IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA,

v.

MICHAEL SCOTT WILSON,

Defendant. / CASE NO.: 2017-01168-CFFA
JUDGE TERENCE R. PERKINS

MOTION IN LIMINE

COMES NOW the Defendant, Michael Scott Wilson, by and through his undersigned Assistant Public Defender and moves this Honorable Court to allow the Defense to prove insanity with lay testimony.

1. Dr. Leventhal evaluated Mr. Wilson in early to mid-November of 2017.

2. Dr. Leventhal will testify that Mr. Wilson was diagnosed with paranoid schizophrenia.

3. This alleged incident occurred three weeks later on or about December 23rd, 2017.

4. Lay witnesses can testify to his actions and bizarre behavior leading up to and after the alleged incident.

Legal Authority That Supports Defendant's Motion

Jury does not necessarily have to take expert testimony over non-expert testimony, but they may disbelieve expert and believe non-expert if this is their inclination, and defendant is entitled to charge to this effect if he so desires. Question of defendant's mental condition at time of offense is question of fact for jury. In criminal cases, if defendant can interject sufficient evidence to create reasonable doubt in minds of jurors, or even where such reasonable doubt appears from prosecutor's case, sanity of accused must be proved by prosecution as any other element of offense, beyond reasonable doubt. Byrd v. state, 297 so. 2d 22 (Fla. 1974).

The test for **insanity** in Florida is whether, at the time of the offense, the defendant "had a 'mental infirmity, disease or defect' and as a result, **did** not know what he was **doing** or **did** not know that what he was **doing** was wrong." *State v. McMahon*, 485 So.2d 884 (Fla. 2d DCA 1986) (quoting Fla. Std. Jury Inst. (Crim.) 3.04(b)). A criminal defendant is presumed sane; however, once he presents evidence as to **insanity**, the burden is on the state to **prove** sanity beyond a reasonable doubt. *Yohn v. State*, 476 So.2d 123 (Fla.1985). It is well

settled that sanity is a question for the trier of fact to be determined from all of the evidence, and that **expert testimony** is not conclusive on the issue of sanity. *State ex rel. Bludworth v. Kapner,* 394 So.2d 541 (Fla. 4th DCA 1981); *State v. Van Horn,* 528 So.2d 529 (Fla. 2d DCA 1988). In Gilliam v. State, 514 So.2d 1098 (1987), the state called police officer to testify as to insanity of the defendant.

Analysis

The court in Byrd, allowed the State to rebut expert testimony with lay witnesses. The Byrd case involved an insanity defense wherein the Defense had three experts. This case also states that it is settled in law in this state that a man is presumed to be sane until a contrary demonstration appears. The Court in Gilliam allowed a police officer who was familiar with the Defendant to testify as to whether he was insane at the time of the offense.

In the case at bar, when insanity was raised, this court granted the State's order for an evaluation. This court ruled and granted the State's Motion in Limine and concluded that the second part of the M'Naughten test of insanity was not met. Mental issues are only relevant in trial unless there's a defense of insanity. This court also believed that the only way to prove insanity is to have expert testimony that Defendant was legally insane at the time of the offense.

The Defense has an evaluation from Dr. Leventhal that the defendant was diagnosed with paranoid schizophrenia. This diagnosis was three weeks prior to the alleged incident. Defendant is currently taking anti-psychotic medication while incarcerated. He's been incarcerated for a year and half. His ex-wife, Ashley Wilson can testify to his bizarre behaviors after his TIA. Testify that she called Dr. Leventhal to have Mr. Wilson evaluated. That he was very attentive to the family but after the TIA he was distant, did not spend time with her or their daughter, saying off the wall things, staying in the garage, would send her text messages and after the hospital incident, send her messages via Facebook messenger about how he loved her but then how he hated her. He accused her of cheating on him, felt like she set him up, that her family was trying to kill to get money for the insurance policy, etc.

According to Gryczan v. State, 726 So. 2d 345 (4th Cir. DCA 1999), expert testimony is not conclusive on the issue of sanity. Lay witnesses are not formally trained in the field of psychology but can offer testimony as to what they saw that either bolsters or rebuts the issue. The court in Byrd thought it proper for the State to rebut expert testimony with lay witnesses. Here, the Defense has a formal diagnosis and thus should be allowed to present lay testimony of his sanity at the time of the incident to meet the second prong of M'Naughton. The Due Process Clause of the United States Constitution guarantees an opportunity to present a reasonable defense.

WHEREFORE, Defendant prays this Honorable Court grant this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: Melissa Clark, Assistant State Attorney, 1769 East Moody Blvd., Bldg. #1, Bunnell, FL 32110, and to the defendant, on June 14, 2019.

/s/ Regina Nunnally
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