

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	
POINT I	
THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING EXCLUDING PROPOSED DEFENSE CROSS EXAMINATION OF THE VICTIM ON HER HABITUAL DRUG USE AND ADDICTION.	3
POINT II	
THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING THAT DEFENSE CROSS EXAMINATION OF A STATE WITNESS ON HIS BIAS AGAINST PETITIONER WOULD "OPEN THE DOOR" FOR THE STATE TO BRING OUT IMPROPER "WILLIAMS RULE" EVIDENCE ON REDIRECT.	5
POINT III	
THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING ADMITTING EVIDENCE OF THE EXTENT OF THE VICTIM'S INJURIES.	7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Chapman v. Pinellas County, 423 So.2d 578</u> (Fla. 2d DCA 1982)	5
<u>Dillon v. Chapman, 404 So.2d 354</u> (Fla. 5th DCA 1981)	5
<u>State v. Hayes, 333 So.2d 51</u> (Fla. 4th DCA 1976)	5
<u>State v. Wilson, 509 So.2d 1281</u> (Fla. 3d DCA 1987)	5

PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida. Petitioner was the Appellant and Respondent was the Appellee, in the District Court of Appeal, Fourth District.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner did not, as asserted by the state (page 4 of brief), testify at one point that James Jackson was present at Godfather's bar on the night of the incident and then testify at another point that he was not. Petitioner testified that Jackson was not there when she first walked in, but that he came in five minutes later (R 310-311, 329).

Other factual matters raised by the state in the argument section of its brief, but not included in its statement of case and facts, will be addressed by Petitioner in her argument in response.

ARGUMENT

POINT I

THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING EXCLUDING PROPOSED DEFENSE CROSS EXAMINATION OF THE VICTIM ON HER HABITUAL DRUG USE AND ADDICTION.

Contrary to the state's assertion (page 13 of brief), it was not brought out before the jury that Sandra Day had been a narcotics addict and had a problem with drugs. On page 121 of the record, cited by the state, Day stated merely, "I'm a member of N.A. and I try to stay away from temptation." This did not give the slightest inkling of Day's extensive and long-term drug use which the defense was prevented from bringing before the jury. It certainly did not make exclusion of the defense's evidence harmless. Similarly, the facts that Day admitted adultery and stated that there was a "base house" in her neighborhood (not that the area was "drug infested," as represented by the state) could also not make exclusion of the defense's evidence harmless. Whether Day was "an adulteress" or whether she lived in a drug area are both irrelevant to the issue of her own drug use and its affect on her testimony and credibility. Finally, defense counsel's mention of Day's drug use during closing argument was slight indeed: Counsel stated merely, "It stands to reason if she's a member of Narcotics Anonymous at one time, she's a drug addict, member of Narcotics Anonymous" (R

402). Although defense counsel succeeded in making this statement without objection, it was not a substitute for the evidence which the defense had been prevented from presenting.

ARGUMENT

POINT II

THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING THAT DEFENSE CROSS EXAMINATION OF A STATE WITNESS ON HIS BIAS AGAINST PETITIONER WOULD "OPEN THE DOOR" FOR THE STATE TO BRING OUT IMPROPER "WILLIAMS RULE" EVIDENCE ON REDIRECT.

The state's assertion that State v. Wilson, 509 So.2d 1281 (Fla. 3d DCA 1987), as a Third District case, had no precedential value in the instant case (page 14 of Brief) is incorrect. On the contrary, a trial court is obligated to follow decisions of other District Courts of Appeal in this state in the absence of conflicting authority and where the appellate court in its own district has not decided the issue. Chapman v. Pinellas County, 423 So.2d 578, 580 (Fla. 2d DCA 1982); Dillon v. Chapman, 404 So.2d 354, 359 (Fla. 5th DCA 1981) (opinion on motion for stay). A circuit court wheresoever situate in Florida is equally bound by a decision of a District Court of Appeal regardless of its appellate district. State v. Hayes, 333 So.2d 51, 52 (Fla. 4th DCA 1976). Although the opinion in Wilson was not published until two months after Petitioner's trial, nonetheless it represented the law in Florida until the contrary decision in the instant case.

As a factual matter, the state asserts in its brief (page 15) that defense counsel stated he would have no problem with the incident involving the death of James Jackson's friend if the encounter had involved Petitioner's use of a gun rather than a knife. This is a misinterpretation of counsel's words. Counsel

stated, "I would have no problem if this witness on redirect, testified the reason he blames her or believes she was at fault is because she provoked the man with the gun and when the man with the gun fired, the way he ended up killing his friend as well as shooting her" (R 26-27). In both places in the sentence where the clause "with the gun" is used it obviously refers to the man and not Petitioner.

ARGUMENT

POINT III

THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY AFFIRMED THE TRIAL COURT'S RULING ADMITTING EVIDENCE OF THE EXTENT OF THE VICTIM'S INJURIES.

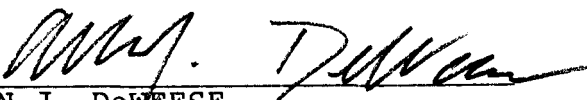
The detailed and gory description of Sandra Day's wounds, at issue in this point on appeal, are not merely cumulative to the testimony cited by the state (page 19 of brief). Petitioner is not arguing that the jury should not have been told that Sandra Day was in fact cut by a knife: as discussed in Petitioner's initial brief, the use of a knife was relevant to the charge of aggravated battery with a deadly weapon. Petitioner therefore does not object to Day's statement that she was cut or to the police officer's and Elizabeth Coffee's testimony that Day had been cut. The objectionable testimony, that to which Petitioner objected at trial, went much further, however. The further details of Day's wounds and treatment were not relevant to the fact that a knife was used but were, because of their very goriness, prejudicial. Petitioner did not object to the testimony that Day was cut with the knife because it was not objectionable; the failure to object to it did not, as asserted by the state, render admission of the later gory testimony harmless.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, Appellant respectfully requests this Court to reverse the decision of the trial court and remand this cause with proper directions.

Respectfully Submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
The Governmental Center
301 N. Olive Ave. - 9th Floor
West Palm Beach, Florida 33401
(407) 355-2150



ALLEN J. DEWESE
Assistant Public Defender
Florida Bar No. 237000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to James J. Carney, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida 33401 this 12th day of May, 1989.



Counsel for Appellant