

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JAMES TUBWELL,

Appellant,

v.

CASE NO. 1D03-5366

STATE OF FLORIDA,

Appellee.

Opinion filed November 17, 2004.

An appeal from the Circuit Court of Escambia County.
Judge Frank Bell.

Nancy A. Daniels, Public Defender and David P. Gauldin, Assistant Public Defender,
Tallahassee, for Appellant.

Charles J. Crist, Jr., Attorney General and Sheron Wells, Assistant Attorney General,
Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The defendant appeals his conviction for felony battery and the five-year sentence imposed as punishment for the crime, contending that the trial court erred in failing to renew the offer of appointed counsel at several critical stages of the proceeding. We find no error in the hearing to determine whether the defendant was

capable of making an informed choice of self-representation, and that the offer of counsel made during this hearing applied to all of the proceedings before the jury. However, the offer to provide appointed counsel was not renewed prior to the sentencing hearing. Because, we are unable to conclude that this error was harmless, we conclude that the defendant is entitled to a new sentencing hearing.

Accordingly, we affirm the conviction but reverse for resentencing.

ERVIN, PADOVANO and LEWIS, JJ., CONCUR.