

IN THE MISSISSIPPI COURT OF APPEALS

COPY

No. 2005-KA-01338-COA

JAMES R. WILLIAMS, III

APPELLANT

FILED

Vs.

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF APPELLANT

Appeal from the Circuit Court of Hinds County, Mississippi

Julie Ann Epps (MS Bar No. [REDACTED])
504 East Peace Street
Canton, MS 39046
(601) 407-1410
facsimile (601) 407-1435

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LAW AND ARGUMENT

1. **The trial court erred in failing to suppress James' statements made after his parents unequivocally and repeatedly invoked his right to silence and to an attorney.**

First of all, the State argues that the trial court properly found that a third party can not invoke another's person's right to counsel. However, the trial court never addressed this issue. The trial court ruled, rather, that James' statements were preceded by Miranda warnings and were not the result of threats or coercion. The court never tackled the issue of whether anyone invoked James' right to remain silent and for an attorney much less whether this invocation was sufficient. The ruling reads as though the court was of the opinion that even if James' Fifth and Sixth Amendment rights had been invoked, a statement that followed the giving of Miranda rights and was not the result of coercion is admissible. Of course, nothing could be further from the truth.

If James' right to counsel and his right to remain silent were invoked, any statements taken by the police after the invocation were inadmissible unless the defendant himself initiated the communication with police. *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981); *Minnick v. Mississippi*, 498 U.S. 146, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990).

The fact that James was Mirandized and that the statements were not the result of coercion or promises is immaterial.

In this case, Sandra and Steven McFarland, in the presence of their minor son, unequivocally told the detectives not to question their son any more until an attorney was present. Indeed, they would never have left police headquarters if they thought that the law enforcement officers would not heed their admonishments. The subsequent statement should have been suppressed as violative of James' right to remain silent and his right to counsel.

2. The trial court erred in failing to require the prosecution to provide every officer who was present the day that Williams was interrogated.

The state argues that the *Agee* rule comes into play only if the defendant claims he was threatened or promised something and there was no such claim made in this case. In *Sanders v. State*, 801 So.2d 694, 699 (Miss. 2001), the Mississippi Supreme Court described an earlier court of appeals case, *Hogan v. State*, as “holding that *Agee* applies only where defendant has alleged that his confession was induced by threats or promises”). *Sanders*, 801 So.2d at 699 citing *Hogan v. State*, 730 So.2d 94 (Miss.App. 1998). However, what *Hogan* held is that “When misconduct of a law enforcement officer is alleged, the ‘every witness’ rule gives the court as complete an explanation as is available from other officers and observers of what happened. *Hogan*, 730 So.2d at 99. The misconduct alleged here is that officers continued interrogating James after his rights to remain silent and to be represented by counsel were invoked.

The State notes that Detectives and Bailey testified that Ainsworth “was not even at the precinct the night Williams confessed.” According to the parents, Ainsworth **was** there part of the night but left before James was prevailed upon to confess. T. 76, 88, 90. After all, Ainsworth was the officer in charge of the missing persons case. And Ainsworth was one of the officers that Mr. And Mrs. McFarland instructed not to question James until his attorney could be present. *Id.* Under *Agee*, the defendant has a right to have Ainsworth testify as to what occurred while he was at the station.

Notably, the prosecution did not claim at trial that Ainsworth was not involved, only that he had not filed a statement or other information. In explaining why Ainsworth was unavailable, the prosecution stated, “There was no Ainsworth from what I can recall that filed any statements or any of the information in discovery by the State. So with that, the State has no further witnesses.” T. 168-169.

The failure of the prosecution to call Ainsworth as a witness at the suppression hearing was error and requires reversal of James’ convictions.

3. The trial court erred in refusing to allow the defense to question Adam White about a statement made to the defense.

The state argues that the prior statement was not inconsistent. This is specious. On cross-examination, White was asked if Detective Davis had told him that if he cooperated, he'd get leniency. White's answer was an unequivocal "no." However, when being interviewed by defense counsel a few days previously, however, White was asked whether Davis had said that if White cooperated there was more of a likelihood that he would receive a lesser charge. White responded, "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."

White was the state's star witness. To the extent that the officers made him any promises, no matter how vague, the defendant was entitled to cross-examine White about them.

The trial court's ruling was based on a total misapprehension of the rules of evidence. She refused to allow the questioning based on a "rule" that a witness can not be impeached by a party with a statement made to that party (T. 659) and another "rule" that a witness can not be cross examined on a previous statement unless the witness has already been shown the statement. T. 662 (The Court: "And if the witness has not seen the statement, then it's my job to tell you that he can't see it. You can't ask him questions from something he hasn't seen"). The trial court's ruling was wrong as a matter of law.

4. The trial court erred in limiting the defendant's cross-examination of Adam White.

The state contends that White's youth court records were inadmissible because the defense sought to use them only to impeach White and juvenile records are inadmissible "for general impeachment purposes." *State's Brief* p. 10. (The State never addresses the admissibility of the Whitfield records). What the state appears to forget is that James testified that it was the younger, but bigger, White who shot James' father. The juvenile and Whitfield records supported this theory inasmuch as they contained a wealth of information demonstrating that White had a propensity for violence and was unable to control his temper.

The United States Supreme Court has repeatedly emphasized that its "cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974) *quoting Douglas v. Alabama*, 380 U.S. 415, 418, 85 S.Ct. 1074, 1076, 13 L.Ed.2d 934 (1965); *Ohio v. Roberts*, 448 U.S. 56, 63, 100 S.Ct. 2531, 2537, 65 L.Ed.2d 597 (1980). The right of cross-examination is an essential safeguard of factfinding accuracy in an adversary system of justice and "the principal means by which the believability of a witness and the truth of his testimony are tested," *Davis v. Alaska*, 415 U.S. at 316, 94 S.Ct. at 1110.

Mississippi cases are in accord. A criminal defendant has a constitutional right to impeach government witnesses. *Harris v. State*, 878 So.2d 90, 101 -102 (Miss.App. 2003). The right to cross-examine witnesses is one of the most

important afforded defendants under both the state and federal constitutions. *Suan v. State*, 511 So.2d 144 (Miss. 1987) (defendant has a right to broad and extensive cross-examination); *Hamburg v. State*, 248 So.2d 430 (Miss. 1971) (right to confront and cross-examine accuser is broad and fundamental).

Thus, when a witness's mental condition was relevant to a defense theory of motive or bias, or when the condition was sufficiently severe as well as so closely tied to the events in question so as to cast doubt on that witness's ability to perceive or interpret the events in question. *See, e.g., United States v. Lindstrom*, 698 F.2d 1154, 1160-64 (11th Cir. 1983) (reversing a conviction because the trial court limited cross-examination and prohibited the defense from accessing the psychiatric records of the government's star witness, and because defense's theory was that the witness's severe and ongoing mental illness had given her an improper motive for accusing the defendant of wrongdoing); *Greene v. Wainwright*, 634 F.2d 272, 275-76 (5th Cir.1981) (granting habeas petition because trial court had not allowed cross-examination on witness's history of mental illness, which prohibited "any exploratory inquiry by defense counsel into [the witness's] possible bias or motive"); *United States v. Society of Indep. Gasoline Marketers of Am.*, 624 F.2d 461, 469 (4th Cir.1979)(finding abuse of discretion when a district court precluded evidence that a witness was, at the time of events in question, being treated for mental illness rendering him delusional and hallucinatory).

Where the witness the accused seeks to cross-examine is the "star" government witness – especially where he was also an accomplice or participant in

the crime with which the defendant was charged - the importance of full cross-examination is necessarily increased. *United States v. Barrentine*, 591 F.2d 1069, 1081 (5th Cir. 1979).

In this case, Adam White was the state's star witness. He was also a codefendant and participant and, according to James, responsible for at least one of the deaths for which James was being tried. Yet the jury was not given crucial evidence regarding Adam White's serious mental problems and propensity to violence. The trial court's refusing to allow the defense to cross-examine Adam White on his criminal record and extensive mental health problems was erroneous. The ruling denied James his right to confront the witnesses against and to produce evidence supporting his theory of the case.

6. The trial court erred in refusing to instruct the jury on accessory after the fact to capital murder. The defendant is entitled to have the jury instructed on his theory of the case.

The state argues that James was not entitled to a lesser included instruction on accessory after the fact because if the deaths happened as James described, there was no felony. "[I]f White had shot James, Jr. in self-defense, then no felony had been committed."

James testified that Adam shot James' father when the father started to draw the gun on Adam. James' father fell into the couch with a pillow on his head. He was still moving and Adam shot through the pillow. T. 758. Whether

Adam's actions amounted to a felony, especially given the second shot, was a question for the jury. Even if self-defense, the action of concealing the bodies amounted to a felony. There was certainly sufficient evidence, however, for the jury to decide, based on James' testimony, that James was an accessory after the fact.

James has an absolute, fundamental right to have his theory of the case presented to a jury. *Chinn v. State*, 2007 WL 1840388, *2 (Miss.). The failure of the trial court to give the jury an instruction through which they could give effect to James' theory of the case was error.

Conclusion

For these reasons, James R. Williams, III's convictions and sentences must be vacated or reversed and remanded for a new trial.

Respectfully submitted,

JAMES R. WILLIAMS, III

By: _____
Julie Ann Epps (MS Bar No. [REDACTED])
504 East Peace Street
Canton, MS 39046
(601) 407-1410
facsimile (601) 407-1435

CERTIFICATE OF FILING AND SERVICE

I, Julie Ann Epps, hereby certify that I have this day mailed by first-class mail, postage prepaid, the original and three copies to the Clerk of the Mississippi Supreme Court, P.O. Box 249, Jackson, Mississippi 39205.

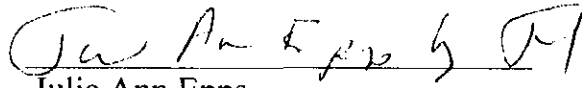
And a true and correct copy of the foregoing Reply Brief of Appellant to the following:

Hon. Jim Hood
Mississippi Attorney General
P.O. Box 220
Jackson, MS 39205

District Attorney Faye Peterson
P.O. Box 22747
Jackson, MS 39225-2747

Hon. Tomie T. Green
Hinds County Circuit Court Judge
P O Box 327
Jackson, MS 39205

This, the 28th day of September, 2007.


Julie Ann Epps