IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMES R. WILLIAMS, III — APPELLANT

VS. — NO. 2007-KA-1338-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 20075-KA-1338-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

I. THE TRIAL COURT CORRECTLY DENIED WILLIAMS' MOTION TO SUPPRESS HIS CONFESSION.

II. THE STATE WAS NOT REQUIRED TO CALL OFFICERS JOHNSON AND AINSWORTH BECAUSE WILLIAMS NEVER CLAIMED THAT THEY COERCED HIS CONFESSION.

III. THE TRIAL COURT PROPERLY PROHIBITED DEFENSE COUNSEL FROM USING EXTRINSIC EVIDENCE TO ATTEMPT TO IMPEACH WHITE WITH AN ALLEGED INCONSISTENT STATEMENT.

IV. THE TRIAL COURT PROPERLY SUSTAINED THE STATE'S SEVERAL OBJECTIONS DURING WHITE'S CROSS-EXAMINATION.

V. THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION IN CONTROLLING THE MODE AND ORDER OF WHITE'S INTERROGATION.

VI. WILLIAMS WAS NOT ENTITLED TO AN ACCESSORY AFTER THE FACT INSTRUCTION.

VII. WILLIAMS IS NOT ENTITLED TO RELIEF BASED ON CUMULATIVE ERROR, AS NO INDIVIDUAL ERROR OCCURRED.

STATEMENT OF FACTS

James Williams, Jr. (James Jr.) and his wife, Cynthia, were last seen alive at their home on December 28, 2002. T. 754. James Williams, III (Williams), who lived with his father and stepmother, was present at their home on December 28, 2002. T. 754. He and his friend, Adam White, helped Williams' parents move into a new house that day. T. 618, 754. At trial, Williams and White gave different versions of what happened at the Williams residence later that night. White's version of events was that he left the Williams residence between 7:30 and 8:00 p.m. to go home and eat dinner. T. 619. Williams came back to pick him up at 11:00 p.m. because the pair had planned to go to a friend's house. T. 621. When Williams arrived at White's house, he told White that they were "going to go for a ride," but first walked behind the house, handed White a .22 rifle, and told him to "chunk it." T. 622. White testified, "At that time I figured that he had actually shot his parents." T. 622. When asked why, he replied, "Because earlier that day, the day before he said that he was going to shoot his parents..." T. 622. Williams also told White that he put rat poison in their milk and drinking water. T. 622. Williams drove White to the Williams residence and ordered him to help clean up the scene. T. 623. When White refused, Williams told him "either you can be with me or you can be with them." T. 624. Williams wrapped the bodies in garbage bags, plastic wrap, and blankets, placed them in large Rubbermaid containers, and put the containers in the back of James Jr.'s truck. T. 625. Williams drove the truck and ordered White to follow in Williams' car. T. 626. The bodies were disposed of in a remote location in Brandon. The pair then went back and cleaned up the crime scene. T. 628.

At trial, Williams testified to the following version of events. White had brought a 9mm Beretta over to the Williams' residence that day to show him, and when they heard James Jr. enter, White hid the gun under the couch. T. 754. Later that evening, James Jr. found the gun under the

couch and became irrate. T. 756-57. James Jr. started yelling and waiving the gun in the air. T. 757. Cynthia came into the living room, and when James Jr. turned, "the gun went off" and shot her. T. 757. White then jumped up and retrieved a .22 rifle from Williams' room and pointed it at James Jr. telling him to drop the gun. T. 757. Williams tried to calm his father down and take gun away, but James Jr. hit him in the stomach and pushed him across room. T. 758. White yelled at James Jr. to drop the gun, but James Jr. pointed it at White, and White then shot him. T. 758. White then shot him once more with the .22 after he fell, then picked up the 9mm and shot him 3 more times. T. 758. Williams then helped White dispose of the bodies and clean the crime scene because White threatened to kill him if he did not. T. 759-60. Williams then stayed at White's house for the next week. Williams' trial testimony completely contradicts an earlier confession, which happens to correspond with White's trial testimony.

James Jr. and Cynthia were reported missing on January 3, 2003 by friends of Cynthia. T. 334; Exhibit S3, p. 2. At that time, authorities saw no evidence of foul play. T. 336. However, authorities were called back to the house two days later after traces of blood were found inside the house. T. 360. Because Williams was reported to be the last person who saw his parents, he was brought in for questioning regarding the whereabouts of James Jr. and Cynthia. T. 392-93, 420. The case was still considered a missing persons case. T. 392. After being Mirandized, Williams gave a statement indicating that he had last seen his parents on December 28 and did not know where they were. T. 394; Exhibit S3. While Williams was being interviewed, White was brought in and questioned. T. 376. White named Williams as the murderer. He also led officers to the location of the bodies, although it took over four hours to find the exact location. T. 424.

After the bodies were found, the officers returned to the station, and Detective Perry Tate Mirandized Williams in the presence of Detective Kent Daniels. T. 17, 27. Williams gave a second

statement which was video and audio taped as well as transcribed. In that statement, Williams admitted to killing his father and stepmother. T. 451, Exhibits S-8-A, S-8-B. Williams explained that he shot his father because his father beat him and had pulled a gun on him. "[I] felt that eventually if my dad could just explode like that. . . that eventually he'd do it and I'd wind up dead. And my stepmom was just an accident. She came around the corner and I just kinda jumped." Exhibit S-8-A, S-8-B.

Williams was tried and convicted by a Hinds County Circuit Court jury of two counts of murder. C.P. 25. He was sentenced to serve two concurrent life sentences. C.P. 25.

SUMMARY OF THE ARGUMENT

The trial court correctly denied Williams' motion to suppress his confession. He claims on appeal that his mother and stepfather invoked his right to attorney, and that the subsequent questioning was therefore impermissible. However, his claim must fail because neither a parent nor any other third party can invoke a criminal defendant's personal right to an attorney. Furthermore, the officers whom the McFarlands named testified that no such conversation took place.

Relying on *Agee v. State*, Williams also argues that Officers Johnson and Ainsworth were required to testify at the suppression hearing. It is well-established that only the officers accused of coercing a criminal defendant to confess must be called in order to rebut the defendant's claims. Williams never claimed that Officers Johnson and Ainsworth were involved in any type of coercion regarding his confession. Accordingly, no *Agee* violation occurred.

Williams also argues that the trial court erred in denying defense counsel the opportunity to impeach White with an alleged inconsistent statement. The alleged inconsistent statement is Exhibit D-39 for identification only. When this honorable Court compares White's testimony to the relevant portion of that statement, it will be abundantly clear that the statements are not inconsistent. As such, the trial court did not abuse its discretion in refusing to allow defense counsel to use the statement.

Williams next contends that the trial court erred in refusing to allow defense counsel to introduce White's youth court records. Although youth court records may be used to show a witness's bias or motive for testifying, they cannot be used for general impeachment purposes. Accordingly, the trial court correctly denied defense counsel's motion.

White's argument that his right to compulsory process was violated is also meritless. The trial court simply directed defense counsel that if he wanted conduct a direct examination of White,

he should do so at the conclusion of White's testimony for the State. The trial court enjoys control over the mode and order of interrogating witnesses and presenting evidence, and in this case, the trial court did not abuse its discretion in doing so.

Williams was not entitled to an accessory after the fact instruction, because such an instruction was not supported by the evidence.

Finally, because Williams failed to show error in any individual assignment of error, there can be no cumulative error.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DENIED WILLIAMS' MOTION TO SUPPRESS HIS CONFESSION.

Williams signed Miranda waivers before giving each statement. T. 100, 104. At the suppression hearing, Williams' mother testified that she told Detectives Bailey and Ainsworth that she did not want her son to be questioned further until an attorney was present. T. 72-76. Williams' stepfather also testified that he told Detectives Bailey, Ainsworth, and Cornelius that he did not want Williams to be questioned further without an attorney. T. 152-56. However, Detective Bailey testified that the parents never said anything to him or in his presence about obtaining an attorney. T. 140. Detective Cornelius testified that after Williams' first interview at 6:00 p.m., he joined other officers in searching for the victims' bodies, and never saw Williams' mother and stepfather that night. T. 155. Bailey and Cornelius also both testified that Ainsworth was not at the police station that night. T. 145, 158. "When the trial court makes findings of fact on conflicting evidence, this Court must generally affirm." **Brink v. State**, 888 So.2d 437, 442 (Miss. Ct. App. 2004) (citing **Gavin v. State**, 473 So.2d 952, 955 (Miss. 1985)).

Although Williams never personally invoked his rights to an attorney or to remain silent, Williams claims on appeal that his confession should have been suppressed because it was taken after his mother and stepfather invoked his right to an attorney. Williams' first contention must fail because a third party cannot invoke a criminal defendant's right to an attorney. **Hill v. State**, 749 So.2d 1143, 1148 (Miss. Ct. App. 1999). Rather, the right must be invoked by the defendant. **McGilberry v. State**, 741 So.2d 894, 906 (¶25) (Miss. 1999). Our supreme court has also stated,

> A rule allowing third parties to invoke individual constitutional rights is not required by federal case law nor was such a rule announced in **Reuben** [**v. State**, 517 So.2d 1383 (Miss. 1987)] or any other Mississippi case. In our opinion, such a rule would be contrary to the clear implication of both federal and state cases.

Lee v. State, 631 So.2d 824, 827 (Miss. 1994). Accordingly, the trial court correctly found that the Ferguson's could not invoke Williams' personal right to an attorney. T. 130.

II. THE STATE WAS NOT REQUIRED TO CALL OFFICERS JOHNSON AND AINSWORTH BECAUSE WILLIAMS NEVER CLAIMED THAT THEY COERCED HIS CONFESSION.

Williams claims that the State committed an *Agee* violation by failing to call Officers Dexter Johnson and Kevin Ainsworth at the suppression hearing.

The State must prove that a criminal defendant's confession was voluntary. **Agee v. State**, 185 So.2d 671, 673 (Miss. 1966). The State makes out a prima facie case of voluntariness by proving that no threats, coercion, or promise of reward was offered in exchange for the confession. **Id**. The *Agee* court held,

> [A]fter the State has made out a prima facie case as to the voluntariness of the confession, the accused offers testimony that violence, threats of violence, or offers of reward induced the confession, then the State must offer all the officers who were present when the accused was questioned and when the confession was signed, or give an adequate reason for the absence of any such witness.

Id. However, our courts have repeatedly noted that the *Agee* decision was rendered two months before *Miranda v. Arizona*, 384 U.S. 436 (1966), and "while the principles established in *Agee* still stand, their importance to an accused have been diminished in light of *Miranda*." **Millsap v. State**, 767 So.2d 286, 291 (¶16) (Miss. Ct. App. 2000). "In light of *Miranda*, *Agee* has been interpreted to require the State to offer in rebuttal only those persons who are claimed to have induced the confession through some means of coercion." **Brink v. State**, 888 So.2d 437, 443 (¶9) (Miss. Ct. App. 2004) (citing **Abram v. State**, 606 So.2d 1015, 1030 (Miss. 1992); **Millsap** at 291 (¶¶ 15-16)(Miss. Ct. App. 2000)).

Williams claimed that Detectives Bailey and Tate threatened him. T. 101, 105. Because

Johnson and Ainsworth were never accused of coercing Williams to confess, the State was not required to call them at the suppression hearing.[1]

III. THE TRIAL COURT PROPERLY PROHIBITED DEFENSE COUNSEL FROM USING EXTRINSIC EVIDENCE TO ATTEMPT TO IMPEACH WHITE WITH AN ALLEGED INCONSISTENT STATEMENT.

The following exchange occurred during White's cross-examination.

Q. What did Detective Davis say to you while you were riding around?

A. He didn't really say anything. I was asking him questions about what were the possibilities, what could happen with all this. He was explaining the different levels of the charge. And he said the best thing I could do for myself is to give as much information as I can without lying and tell the truth.

Q. Did he tell you if you cooperate, you'd get leniency?

A. No.

Q. He didn't say that to you?

A. No sir.

T. 655. At this point, defense counsel attempted to impeach White with a transcript of an interview of White conducted by defense counsel prior to his testimony. The trial court prohibited defense counsel from using the transcript. T. 565.

Extrinsic evidence of a prior inconsistent statement may be used to impeach a witness. M.R.E. 613(b). However, "before a party may impeach a witness under Rule 613(b) there must be an actual contradiction in fact between the testimony and the prior statement." **Everett v. State**, 835 So.2d 118, 122 (¶11) (Miss. Ct. App. 2003). A prior statement is inconsistent if "under any rational theory its introduction might lead to a conclusion different from the witness's testimony" or if it "has

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[1]Detectives Bailey and Cornelius testified that Ainsworth was not even at the precinct the night Williams confessed. T. 145, 158.

a reasonable tendency to discredit the witness's testimony." **Id.**

Defense counsel perceived and inconsistency in White's prior statement on page 5, line 5 of the transcript marked for identification as D-39. T. 659. The prior statement included the following exchange between defense counsel and White.

> Q. Did [Detective Davis] say if you cooperated that there was more of a likelihood that you would receive a lesser charge?
>
> A. He said that if I cooperated that it would help me, he didn't say how it would help me, he said that it would help me. This was after I had started cooperating.

I.D. D-39, p. 5. The trial court noted that White had just testified that he was not promised leniency, and the prior statement in no way contradicted that testimony. T. 661. Because the prior statement did not contradict White's testimony, it was not admissible under M.R.E. 613(b).

IV. THE TRIAL COURT PROPERLY SUSTAINED THE STATE'S SEVERAL OBJECTIONS DURING WHITE'S CROSS-EXAMINATION.

White claims that the trial court erred in prohibiting defense counsel from (1) questioning White about his youth court records, (2) introducing Cynthia's bank statement as well as surveillance pictures of White at an ATM, and (3) having White and Williams to stand side by side in court for a comparison of their height and weight.

White's youth court record

Defense counsel may cross-examine a witness regarding his juvenile record "to probe only as necessary for special treatment, offers or concessions, or to show any bias or interest in testifying." **Brown v. State**, 749 So.2d 204, 213 (¶22) (Miss. Ct. App. 1999) (citing **Bass v. State**, 597 So.2d 182, 188-89 (Miss. 1992); **Davis v. Alaska**, 415 U.S. 308, 311 (1974); cmt. M.R.E. 609(d)). However, juvenile adjudications cannot be used for general impeachment purposes. **Ramsey v. State**, 959 So.2d 15, 27 -28 (¶¶41-42) (Miss. Ct. App. 2006); Miss. Code Ann. § 43-21-561(5).

At trial, defense counsel's stated purpose for seeking to introduce White's youth court records was to show that White allegedly (1) suffered from intermittent explosive disorder, oppositional defiant disorder, and bipolar; (2) had slapped his mother in the face; (3) had been twice committed to Whitfield for physical violence; (4) lied about his height and weight. T. 304, 695-96. Because defense counsel sought to introduce White's youth court records for mere impeachment, rather than to show bias or interest, the trial court properly denied Williams' motion.

ATM still shots and Cynthia's bank statement

White admitted on cross-examination that he had used Cynthia's ATM card at some point after Williams murdered her. T. 670. He could not recall exactly how many trips he made to the ATM or exactly how much money he had withdrawn. T. 670. When asked if it could have been $800, he stated, "Sounds -- it's a pretty good number." T. 670. Defense counsel then attempted to use Exhibit D-14, Cynthia's bank statement marked for identification only, and still photos of White at an ATM during the examination.[2] The trial court refused to allow defense counsel to question White further regarding Exhibits D-14 and 35. The trial court had previously ruled that the bank statement did not show who withdrew money from Cynthia's account. T. 508. Regarding the still photos, the trial court found that they did not show how many trips White made to the ATM, nor how much money he withdrew. T. 697. Defense counsel then asserted that the two exhibits when considered together somehow impeached White's testimony. T. 697.

Trial court's enjoy broad discretion in ruling on the admissibility and relevance of evidence. **Eason v. State,** 916 So.2d 557, 562 -563 (¶27) (Miss. Ct. App. 2005). "The scope of

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[2]Defense counsel erroneously referred to the bank statement as D-11, although it is clear from the context that he was in fact referring to D-14. Further, the court reporter erroneously marked the still photos of White at the ATM as D-3. It is clear from the dialogue on T. 671-72 that the exhibit was actually D-35 for identification only.

cross-examination, though ordinarily broad, is within the sound discretion of the trial court and the trial court possesses inherent power to limit cross-examination to relevant matters." **Id.** (quoting **Smith v. State**, 733 So.2d 793(¶ 37) (Miss. 1999)). White admitted that he withdrew money from Cynthia's account, but could not remember how much or how many times. Nothing shown in the bank statement or still photos could have impeached his testimony. Accordingly, the trial court did not abuse its discretion in finding that the exhibits were irrelevant.

In-court size comparison

During cross-examination, White testified that he was 6' tall and weighed 220 pounds. T. 672. Defense counsel then asked the court if White could stand next to the defendant for a size comparison. T. 672. The court refused the request. On appeal, Williams points out the court's refusal, but presents no argument to illustrate how the ruling was erroneous or prejudicial. Nevertheless, the similarity or difference of size between White and the defendant three years after the murder was irrelevant, and the trial court did not abuse its discretion in refusing an in-court comparison to be made.

V. THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION IN CONTROLLING THE MODE AND ORDER OF WHITE'S INTERROGATION.

White, the State's final witness, testified on the fourth day of trial. The court recessed during White's examination, and defense counsel asked the court whether White was under subpoena so that he could be recalled for the defendant's case-in-chief. T. 667. The court advised defense counsel to take White on direct at the conclusion of his testimony for the State. T. 668. However, after White's redirect examination, defense counsel declined to take him on direct. T. 691. The court, however, advised White that he was still under subpoena. T. 692. Defense counsel never made a proffer to show what, if any, new information the defendant sought to elicit from White.

On appeal, Williams claims that the court violated his right to compulsory process in "preventing defense from calling Adam White as a witness in the defendant's case-in-chief." Appellant's brief at 32. The Compulsory Process Clause gives a criminal defendant "the right to compel the presence and present the testimony of witnesses." **Taylor v. Illinois**, 484 U.S. 400, 409, (1988). White was present and defense counsel had the opportunity to present his testimony. The court never prevented defense counsel from calling White for his case-in-chief. Instead, the court merely directed defense counsel to take White on direct at the conclusion of the State's case.

"The court shall exercise reasonable control over the mode and order of interrogating witness and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." M.R.E. 611(a). "In accord with 611(a), it is within the trial court's discretion to decide whether to allow a witness to be recalled to the stand." **Ellis v. State**, 661 So.2d 177, 179 (Miss. 1995). The court noted that it was the fourth day of trial and that "this case is not going on much longer," which was true as defense counsel concluded its case-in-chief that day. T. 667. The court properly exercised its discretion in accordance with M.R.E. 611(a).

VI. WILLIAMS WAS NOT ENTITLED TO AN ACCESSORY AFTER THE FACT INSTRUCTION.

It is true that Williams' theory of the case was that James, Jr. accidentally shot Cynthia, and White shot James, Jr. in self-defense. However, it is not true that refused instruction 21, an accessory after the fact instruction, was an instruction on his theory of the case. The trial court correctly refused instruction 21 as having no foundation in the evidence.

One is an accessory after the fact if one has "concealed, received, or relieved any felon, or having aided or assisted any felon, knowing that such person had committed a felony, with intent to

enable such felon to escape or to avoid arrest, trial, conviction or punishment, after the commission of such felony . . . ." Miss. Code Ann. § 97-1-5. Even if the jury had believed Williams' version of events, his acts could not meet the definition of accessory after the fact with regard to either murder. If James, Jr. had accidentally shot Cynthia, and if White had shot James, Jr. in self-defense, then no felony had even been committed. Further, "guilty knowledge is an indispensable element of the crime." **Buckley v. State**, 511 So.2d 1354, 1358 (Miss. 1987) (citing **Matula v. State**, 220 So.2d 833 (Miss. 1969)). Williams claimed that he only helped clean the crime scene and hide the bodies because White threatened to kill him, and that he was scared of White. T. 759, 760. Therefore, Williams would not have been acting with the requisite intent to enable White, who was also not a felon, to avoid punishment. Accordingly, the trial court correctly refused the instruction as having no foundation in the evidence.

VII. WILLIAMS IS NOT ENTITLED TO RELIEF BASED ON CUMULATIVE ERROR, AS NO INDIVIDUAL ERROR OCCURRED.

Because Williams failed to show error in any individual assignment of error, there can be no cumulative error. **Truitt v. State**, 958 So.2d 299, 302 (¶13) (Miss. Ct. App. 2007) (citing **Simmons v. State**, 813 So.2d 710, 717 (¶42) (Miss. 2002)).

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Williams' convictions and life sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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