

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

**WILLIAM HAROLD SAWHILL, JR.,
Appellant,**

v.

**STATE OF FLORIDA,
Appellee.**

**UCN: 512017AP000025AXES
Appeal No: 17-AP-25
Lower No: 16-MM-08219**

_____/

On appeal from Pasco County Court,
Honorable William G. Sestak,

Joseph Manzo, Esq.,
for Appellant,

No Answer Brief filed
by Appellee.

ORDER AND OPINION

Appellant raises two arguments on appeal. For the reasons detailed below, the trial court erred when it did not provide written jury instructions to the jury. Because this error requires reversal, the Court does not address Appellant's argument that the trial court erred in overruling Appellant's objection to Dade City Police Officer Troy Fulford's mid-trial body camera research.

STATEMENT OF THE CASE AND FACTS

On December 22, 2016, Appellant was charged by Information with two counts of battery, a first-degree misdemeanor, in violation of section 784.03(2), Florida Statutes (2016). On May 30, 2017, the State dismissed count two and proceeded to trial on count one.

After the close of the State's case-in-chief and Appellant's first motion for judgment of acquittal, the trial court informed the parties that it likely would not be able to provide written jury instructions to the jury. At the close of the State's rebuttal case and

Appellant's second motion for judgment of acquittal, Appellant's counsel asked the trial court whether the jury would be provided a written copy of the jury instructions. The trial court stated that the jury would not be provided written instructions.

Appellant's counsel objected and argued that the jury is entitled to written jury instructions, but was unable to cite from memory any case law or the specific rule numbers from the Florida Rules of Criminal Procedure. The trial court overruled the objection, stating that it was unaware of any rule requiring written jury instruction to be provided to juries in misdemeanor cases. As a result, written jury instructions were not provided to the jury during the trial court's reading of the jury instructions or during the jury's deliberations. The jury found Appellant guilty of battery and he was sentenced to 180 days in county jail followed by one year of probation.

STANDARD OF REVIEW

"An appellate court reviews the trial court's interpretation of the Florida Rules of Criminal Procedure de novo." *Clowers v. State*, 31 So. 3d 962, 964 (Fla. 1st DCA 2010). If a trial court errs regarding jury instructions, the error is subject to harmless error review. *Cf. Dougan v. Singletary*, 644 So. 2d 484, 485 (Fla. 1994) (holding that giving an erroneous jury instruction is subject to harmless error analysis). In such an analysis, the State bears the burden of proving beyond a reasonable doubt that the error was harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1134-35 (Fla. 1986).

LAW AND ANALYSIS

Appellant argues that the trial court erred when it overruled his objection and refused to provide a written copy of the jury instructions to the jury during the reading of the instructions and the jury's subsequent deliberations. Appellant further argues that the error was not harmless.

In 2008, the Florida Rules of Criminal Procedure were amended to require that in all criminal jury trials, the trial court must provide written jury instructions to the jury both during the reading of the jury instructions and during deliberations. See *In re Amendments to Rules of Civ. Procedure*, 967 So. 2d 178 (Fla. 2007) (amending Fla. R. Civ. P. 1.470(b), Fla. R. Crim. P. 3.390(b), and 3.400(b)); Fla. R. Crim. P. 3.390(b) ("The instruction to a jury shall be orally delivered and shall also be in writing"); 3.400(b) ("The court must provide the jury, upon retiring for deliberation, with a written copy of the

instructions given to take to the jury room”). Thus, the trial court erred by not providing written jury instructions to the jury.

As stated above, the State must prove beyond a reasonable doubt that the error was harmless. Because the State did not submit an Answer Brief, it has failed to meet its burden and the Court cannot conclude that the error was harmless.

CONCLUSION

The trial court erred by not providing written jury instructions to the jury. Because the State did not meet its burden to prove the error was harmless beyond a reasonable doubt, Appellant’s conviction must be reversed and the case remanded for a new trial.

It is therefore, ORDERED and ADJUDGED that the cause is hereby REVERSED AND REMANDED for further proceedings consistent with this Opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ____ day of _____, 2018.

Original Order entered on April 18, 2018, by Circuit Judges Linda Babb, Susan G. Barthle, and Daniel D. Diskey.

Copies to:

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