS TO THE DEFENDANT'S SANITY AT THE TIME OF THE OFFENSE.	20
<u>ISSUE II</u>	
THE DECISION OF THE DISTRICT COURT HOLDING THAT THE EVIDENCE PRESENTED IN THIS CASE WAS INADEQUATE TO SUPPORT A JURY INSTRUCTION ON THE INSANITY DEFENSE HAS IMPROPERLY MADE THE TRIAL JUDGE, RATHER THAN THE JURY, THE DECISION-MAKER ON THE QUESTION OF WHETHER THE EVIDENCE PRESENTED REBUTS THE PRESUMPTION OF SANITY.	20
CONCLUSION	24
CERTIFICATE OF SERVICE	25

**TABLE OF AUTHORITIES**

	<b><u>PAGE(S)</u></b>
<b><u>CASES</u></b>	
<u>Fisher v. State</u> , 506 So. 2d 1052 (Fla. 2d DCA 1987) . . . . .	23
<u>Sirianni v. State</u> , 411 So. 2d 198 (Fla. 5th DCA 1981) . . . . .	23
<u>Walker v. State</u> , 479 So. 2d 274 (Fla. 2d DCA 1985) . . . . .	19, 20
<u>Walsh v. State</u> , 751 So. 2d 740 (Fla. 1st DCA 2000) . . . . .	5, 6, 19, 20, 23
<u>Yohn v. State</u> , 476 So. 2d 123 (Fla. 1985) . . . . .	21-23
 <b><u>STATUTES</u></b>	
§ 775.027(2) Fla. Stat. (2000) . . . . .	21

**IN THE SUPREME COURT OF FLORIDA**

**EDWARD PRITCH WALSH,**

Petitioner,

vs.

**CASE NO. SC00-622**

**STATE OF FLORIDA,**

Respondent.

\_\_\_\_\_ /

**PETITIONER'S BRIEF ON THE MERITS**

**PRELIMINARY STATEMENT**

The record on appeal consists of three volumes. One volume contains the clerk of the lower court's record and transcripts of pretrial hearing and the sentencing hearing. This volume will be referenced with the prefix "R". The remaining two volumes contains the transcript of the trial. These volumes will be referenced with the prefix "T" followed by the volume number and page number. Petitioner Edward Walsh will be referred to by name throughout this brief. Since Petitioner and some State witnesses have the same last name, first names will frequently be used for clarity.

**STATEMENT OF FONT SIZE**

This brief has been prepared using courier new, 12 point, a font which in not proportionally spaced.

## **STATEMENT OF THE CASE**

On September 23, 1997, an Escambia County grand jury indicted Edward Pritch Walsh for first degree murder of Rupert Lester Walsh (Count I), attempted first degree murder of Christopher Walsh (Count II), and aggravated assault on Josephine Walsh. (R 1-3) The trial court declared Edward Walsh incompetent to stand trial on May 8, 1998. (R 18-21) Florida State Hospital discharged Walsh on December 29, 1998, and returned him to the Escambia County Jail. (R 22)

A hearing regarding Edward Walsh's competency occurred on February 8, 1999. (R 28) The State and the defense agreed that the court could rely on the written reports of three experts who had examined Walsh since his discharge from the hospital. (R 30-32) Dr. Lynne Westby noted the Walsh was 33 years old at the time of the examination and had a history of mental problems since the age of nine. (R 70) His parents were really his aunt and uncle who adopted him at age five after his natural mother died. (R 70) Walsh's father was in the military stationed overseas and his mother could not control his behavior. (R 70) Walsh was placed in Foster care at the age of nine and moved back to his parent's home at twelve when his father retired from the military. (R 71) Dr. Westby reviewed records which showed a long-standing history of mental illness, a diagnosis of bipolar disorder and treatment with various drugs, mood stabilizers, such as Lithium and Tegretol, and antipsychotic

drugs, such as Prolixin Decanoate and Prolixin HCL. (R 71) Walsh had been hospitalized many times which included several to Florida State Hospital. (R 71) On the day she examined Walsh, December 2, 1998, Dr. Westby reported that Walsh had received an increased dose of Klonopin and had just received his shot of Prolixin. (R 74) Westby concluded that Walsh was competent to stand trial and should be returned to court. (R 74-76)

Dr. Francisco E. Ramos-Acosta examined Walsh on January 28, 1999. (R 61) The doctor had previously examined Walsh and had found him incompetent on March 27, 1998, and recommended hospitalization. (R 61) Ramos-Acosta concluded that Walsh was marginally competent to stand trial, provided he complied with taking his medication. (R 63) He noted that Walsh's behavior was erratic and his competency might deteriorate. (R 64)

Dr. James Larson examined Walsh on January 29, 1999. (R 65) Larson noted that Walsh was taking several psychotropic medications -- Tergretol, Klonopin, Prolixin, Lithium and Allopurinol. (R 66) Although Larson found Walsh competent, he was concerned about the stability of Walsh's competency. (R 67) Larson would not render a final opinion on competency until 30 days prior to any trial date. (R 67)

The trial court found Walsh competent. (R 34, 38) Due to the concerns the experts expressed, the court encouraged an expedited trial date. (R 34-37)

Walsh proceeded to a jury trial on April 12, 1999. (T1:1) He raised the defense of insanity at the time of the crime. (R 77) The jury found Walsh guilty as charged on April 13, 1999, (R 132-133; T2:358-359) Circuit Judge Kim Skievaski adjudged Walsh guilty and sentenced him to life for he first degree murder (Count I), 30 years for he attempted murder (Count II), and five years for the aggravated assault (Count III). (R 134-156)

Walsh filed his notice of appeal to The First District Court of Appeal on April 20, 1999. (R 158) On February 21, 2000, the First District Court issued an opinion affirming Walsh's conviction, rejecting Walsh's argument that his motion for judgement of acquittal should have been granted. Walsh v. State, 751 So.2d 740 (Fla. 1st DCA 2000). The District Court wrote:

We find that the trial court properly denied the appellant's motion for judgement of acquittal, which was grounded on the insanity defense. The evidence presented indicated that the appellant suffered from bipolar disorder, required medication to treat the disorder, became angry and erratic when he was not taking his prescribed medication, and may not have been taking his medication on the night the offenses were committed. However, no evidence was presented indicating that, because of his mental disorder, the appellant did not understand the nature and consequences of his actions, nor was evidence presented that, because of his mental disorder, the appellant did not know that his actions were wrong, even if he understood their nature and consequences. Contrary to our sister court's holding in Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985), we find that such evidence is legally insufficient to raise a reasonable doubt in the minds of the jurors regarding the appellant's sanity at the time the offenses were committed. [footnote omitted] Without such evidence, the presumption of the appellant's sanity at the time of the offenses was not rebutted, the state was not required to



prove beyond a reasonable doubt that the appellant was legally sane at the time of the offenses, and no jury instruction on the insanity defense was required to be given.

Walsh v. State, 751 So.2d at 741.

On September 15, 2000, this Court granted Walsh's petition for discretionary review.

## **STATEMENT OF THE FACTS**

Rupert and Josephine Walsh adopted Edward when he was three years-old. (T1:118) Edward had lived with the Walsh's since he was two, after his mother, Josephine's sister, died. (T1:118, 126) There were two other children in the family, Jacqueline and Christopher. (T1:119) Edward suffered from mental problems. (T1:128) At the time of trial, Edward was 34 years-old and except for some periods of time and times of hospitalizations, he had lived at home with Rupert and Josephine. (T1:126-127)

Josephine said that Edward's mental problems really started after he received a head injury in a motorcycle accident when he was 15 years-old. (T1:128-129) The family was living in Japan and Edward was sent back to the United States to be treated. (T1:129) After the injury, Edward had times of extreme anger. (T1:129) He received psychiatric treatment and medication. (T1:130) The medication helped most of the time, except when Edward failed to take it appropriately. (T1:130) Without the medication, Edward acted differently. (T1:130) As Josephine said, Edward would get crazy. (T1:131) They would hospitalize him. (T1:131) Edward was hospitalized many times. (T1:131)

In the early morning hours of August 30, 1997, Edward took a taxicab to his parents house. (T1:119) He had moved out the house about a month earlier. (T1:120) Josephine let Edward in the house. (T1:120) He asked for money to pay the taxicab driver. (T1:120)

Josephine got money for Edward to pay the driver. (T1:120-121) For the last week prior to August 30, Edward said he was in jail. (T1:132-133) He asked for food and Josephine prepared some for him. (T1:121) Edward then asked for the keys to her car. (T1:121) She told him her car was broken. (T1:121) He asked for the key to his father's vehicle, and Josephine told him that was for his father to decide. (T1:121) Edward picked up two kitchen knives and came toward his mother. (T1:121-122)

Josephine could tell by Edward's behavior that he had not been taking his medication. (T1:132-133) He had never before threatened her in that manner. (T1:133) Additionally, when he became angry, Edward unzipped his pants, exposed his penis, and said, "I'm a man." (T1:132) Josephine said he had never before done anything like that. (T1:132-133) She knew he would not behave in that manner if he had been on his medication. (T1:133)

When Edward came toward her, Josephine was scared and shouted. (T1:122) Her husband, Rupert, came out and began to talk to Edward. (T1:122) Edward asked Rupert for the key to his truck, but Rupert refused to give it to him. (T1:122) He told Edward he would drive him where he wanted to go. (T1:122-123) Josephine, at this point, ran to the neighbor's house. (T1:123) She testified that Edward had never before threatened or attacked her or her husband. (T1:133-134)

Edward's brother, Christopher Walsh, was 28 years-old and he lived in the house with his parents. (T1:135-136) He came home around midnight on the night of August 29, 1999, and went to his room and fell asleep. (T1:136) Later, a booming noise awakened him. (T1:136) Christopher got up and went into the kitchen. (T1:136) He then looked into his parent's room where he saw Edward stabbing his father. (T1:137) His father was in the jacuzzi inside the master bathroom. (T1:137) Christopher yelled at Edward and tried to grab him. (T1:137) Edward turned around. (T1:137) He held a knife in each hand. (T1:137) Christopher ran. (T1:137) Still holding both knives, Edward ran after him. (T1:137)

Christopher ran down the hall toward his bedroom. (T1:137-138) Edward was chasing him with both knives still in his hands. (T1:137-138) Christopher fell when he tripped over a pillow he had dropped in the hallway. (T1:138, 145) Edward tried to stab him, but Christopher managed to avoid being struck -- the knife point was hitting the carpet around him. (T1:138) Edward was over him, but Christopher managed to get him off. (T1:138) Christopher crawled on his hands and knees to the end of the hall and into his bedroom. (T1:138) Before he stood up, Christopher closed the bedroom door. (T1:138, 149) Edward was hitting the door, and Christopher saw the blades of the knives stabbing through the middle of the door. (T1:139, 149) After getting the door locked, Christopher jumped out the window and went to his neighbor's house to call the

police. (T1:139) During this entire time, Edward had never spoken a word. (T1:145)

Christopher waited outside and talked to the 911 operator on a cordless phone until the police arrived. (T1:139) Edward was outside trying to get into his father's truck when the police arrived. (T1:139) The officers arrested Edward. (T1:140) Christopher went back into his house to assist his father, but his father died as Christopher tried to stop the bleeding. (T1:140)

Dr. Michael Berkland, the medical examiner who later performed the autopsy, found that Rupert Walsh suffered over 20 incised wounds. (T2:202-203) These included slashing and stabbing types of wounds. (T2:203-210) Berkland concluded that Rupert Walsh died of multiple stab wounds. (T2:210)

Deputy Bill Pierce arrived at 2:56 a.m. (T1:176) Christopher Walsh met Pierce upon his arrival and said his brother, Edward, had stabbed his father. (T1:177) Pierce saw Edward behind a parked truck. (T1:177) He told Edward to lay down and Pierce handcuffed him. (T1:177) Pierce asked Edward what happened, and Edward said "I guess I just went off." (T1:177) Edward also asked, "[T]his is going to get me to Chattahoochee?" (T1:178-179) After the arrest, Pierce found two knives sticking in the ground near the truck. (T1:179)

Investigators entered the house. (T2:184) They found Rupert Walsh's body lying on the floor of the master bedroom. (T2:185) The

body was unclothed. (T2:185) In the master bathroom, the tub was partially filled with bloody water. (T2:186) The door to the master bedroom was knocked completely off its frame, and the door and the frame were inside the bedroom. (T2:185) In the hallway where the other bedrooms were located, a pillow with blood on it was found. (T2:187) Two doors in the hallway had slits in it with what appeared to be blood around the edges. (T2:187) One of these doors also had been knocked off the frame and into the room. (T2:187) In the kitchen, three knives were on the counter, one appeared to have blood on it and two of them had bent blades. (T2:189-190) The two knives found outside sticking in the ground in an X pattern were retrieved. (T2:191) On the truck, a set of keys was found. (T2:193)

Investigators Ricky Shelby and John Sanderson later interviewed Edward at the sheriff's office. (T2:216) Shelby knew that Edward had mental problems and had been on medication most of his life. (T2:268) A family member said that Edward suffered from bipolar disorder. (T2:268) Edward said he took a taxi home, arriving about 1:30 a.m. (T2:225) Although Edward called for his mother, his dad answered the door. (T2:225) His dad banged on the door of the room that used to be Edward's but had been made into a room for his mother. (T2:225) Edward needed \$17 to pay for the taxi. (T2:225) His mother came up with a \$100 bill which the driver could not take. (T2:226) His mother then found \$17 to pay the driver. (T2:226)

Edward fixed himself some food and began to feed the dog. (T2:226) His mother got angry. (T2:226) Edward said he stared at her. (T2:226) She told him not to stare at her acting crazy. (T2:226-227) She told him to leave the house. (T2:227) Edward continued to eat and let the dog out. (T2:227) His brother came in and Edward got a cigarette from him. (T2:227) Edward went back inside the house. (T2:228) His mother was laying on the couch. (T2:228) He began staring at her again. (T2:228) She confronted him about the staring. (T2:228) Edward said his mother told him to get out of the house and he was not part of the family anymore. (T2:228) Edward said he became angry and "lost it." (T2:228) Edward grabbed a knife and showed it to his mother. (T2:229)

Edward's dad walked out from his bedroom. (T2:228-229) Rupert asked what was happening, and Edward told him, "Nothing concerning you, you old bastard." (T2:230) His father started cursing and move toward Edward. (T2:230) Edward pulled the knife. (T2:230) He told his father he was "gonna stab the shit out of your ass, you white cracker." (T2:230-231) His father went to his bedroom and closed the door. (T2:231) Edward stuck the knives through the door. (T2:231) One of the knives broke. (T2:231) Edward then knocked the whole door out and went into the bedroom. (T2:231) His father had been trying to hold the door, but Edward knocked it down on top of him. (T2:232) Edward said that his father come toward him and Edward stabbed him. (T2:232) Rupert backed up and asked Edward what

he wanted. (T2:232) Edward said the keys to the car. (T2:232) His father said he could have the car. (T2:233) Edward wanted the truck because the car did not run right. (T2:233) His father said he could not have the truck. (T2:233) Edward said, "bullshit" and demanded the keys. (T2:233)

Rupert hesitated in handing Edward the keys. (T2:233-234) Edward stuck both knife blades to his father's throat. (T2:234) He backed his father to the bed with the knife at his throat. (T2:234) He told his father to get up. (T2:234) His father cursed him, and Edward stabbed him in the chest. (T2:234) At that point, Rupert told Edward to take anything he wanted. (T2:235) Edward said he was mad. (T2:236) He complained to his father that he never let him drive the cars while his brother was allowed to do so. (T2:236) Edward said he lost it. (T2:236) He stabbed his father in the chest again. (T2:236) His father screamed for mercy and Edward said he was going to kill him. (T2:236) Rupert said "quit stabbing me" and he did not want to die. (T2:237) Edward told his father to take his clothes off and get into to the bathroom tub. (T2:237) He put his father in the tub because he was bleeding. (T2:238) Rupert asked for something to help stop the wounds from bleeding. (T2:238) Edward told him no. (T2:238) Edward had his father hold his arms straight up over his head, and told him not to move or he would kill him. (T2:238, 247) His father put his arms down in the water



which made Edward angry. (T2:239-240) Edward stabbed his father three more times in his chest, neck and stomach. (T2:240)

At that point, Edward told his father not to move. (T2:240) Edward went looking for his mother, but she was gone. (T2:240) He found his brother, Christopher, in another room. (T2:240) Edward told his brother to go get his father because he had stabbed him. (T2:240) His brother thought Edward was kidding. (T2:240-241) Christopher got up and went to the master bedroom where he saw his father. (T2:242) Christopher ran to his bedroom. (T2:242) Edward ran after him intending to stab him. (T2:242) After Christopher slammed and locked his door, Edward stabbed the knives through the door. (T2:243) Edward knocked the door down, but when he entered the room, he saw that Christopher had gone out of the window. (T2:244) Edward saw Christopher on the neighbor's porch. (T2:244) Edward went outside, but then returned inside to his father. (T2:245)

Rupert Walsh was still in the bathtub when Edward returned. (T2:245) Edward asked his father if he still loved him. (T2:245) His father said yes in a special way. (T2:245) Edward called him a liar and stabbed him, trying to hit the heart. (T2:246) Rupert was yelling and screaming. (T2:246) Edward said he laughed at him. (T2:246) Edward told his father to put his arms back up. (T2:246-247) However, his father put his arms in the water again, and Edward looked for his mother again. (T2:248) Edward said he would

not hurt his mother. (T2:248) He said he would have stabbed his brother if he had caught him. (T2:249)

Edward told his father to get up from the tub and find the truck keys. (T2:250) Rupert told Edward the keys were under the blanket under his mother's bed. (T2:250) Rupert tried to get out to the tub, but he fell and hit the toilet. (T2:250) Edward cut his father's neck in an attempt to hit his jugular. (T2:253) Edward used both knives in a crossed hands manner to cut his father's throat. (T2:253) Edward got the keys and went to the front yard. (T2:251-252) The police were there and arrested him. (T2:252)

Investigator Sanderson asked Edward if his father was ever abusive toward him. (T2:255) Edward said his father beat him with a broom when he was young, and he did not get along with his father. (T2:255)

Edward said he had recently been arrested and in jail for a theft charge and was just released. (T2: 256-257) At the jail, Edward received the wrong medication. (T2:260) He was given Haldol at 10:00 p.m. the night before the day of the homicide. (T2:260-261) The jail infirmary refused Edward any other medication. (T2:261) Edward had no alcohol or other drugs before he went to his parents' house. (T2:262) When he was at the house, he asked his mother for his medicine. (T2:263) She had some left from when he lived there. (T2:263) Edward took some -- Xanax, Lithium, Cogentin,

Thorazine -- that night. (T2:263) He felt relaxed at the time as he gave he investigator the statement.(T2:264)

At the close of the State's case, the defense also rested its case, without presenting any testimony. (T2:269-270) The State moved to strike Walsh's defense of insanity. (T2:270) At hearing on the motion, the defense noted the testimony elicited from State witnesses about Walsh's mental health history, his lack of medication for a time preceding the events and highly unusual behavior at the time of the homicide. (T2:270-289) The court denied the State's motion and ruled that the jury would be instructed on the insanity defense.(T2:270-289) The defense then moved for a judgment of acquittal on the ground that sufficient evidence presented in the State's case raised a reasonable doubt as to Walsh's sanity and that the State had failed to prove the defendant sane beyond a reasonable doubt. (T2:289)

MR. LOVELESS: At this time, we would move for directed verdict of acquittal on the ground that the State has not met its burden. The State, at this point in time, has to prove beyond and to the every reasonable doubt -- to the exclusion of every reasonable doubt that the defendant not only committed the offense, but that he was sane at the time that he committed them. I remind the Court the instruction is that once evidence has been presented to raise a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the Court[sic] must prove beyond a reasonable doubt that the defendant was sane, Your Honor.

THE COURT: You mean the State must prove?

MR. LOVELESS: The State must prove beyond a reasonable doubt that the defendant was sane.

Your Honor, the evidence has been presented to raise that reasonable doubt. And in response to that the State has presented nothing to indicate or to present any evidence that he was sane at the time. The only evidence presented is that he was suffering from that mental illness and without his medication and had no concept of what was -- of the right and wrong of what was occurring.

THE COURT: Okay. Your motion is denied.

(T2:289-290)

## SUMMARY OF ARGUMENT

The First District Court decided that the evidence of Walsh's extensive mental health history and his bizarre behaviors at the time of the offense, which did not include opinion testimony on the issue of legal sanity or insanity, was insufficient to raise a reasonable doubt as to Walsh's sanity. Walsh v. State, 751 So.2d 740 (Fla. 1st DCA 2000). This ruling conflicts with the decision from the Second District Court in Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985) holding that such evidence was sufficient to raise a reasonable doubt as to the sanity of the defendant. The position of the First District Court is incorrect. First, it improperly shifts the burden of proof from the State to the defense. Under the First District's decision, the defense would no longer have to merely present enough evidence to raise a reasonable doubt as to sanity. The defense would be required to present some level of conclusive proof of insanity. Second, the First District Court's decision holding that the evidence was inadequate for the trial judge to have instructed the jury on the insanity defense made the issue of whether the evidence rebutted the presumption of sanity one for the trial judge, rather than the jury, which is contrary to Florida law.

## ARGUMENT

### Issues Presented

#### ISSUE I

THE DECISION OF THE DISTRICT COURT HAS IMPROPERLY SHIFTED THE BURDEN OF PROOF FROM THE STATE TO THE DEFENSE ON THE ISSUE OF THE DEFENDANT'S SANITY AT THE TIME OF THE OFFENSE BY REQUIRING THE DEFENSE TO PRESENT CONCLUSIVE EVIDENCE OF THE DEFENDANT'S INSANITY TO REBUT THE PRESUMPTION OF SANITY, RATHER THAN MERELY REQUIRING COMPETENT EVIDENCE SHOWING A DOUBT AS TO THE DEFENDANT'S SANITY AT THE TIME OF THE OFFENSE.

#### ISSUE II

THE DECISION OF THE DISTRICT COURT HOLDING THAT THE EVIDENCE PRESENTED IN THIS CASE WAS INADEQUATE TO SUPPORT A JURY INSTRUCTION ON THE INSANITY DEFENSE HAS IMPROPERLY MADE THE TRIAL JUDGE, RATHER THAN THE JURY, THE DECISION-MAKER ON THE QUESTION OF WHETHER THE EVIDENCE PRESENTED REBUTS THE PRESUMPTION OF SANITY.

The First District Court decided that the evidence of Walsh's extensive mental health history and his bizarre behaviors at the time of the offense, which did not include opinion testimony on the issue of legal sanity or insanity, was insufficient to raise a reasonable doubt as to Walsh's sanity. Walsh v. State, 751 So.2d 740 (Fla. 1st DCA 2000). This ruling conflicts with the decision from the Second District Court in Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985) holding that such evidence was sufficient to raise a reasonable doubt as to the sanity of the defendant. The position of the First District Court is incorrect. First, it improperly shifts the burden of proof from the State to the defense. Under the First District's

decision, the defense would no longer have to merely present enough evidence to raise a reasonable doubt as to sanity. The defense would be required to present some level of conclusive proof of insanity. This was not the law governing Walsh's trial.<sup>1</sup> See, Yohn v. State, 476 So.2d 123 (Fla. 1985). Second, the First District Court's decision holding that the evidence was inadequate for the trial judge to have instructed the jury on the insanity defense made the issue of whether the evidence rebutted the presumption of sanity one for the trial judge, rather than the jury, which is contrary to Florida law. See, Yohn v. State, 476 So.2d at 126.

In Yohn, this Court, in addressing the adequacy of jury instructions on the defense of insanity, explained the applicable Florida law as follows:

However, we have stated unequivocally the law in Florida on this issue on a number of occasions. For example, in Holmes v. State, 374 So.2d 944 (Fla. 1979) cert. denied, 446 U.S. 913, 100 S.Ct. 1845, 64 L.Ed.2d 267 (1980), we stated:

It is the law of Florida that all men are presumed sane, but where there is testimony of insanity sufficient to present a reasonable doubt of sanity in the minds of the jurors the presumption vanishes and the sanity of the accused must be proved by the prosecution as any other element of the offense, beyond a reasonable doubt.

---

<sup>1</sup> Recent legislation, not in force at the time of Walsh's trial, now requires the defendant to prove the defense of insanity by clear and convincing evidence. Sec. 775.027(2) Fla. Stat. (2000).

Id. at 948 (quoting Jones v. State, 332 So.2d 615 (Fla. 1976), Sunberg, J., specially concurring). See, also, Parkin v. State, 238 So.2d 817 (Fla. 1970), cert. denied, 401 U.S. 974, 91 S.Ct. 1189, 28 L.Ed.2d 322 (1971). It is clear then that Florida law differs from federal law on this point because in the federal courts the trial judge determines as a matter of law when insanity is in issue. See, e.g., United States v. Jackson, 587 F.2d 852, 854 (6th Cir. 1978).

It is true, as the state argues in a companion case to the instant case, Reese v. State, 476 So.2d 129 (Fla. 1985), that the United States Supreme Court has held in Patterson v. New York, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977), that it is not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, we have chosen not to place this burden of proof on the defendant in the state of Florida, but as we have said, to create a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense. We do not reconsider that policy in this decision.

Yohn v. State, 476 So.2d at 126. Under the above principles, Walsh was only required to go forward with sufficient evidence to raise a reasonable doubt as to his sanity. At that point, the presumption of his sanity disappeared, and his sanity became an element which the State was then required to prove beyond a reasonable doubt. The State failed to present evidence to overcome the reasonable doubt as to the Walsh's sanity, and he was entitled to acquittal on the charges and to be adjudged not guilty by reason of insanity. See, Fisher v. State, 506 So.2d 1052 (Fla. 2d DCA 1987); Sirianni v. State, 411 So.2d 198 (Fla. 5th DCA 1981). The First District Court incorrectly held that Walsh was not entitled to a judgement of not guilty by reason of insanity. Walsh v. State, 751 So.2d 740.



In addition to incorrectly ruling on the trial court's denial of a motion for judgement of acquittal, the First District Court also incorrectly held that the trial court should not have instructed the jury on the defense of insanity. Walsh, 751 So.2d at 741. This holding usurps the jury's role as outlined in Yohn. Once the defense goes forward with evidence casting doubt on the defendant's sanity, the presumption of sanity vanishes and the issue becomes one for the jury to decide. See, Yohn v. State, 476 So.2d at 126.

**CONCLUSION**

For the reasons presented in this Merit Brief, Petitioner Walsh asks this Court to disapprove of the decision of the First District Court of Appeal and to remand his case to that court with directions that it reverse the trial court's entry of a judgement of conviction and substitute therefor a judgement of not guilty by reason of insanity.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

---

---

W. C. McLAIN  
Assistant Public Defender  
Florida Bar No. 201170  
Leon Co. Courthouse, #401  
301 South Monroe Street  
Tallahassee, Florida 32301  
(850) 488-2458

ATTORNEY FOR APPELLANT

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a copy of the foregoing has been furnished by delivery to Thomas D. Winokur, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301, and by U. S. Mail to Petitioner, Edward P. Walsh, #211101, Charlotte C.I., 33123 Oil Well Road, Punta Gorda, Florida, 33955, on this \_\_\_\_\_ day of October, 2000.

\_\_\_\_\_  
W. C. McLAIN  
Assistant Public Defender