

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

BILL E. WILKERSON,

Appellant.

DOCKET NUMBER WD71314

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 1, 2011

APPEAL FROM

The Circuit Court of Moniteau County, Missouri
The Honorable Donald L. Barnes, Senior Judge

APPELLATE JUDGES

Division One: Mark D. Pfeiffer, Presiding Judge, and Thomas H. Newton
and Alok Ahuja, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.)
)
BILL E. WILKERSON,)
)
Appellant.)

WD71314

Moniteau County

Before Division One Judges: Mark D. Pfeiffer, Presiding Judge, and
Thomas H. Newton and Alok Ahuja, Judges

Bill E. Wilkerson appeals from the judgment of the Circuit Court of Moniteau County in which a jury found him guilty of the class D felony of endangering a corrections officer and for which he was sentenced to a term of four years. On appeal, Wilkerson argues that the trial court impermissibly proceeded to trial without first obtaining and giving due consideration to a report of mental examination both as ordered by the trial court and as contemplated by section 552.020.

REVERSED AND REMANDED.

Division One holds:

At his first trial, Wilkerson engaged in a bizarre display of singing, nonsense talk, and egregious verbal abuse of his attorney and the judge. Because part of this exchange occurred in front of the jury, the trial court declared a mistrial and ordered the Department of Mental Health to perform a mental health examination to determine if Wilkerson was competent to stand trial and to share their findings in a report as outlined in section 552.020. However, Wilkerson would not leave his cell to meet with the mental health examiner, the mental health examiner made no further effort to review Wilkerson's mental health through other sources, and no report was issued to the trial court from the mental health examiner. Despite this, the trial court proceeded with a second trial in which Wilkerson was found guilty.

In his sole point on appeal, Wilkerson argues that the trial court plainly erred in proceeding with the trial after the mental health examiner failed to provide a mental health report as required by section 552.020. A careful reading of that statute in concert with case law reveals that once a trial court determines that a mental health report is necessary, it *must* be completed before a trial court can reach a determination on a defendant's competency to stand trial. Because the reporting mandates of section 552.020.3 are mandatory and the failure to follow them affected Wilkerson's substantive due process rights, Wilkerson's conviction is vacated and the trial court is ordered to complete the section 552.020 mental health examination and, at such time as the court deems Wilkerson competent to stand trial, the State may retry him for the offense as charged.

Opinion by: Mark D. Pfeiffer, Judge

February 1, 2011

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