

IN THE MISSISSIPPI COURT OF APPEALS

COPY

No. 2005-KA-01338-COA

JAMES R. WILLIAMS, III

APPELLANT

FILED

Vs.

JUL 23 2007

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

Appeal from the Circuit Court of Hinds County, Mississippi

Julie Ann Epps (MS Bar No. [REDACTED])
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

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Appellant/Defendant

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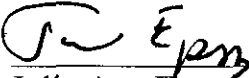
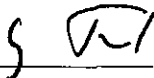
Faye Peterson
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Jim Hood
Attorney General

The State of Mississippi
Appellee

Honorable Tomie T. Green
Circuit Court Judge, Hinds County, Mississippi.

SO CERTIFIED, this the 23rd day of July, 2007.

Julie Ann Epps

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STATEMENT OF ISSUES

- 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.**
- 2. The trial court erred in failing to require the prosecution to provide every officer who was present the day that Williams was interrogated.**
- 3. The trial court erred in refusing to allow the defense to question Adam White about a statement made to the defense.**
- 4. The trial court erred in limiting the defendant's cross-examination of Adam White.**
- 5. The Court erred when it ruled that the defense could not call White as a witness in their case, that if they wanted to examine White under direct, they had to do it while he was testifying for the prosecution.**
- 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.**
- 7. The errors taken together are cause for a new trial.**

STATEMENT OF THE CASE

The indictment:

James R. Williams, III was indicted in April, 2003, for the December 2002 murder of James R. Williams, Jr. and for the murder of Cynthia A. Williams. CP. 1, 38; RE. 21, 22. The cases were consolidated for trial.

The trial:

Officer Cesaer Hamilton testified that on January 3, 2003, he received a call about missing persons at 265 Winfield Street in Jackson. T. 333. When he arrived at that location, Zeno Mangum and James Williams, III were present. T. 334. The missing persons were Cynthia Williams and James Williams, Jr. T. 334. Hamilton went through the house. It did not appear to be burglarized. The VCR and TV were there. "The house was in order from my point of view." T. 336. He did not see any blood in the house. T. 340. The missing man's son, James Williams, III (hereinafter "James"), told the officer that that he had last seen his father and stepmother on December 28, 2002, at around 10:00 p.m. They were preparing for bed. T. 337. At that time, James was staying with a friend on Greenview Street. T. 337.

The next day, Hamilton again went to the house on Winfield. T. 338. He learned that James had given the house key to a neighbor (Sandra Fisher's son) and asked him to feed the family's dog. T. 339.

Sandra Fisher lived at no. 212 – about five houses down - on the same street as the Williams family. T. 342. On New Years Eve before the Williams were reported missing, she testified, James and his friend Adam White were at Fisher's house. James asked her if she had seen what he had bought. When she said no, he said he had bought a black leather jacket and a pair of black leather pants using a prepaid credit card given to him by Cindy. T. 344. James said he'd been staying at Adam's house and had not spoken to James and Cindy for a few days. T. 343-44.

JPD detective Al Ledoux had known James Williams, Sr. for twenty years. T. 351. One Sunday after Christmas, Williams Sr. called Ledoux and asked to meet him at 265 Winfield Street. Williams Sr. owned the house and was renting it to his son, James Williams, Jr. T. 352. Williams Sr. explained to Ledoux that his son and daughter-in-law had been missing for about a week and that officers had been to the house and not seen any signs of foul play. T. 352. Ledoux began looking around the house. He noticed blood splatters on the wall near the central heating vent and a stain on the floor. T. 352. In the living room, near the couch, there appeared to be another large stain and there were spots of what appeared to be blood on the threshold of the door between the kitchen and the carport. T. 353. In the master bedroom, the sheets and the bedspread were missing off the bed. T. 357. Ledoux figured that there had been foul play involved in the disappearance of James Williams, Jr. and his wife and proceeded to secure the scene. T. 362. He

also called dispatch and had some homicide detectives paged to come to the scene. T. 360- 362.

Sergeant Willie Mack headed the homicide and robbery division. T. 366. He sent a couple of officers, Johnson and Bailey, to the scene at 265 Winfield. T. 367. They went out there and called back to say that because the family members at the house were arguing, they couldn't do much to determine what was going on. T. 368. The next day Mack went to the scene. There were probably six other officers already there. T. 371. At this point, he testified, it was no longer a missing persons case. T. 372. James Williams, III, was there. He said that the last time he had seen his parents, they were preparing for bed. T. 373. He said that he was staying at the house of Adam White. T. 374. James was transported to the police station around 6:30 or 7 p.m. T. 375, 379. At that point, James was not free to leave. T. 380. Adam White was located and he wrote out a statement. T. 376.

Detective James Cornelius interviewed James for about two hours on January 5. T. 392, 402. Detectives Bret Bailey and Dexter Johnson were at the station during this time. T. 413. All James said at that time was that he knew his father and stepmother to go to a storage building and that it was unlikely for the back door to be left open. T. 399. He said that James and Cindy had gone to Magee Mini Storage on Monday and that he, James, III, had been staying with his friend Adam White for a couple of days. T. 400. At some point, he got a call from his stepmother's friends, Mark and Denise McNair. They told James that

Cindy had not shown up for work and they were worried about her. T. 400.

James told Cornelius that he and Adam decided to meet Mark and Denise at the house and check things out. T. 400. James reported that his .22 caliber rifle was missing. T. 402.

Detective Perry Tate was the lead detective on the case. T. 418. On January 4, 2003, he had officers transport James and Adam White to JPD headquarters. T. 419. While James was still at his father's house, he told Tate that he last saw his father and stepmother on the night of December 28th. His dad was on the couch sleeping and his [step]mother was in the bedroom and he, James, III, left the house. T. 420. Later, one of the detective took a statement from Adam White in which Adam said that James told Adam that he, James, killed his parents. T. 422.

Commander Walls later called Detective Tate from Adam's parent's house and asked for Tate to meet him at a location at Terry Road and McDowell. T. 423. Adam had told him the location of the gun alleged to have been used in the crime. T. 423. Adam White led Detective Davis to a wooded area behind Whitten Middle School where a .22 rifle was found. T. 424. Adam White also told officers he might have an idea where the bodies might be. T. 424. They ended up in the Shiloh Park area of Brandon where they were looking for a silver Chevy Silverado truck. T. 425. About 1 a.m. January 6, 2003, they located the truck. T. 428-29. Two bodies were found in the back of the truck. T. 429.

Walls testified about the various statements made by James and Adam.

James' first statement was made on January 5, 2003 at 6:59 p.m. At this time, he denied knowing what had happened to his father and stepmother. T. 473.

Adam White gave several statements over the course of several days. He gave his first statement at 8:55 p.m. on January 5, 2003. T. 470. It was this statement that led police to the bodies of James Williams, Jr. and his wife.

After they returned from the woods with Adam, law enforcement took a second statement from James at 3:45 a.m. (January 6). T. 470.

In this statement that James gave in the early morning hours of January 6 (the videotape of which was played to the jury during Tate's testimony, T. 460) James told Detective Tate that on the Saturday night before James and Cindy were reported missing, his father started yelling and screaming at James because he didn't go to work a couple of days before. "And then all of a sudden he just got up and just started trying to just . . . woop on me." He was hitting James all over and then went and got his .22 pistol and held it to James' head and told James that if he moved from the ground, he would shoot him in the head. James' father then went and lay on the couch with the gun. James retrieved a gun from the corner of his room and shot his father. When his stepmother walked into the room, she started screaming and James shot her too. S-1-B; S-8-B.

Dr. Steven Hayne testified concerning the autopsy he performed on the victims. T. 518. Dr. Hayne testified that he found eight gunshot wounds in James Williams, Jr.'s body – a lethal shot to the head near the forehead and three to the chest, one of which was lethal. T. 522-523. There was also a gunshot wound to the right arm, two wounds to the left arm and one to the back and right wrist. T. 523. On the body of Cynthia Williams, Dr. Haynes found bruises to both shins and a lethal gunshot wound between the left eye and the nose. T. 547-548. There were small, stippled areas around the wound consistent with tattooing. T. 548, This would indicate that the gun was six inches to a foot from Cynthia's face when the gun went off. T. 549.

JPD officer Charles Taylor testified as to items recovered from the house and from the scene where the bodies were found. He identified pieces of carpet cut from the house. T. 563. In a back bedroom believed to be James', officers recovered two hunting knives and a .22 rifle. T. 567. The Chevrolet truck was located in the Shiloh Park area. T. 577. The bodies were found in some blue Rubbermaid plastic containers. T. 579. The bodies were covered with different blankets and plastic bags. T. 581. Two cartridges were found in the coverings. T. 582. The body of James Williams had tape around the upper body and head. T. 587. Black duct tape was wrapped around Cynthia's legs. T. 589.

Officer Michael Childress recovered other items including Cynthia's purse which was in a field near the bodies. It contained a wallet with \$100.00 in it and

another \$203 inside the purse. T. 593. A Ruger 1022 rifle was found behind Whitten Middle School. T. 594-95.

Adam White testified that he was 15 years old in January, 2003. T. 617. He had been friends with James for about eight months. T. 640. In December, 2002, Adam was helping James and his parents move to a house across the street which James had inherited from his grandmother. T. 618. Adam was there from about 11 a.m. until he went home to eat dinner around 7:30 p.m. T. 619. Later that night, James came to Adam's house and told Adam he was going for a ride. T. 621-22. As soon as he said that, he handed Adam a .22 rifle and told Adam to "chunk it." Adam threw the rifle over the back of the fence behind his house. T. 622. "At that time I figured he had actually shot his parents," Adam testified. T. 622. James had said previously that he was going to kill them. T. 622. James took Adam to James' house. T. 623. When Adam walked in, he smelled something bad. T. 523. James told Adam he was going to have to help James clean it up. When Adam demurred, James said "either you can be with me or you can be with him." T. 624. They walked into the living room and Adam said he would throw up at the sight so James threw blankets over the bodies of his father and stepmother. T. 624. They wrapped the bodies with garbage bags and plastic wrap and placed them into Rubbermaid totes that James brought in from the garage. T. 625. They loaded them into the back of the truck. T. 625. James told Adam to drive his (James') car and follow him. James drove the truck. T. 626. They ended up somewhere and James drove the truck into the woods. T.

626. James got out of the truck and was throwing milk cartons and a purse into the woods. T. 626. They then got into James' car and drove back to James' house where they set about cleaning the house. T. 627-28. When they got done, they loaded the car with the cleaning equipment and threw the stuff into a dumpster. T. 629. Then they went to Adam's house where James stayed for the next six days. T. 630. Every day, James used his father's ATM card to get around \$400 from the bank. T. 631. Adam testified that he never went to the police because he was afraid of James. T. 632. He testified that James threatened to hurt Adam's little sister if Adam said anything. T. 632.

Some days later, after a missing persons report was made and the police apparently found blood in the house, the police picked up James and Adam and took them to JPD headquarters. Adam didn't tell them everything in his first statement. T. 634. Adam's father was present when he gave the statement. T. 635. Adam then accompanied officers to the various places where the weapons had been disposed of and finally to the place where the bodies were located. T. 636.

On cross-examination. Adam admitted that none of his statements mentioned that he was scared of James. T. 650. He also admitted that he used Cynthia's ATM card to obtain some \$800 from the bank after James was taken to jail. T. 670. Earlier testimony established that although Adam said he was scared of James, Adam, at six feet tall and 220 pounds, is bigger than James who is about

5'7" and 140 pounds. T. 488-489. Adam White was charged with accessory after the fact. T. 509. The case was handled in youth court. T. 509.

On redirect, White testified that when he was fifteen, he was 5'8" and weighed 180. T. 691.

The prosecution rested at the end of White's testimony.

The defense's first witness was officer Kent Daniels and the focus of his testimony was the videotaped statement James gave at 3:45 a.m. on January 6. T. 706. The statement was taken in the interrogation room at JPD headquarters. T. 707. Earlier in the trial, Daniels testified that the video camera was already set up when they went into the room. T. 709. Daniels had also previously testified that Detective Tate started out the videotape by reading James his Miranda rights. T. 710, 722. But after being shown that the statement did not contain any recording of James being read his Miranda rights, Daniels agreed that this did not happen. T. 712. Daniels also agreed that there was a 45 minute gap between when James signed the waiver form at 3:45 a.m. and when the tape began at 4:30 a.m. T. 720. The defense's contention was that it was during this gap that James asked for an attorney and when James asked for an attorney, the officers started the tape over which would explain the 45 minute gap.

James' mother Sandra McFarland testified that when her ex-husband turned up missing, she and her family, except for James, were at a deer camp. On January 4, Sandra's mother called to tell her that James and Cindy had disappeared. Sandra and her family returned home and Sandra tried to track down

James. T. 731-32. She finally tracked him down at Adam White's house. She told James that she thought it would be better if he were at home with his mother and stepfather but Adam got on the phone and said that it would be better if James stayed with them; "that he would be closer things" if they needed to run over to the house or if the police needed them. T. 733.

The next day, Sandra found out that James had been taken to JPD headquarters. She and her husband Steve went downtown and finally located James on the third floor of the Standard Life Building (JPD headquarters). T. 734. By then it was close to 11:00 p.m. T. 735. When they located James, James told them he was a little weak and dizzy because he had not been given anything to eat or drink. T. 735.

Sandra talked to Detective Bailey and he asked for permission to talk to James. Detective Ainsworth also asked for permission to talk to James. Sandra told them both no. She told them she wanted to get him an attorney before he talked to anyone else. T. 736. Around 3:30 the next morning, Sandra and Steve were getting ready to leave. The detectives had told them that "it was basically over; that we needed to leave." T. 738. Steve told the detectives not to talk to James until he got an attorney. T. 738. James was standing there when this was said. T. 748.

James testified that on December 28, 2002, his father had asked if he had any friends who could help them move some heavy objects. James went and got Adam because he was a large person and they moved some furniture. T. 754. At

some point that day, Adam pulled a gun, a .9 millimeter Beretta, from his waistband and said that he had gotten the gun from a friend. T. 754. They heard James' father coming in the back door so Adam jammed the gun up under the couch. T. 754. After they ate pizza for dinner, James' father asked if Adam could stay over and continue helping them move in the morning. T. 755. James and Adam went to Adam's house where Adam's mom said they had to clean up Adam's room before Adam could leave. T. 755. They returned to James' father's house around 11:00 p.m. and sat on the couch to watch TV. T. 755.

While they were watching TV, James' father came into the living room and sat on the love seat. "For a minute he seemed like he couldn't get comfortable." He lifted up the couch cushion and held up Adam's gun. He asked whose gun it was and Adam said that it was his. Then James' father realized that the gun was loaded and he exploded asking if Adam had planned on robbing him. T. 756. Adam said, "no, sir, like I told you I just brought it to show James. And I'd like my gun back if you don't mind." James' father said he did mind. He was waving the gun around and saying that he was going to call the police and Adam's parents. T. 756-57. At that point, James' stepmother came down the hallway. "[M]y dad turned. And when he turned, he pointed the gun in that direction, and the gun went off." T. 757. Adam ran to James' room and grabbed a .22 rifle that was sitting by the door. He came back into the living room and ordered James' father to drop the gun. James tried to take the gun from his father but his father pushed him across the room. T. 757. James' father started to draw the gun on Adam and

Adam fired. James' father fell into the couch with a pillow on his head. He was still moving and Adam shot through the pillow. T. 758.

Adam told James they needed to move the bodies. T. 759. James wanted to call the police but Adam said the police would never believe it was self defense. Adam told James that he had to help move the bodies or "I'm just going to put one in your head." T. 759. James then testified as to how they moved the bodies and cleaned up the house. T. 760-766.

James testified that when the detectives tried to take another statement from him in the early morning hours of January 6th after James' mother and stepfather left, James told the detectives that his mother told him not to sign anything or talk to anybody. Detective Tate told him that in the lobby, his mother had said for James to cooperate with them. T. 772. James capitulated and agreed to give a statement. Detective Tate rewound the tape so as to get rid of James' saying that he wasn't going to talk without a lawyer. Tate told James that if he kept asking for a lawyer, he would make sure that James got the death penalty. T. 776.

James' stepfather Steve McFarland testified that he, like James' mother, told the detectives not to question James until they were able to get an attorney for him. He had conversations with three different detectives and each one wanted permission to question James. T. 808.

The prosecution called Detective Bret Bailey as a rebuttal witness. He testified that neither Sandra nor her husband told him not to question James without an attorney present. T. 818.

The jury found James guilty of murder of both James and Cynthia Williams. The trial court sentenced Jams to two consecutive life sentences with all suspended except for 30 years to serve. CP. 18, 19; RE. 21, 22, Thereafter, the prosecution moved for reconsideration of the sentence (CP. 20) and the trial court amended the sentences to two concurrent sentences of life imprisonment. CP. 24, 25; RE. 23, 24.

SUMMARY OF THE ARGUMENT

The trial court refused to suppress James' statement taken after James' mother and stepfather (the McFarlands) unequivocally told detectives, while in James' presence, that they could no longer question James and could not question James until they obtained an attorney for him. The trial court, in ruling on the motion to suppress, never made any finding as to whether the McFarlands made these statements and/or invoked James' right to remain silent and to have an attorney. Instead, the trial court ruled that James' subsequent waiver of his rights rendered his confession voluntary.

Of course, if James' rights were indeed invoked, the law requires the officers to cease speaking to the defendant. If the officers continue to interrogate a suspect after his rights to silence and an attorney have been invoked, it matters not that the suspect eventually waives these rights. The only way that officers may interrogate a suspect after his rights have been invoked is if the suspect himself initiates the communication with police. The trial court's ruling, then, was error. James' subsequent waiver of his rights is of no moment if those rights had been

previously invoked and the waiver was obtained after police continued interrogating James. The trial court's error in failing to suppress James' statement or to even address the issue of whether James rights were invoked requires the conviction and sentence be reversed and the case remanded for a new trial.

During the suppression hearing, the names of two officers who were present during the time James was in custody prior to his last, inculpatory, statement, came up – Ainsworth and Johnson. The McFarlands testified that Ainsworth was one of the detectives they told not to question James. During the suppression hearing, the prosecution did not call either Ainsworth or Johnson to testify. The prosecution claimed Johnson was unavailable because he had been called up to serve in Iraq. Ainsworth was unavailable because he was off-duty the day of the suppression hearing. Under *Agee v. State*, once an issue arises during a suppression hearing about the voluntariness of a statement, the prosecution is required to have every officer who was involved in the custody and interrogation of the suspect available to testify at the hearing. Only if the officer is truly unavailable may that officer be excused. The fact that an officer is off-duty the day of the suppression hearing is not sufficient reason to excuse the officer's presence. The failure of the prosecution to have officer Ainsworth available at the suppression hearing is another reason requiring reversal.

There are several issues involving the cross-examination of Adam White. The defense was not allowed to cross-examine White about a statement White had given the defense during the trial. The trial court, *sua sponte*, ruled that the

defense could not impeach White with a statement White had given the defense (because, the court stated, a party cannot impeach a witness with a statement taken by that party) or with a statement which had not been previously provided to White. Neither of these “requirements” regarding the cross-examination of a witness with a previous statement are the law.

The defense was also prevented from cross-examining White, the prosecution’s star witness, about either his youth court record or his various psychological diagnoses. White had a youth court record going back several years. His mother had also had to apply to chancery court to have her son committed because of his serious psychological problems – problems that were causing White to be violent with his family. Given that James’ theory of the case was that White was responsible for the deaths of James’ father and stepmother, this evidence was critical. It was also important evidence in light of the fact that the main witness against James was Adam White.

It was James’ theory of the case that if he was guilty of anything, it was in helping White dispose of the bodies. An instruction that would have permitted the jury to consider finding James guilty of accessory after the fact was refused by the trial court. The trial court’s refusal to instruct the jury on James’ theory of the case was reversible error.

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.**

James testified that officers arrived at Adam White's house and took him into custody around 1:00 or 2:00 p.m. They arrived at the police station between 3:00 and 3:30 p.m. T. 99. James was taken to the third floor hallway where he was instructed to sit down and the handcuffs were removed. T. 99. James testified that he was not free to leave. He knew this because he asked several times to call his mother to come pick him up but the officer told him that they were under instructions from Sergeant Mack not to talk to him and not to let him use the phone. T. 99. A little while later, they brought Adam White and had him sit in the hallway as well. T. 99. Between 6:00 and 7:00 p.m., Detective Cornelius took James in to a room and handcuffed him. T. 100. James was given a waiver of rights form and told that he needed to sign it. He signed it and gave Officer Cornelius a statement. T. 100.

Around 7:30 or 8:00 p.m., Adam had left and James was placed in another room. T. 100. James again asked to call his mother but his request was refused. T. 101. The officers were asking him questions, saying that they knew he had killed somebody and that he needed to confess or they were going to see to it that James got the death penalty. T. 101. James' mother and stepfather arrived around 10:30 p.m. T. 102. His stepfather Steven stayed in the same room with

James until Steven and Sandra left around 3:00 a.m. At one point, Sandra was asked to step into another room by Detective Bailey. T. 102. When the McFarlands got ready to leave, Steven McFarland told Detective Cornelius that they did not need to talk to James anymore and that they (the McFarlands) were going to get an attorney and be back. James nodded his head and said ok. T. 103. Mrs. McFarland said the same thing. T. 103-04. Detective Bailey then took the McFarlands downstairs. Several detectives approached James and put a waiver in front of him and told him to sign. T. 104.

James' mother and stepfather Sandra and Steven McFarland testified that they arrived at JPD headquarters around 10:30 or 10:45 that night. T. 70. They were allowed to sit in a room with James and Detectives Bailey and Cornelius for about an hour. T. 71. James told them that he had been in custody since about 1 or 2:00 that afternoon. T. 71. Sandra McFarland was not aware that James had given a statement around 6:29 p.m. T. 72. She testified that she was allowed to talk to James and then went into a room with Detective Bailey where Bailey told her that James' father and stepmother were missing and that they needed to talk to James. T. 72. Ms. McFarland stated that she did not want them to talk to James and that she wanted James to have an attorney before any other questioning was done. T. 72-73. Later, a Detective Ainsworth asked her if they could have permission to talk to James. Ms. McFarland told him that she did not want any further questioning until she was able to get James an attorney. T. 76. Mr. And Mrs. McFarland stayed at JPD headquarters until 3:30 a.m. when they were told

they could leave, that nothing further would be done and that they should come back in the morning and talk to Sergeant Willie Mack. T. 77. Mrs. McFarland told James not to say anything else, that she would find an attorney and be back. T. 78.

Steven McFarland testified that he and his wife had heard that James had been taken to the police station. T. 88. They eventually made it to JPD Headquarters and were taken to the third floor. T. 88. James was sitting in a chair with his hands cuffed in the front. T. 88. At first, Detectives Cornelius and Bailey were in the room. They were later joined by Detective Ainsworth who stated that he was there strictly on the missing persons case and that if evidence turned up showing that it was no longer a missing persons case, he would no longer be working on the case. T. 88. Steven McFarland told the officers that he didn't want James to be questioned any more. T. 89. Later, Ainsworth left and Cornelius and Bailey told the McFarlands that James was about to be arrested and charged with murder. T. 90. Steven McFarland stated that they were never told that James had already given a statement but that he, Steven, specifically told the officers twice that they did not want James questioned any more until an attorney could be present. T. 90. McFarland stated that if they had known that James had already given a statement, he would have done his best to get an attorney for James right then. T. 90. The officers asked for permission to speak to James at least three to five times and each time McFarland told them "no". McFarland testified that when the officers told them James would be formally charged,

McFarland stated, "Okay, guys, maybe I've watched too much television, but I don't want anymore questions asked until we get an attorney." The McFarlands left when "Officer Bailey assured me at that point that no more questions would be asked and that nothing else would be done that night. And we were to come back at 10:00 the next morning and talk with the shift leader or sergeant." T. 91.

Officers Bailey, Cornelius and Sparkman testified that they made no threats, no promises and don't recall anyone - either James or the McFarlands - asking for an attorney. T. 136-137, 150-151, 165-166.

The trial court denied the motion to suppress.

The parents were there with him. And their claim is that when they got ready to leave him, they left him with direct orders that he was not to discuss anything further with the police.

At some time prior to the parents leaving or just after they left, the bodies of the two individual decedents were found, and the missing persons investigation shifted from missing persons to murder.

At that time, the proof appears in S-1-A that James Williams was then turned over to two other detectives. That would be Detective Tate and Detective Daniels who again Mirandized the defendant, had him to initial the statement, and he then began a statement some 45 minutes later. No place in the statement does he appear to indicate he didn't understand. To the contrary, he initialed each of the five items and said he did understand his Miranda rights and he was giving them up.

Although he claims that his mother told him not to talk, he went further to give a full statement beginning at 4:30, ending at 4:45: some 20 minutes. And at no time during that statement did the defendant ask for an attorney.

In the totality of the circumstances and considering all of the testimony, some having conflict, the Court is of the opinion that the statement was voluntarily given. That there was no threat or coercion or promise of award or leniency. That a missing persons turned into a murder. And at the time the statements offered in S-1-A and B were given, that the defendant was properly Mirandized.

T. 170-171; RE. 26-29.

The Fifth and Fourteenth amendments to the United States Constitution and Article 3, Section 26 of the Mississippi Constitution prohibit the government from compelling a citizen to incriminate himself. In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court devised rules to ensure that the right to be free from coerced self-incrimination retained meaning, including, upon request by the suspect, that the suspect have counsel present during custodial interrogation. *Miranda*, 384 U.S. at 474, 86 S.Ct. at 1627-28, 16 L.Ed.2d at 723. An “accused * * * having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981).

Moreover, once invoked, the right to be free of interrogation without the presence of counsel continues unabated, even after the suspect has been afforded an initial consultation with an attorney; he does not need to continually reinvoke

his rights. See *Minnick v. Mississippi*, 498 U.S. 146, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990). The rule of *Edwards* is a bright-line rule that “conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness, and implements the protections of *Miranda* in practical and straight-forward terms.” *Minnick*, 498 U.S. at 151, 111 S.Ct. at 489-90, 112 L.Ed.2d at 496. However, “[o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the State's intention to use his statements to secure a conviction, the analysis is complete and [his] waiver [of those rights] is valid as a matter of law.” *Moran v. Burbine*, 475 U.S. 412, 422-23, 106 S.Ct. 1135, 1141, 89 L.Ed.2d 410, 422 (1986).

In this case, Sandra and Steven McFarland unequivocally told the detectives not to question their son any more until an attorney was present. While the United States Supreme Court has held that a third party cannot validly invoke the right to counsel for an adult suspect, the circumstances in that case, *Moran v. Burbine*, are very different from the facts presented here.

In *Moran v. Burbine*, 475 U.S. 412, 89 L. Ed. 2d 410, 106 S. Ct. 1135 (1986), a suspect's sister attempted to retain counsel for her brother. An attorney called the police station on his behalf and stated that she would represent defendant in the event of any interrogation or lineups involving the suspect. The police officer taking the attorney's call informed her that they were through with the suspect for that evening. However, officers from another police department,

investigating a separate crime from that which had led to his initial arrest, did interrogate the suspect that night and acquired his confession. *Moran*, 475 U.S. at 416-18, 89 L. Ed. 2d at 417-19, 106 S. Ct. 1138-39. The suspect had been repeatedly advised of his Miranda rights prior to confessing and was unaware of either his sister's or the attorney's efforts to aid him. *Moran*, 475 U.S. at 417-18, 89 L. Ed. 2d at 418-19, 106 S. Ct. at 1139.

The *Moran* Court rejected the suspect's claims that his sister's and the attorney's actions amounted to an invocation of his right to counsel and that the failure to notify him of their efforts rendered his waiver of his rights involuntary. The *Moran* Court observed both that "[e]vents occurring **outside of the presence of the suspect and entirely unknown to him** surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right." *Moran*, 475 U.S. at 422, 89 L. Ed. 2d at 421, 106 S. Ct. at 1141 (emphasis added).

The trial court in this case never ruled on whether James' mother and stepfather invoked James' rights. The court skipped over the McFarland's testimony and determined that, regardless of what the McFarlands did, James went on and waived his rights. But, if the McFarlands' testimony is believed, they, in James' presence, invoked James' right to counsel and to remain silent and James, by failing to issue a countermand, acquiesced in their invocation. **Any subsequent waiver by James was invalid** if it was the result of continued police questioning.

This is because once the right to remain silent and to an attorney have been invoked, law enforcement may have **no further communications** with the accused unless those communications are initiated by the accused. And if law enforcement later obtains a statement after reinitiating discussions with the accused, it matters not that the defendant has waived his rights during the later questioning. Any resulting statement must be suppressed.

In *Duplantis v. State*, 644 So.2d 1235 (Miss. 1994), Duplantis was arrested in Tennessee but he was accused of committing crimes in both Mississippi and Tennessee. Upon arrest, Duplantis told local law enforcement that he didn't want to talk and that he wanted a lawyer before talking to authorities. *Dupolanits*, 644 So.2d at 1240-41. When Mississippi law enforcement officers Knight and Vick arrived to talk to Duplantis about the Mississippi crimes, Duplantis was escorted to an office to meet with them. Neither Knight nor Vick were told that Duplantis had previously refused to talk without an attorney. When Duplantis was taken into an office where Knight was waiting to interrogate him. Knight read Duplantis his Miranda rights and had Duplantois sign a waiver. However, Duplantis stated that he would not talk to Knight because he did not know him but that he would talk to Vick. Vick came into the office later and allowed Duplantis to smoke a cigarette in the bathroom. "Once in the bathroom, Vick reminded Duplantis that he had been advised of his rights and Duplantis began to talk to Vick about [the Mississippi crimes]." *Duplantis*, 644 So.2d at 1241.

The trial court found that Duplantis' statements had been made freely and voluntarily and overruled Duplantis' motion to suppress. *Duplantis*, 644 So.2d at 1242. The Mississippi Supreme Court reversed.

If the defendant invokes his right to remain silent, questioning must cease. *Holland [v. State]*, 587 So.2d [848] at 855 [Miss. 1991]. If the defendant invokes his right to an attorney, “ ‘the interrogation must cease until [one] is present.’ ” *Id.*, quoting *Miranda*, 384 U.S. at 479, 86 S.Ct. at 1630, as quoted in *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378 (1981). Once the defendant has invoked either right, interrogation may resume without an attorney present **only** if further discussion is initiated by the defendant **and** he knowingly and intelligently waives the right previously invoked. *Holland*, 587 So.2d at 855, citing *Smith v. Illinois*, 469 U.S. 91, 95, 105 S.Ct. 490, 492-93, 83 L.Ed.2d 488 (1984) (per curiam).

Duplantis, 644 So.2d at 1242-43 (emphasis supplied). “Although the trial court found that Duplantis' statements were made freely and voluntarily without promises of reward, this is not the correct legal standard for the circumstances presented by the instant case.” *Duplantis*, 644 So.2d at 1242-43.

What the Mississippi Supreme Court said of the trial court's ruling in *Duplantis* is applicable here. The trial court in this case found that James' statement was made freely and voluntarily. The court did not address the issue of whether the statement was taken after a clear invocation of James' right to remain silent and to counsel. This error requires reversal because the January 6, 2003, statement was the only inculpatory statement.

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

There were two officers present the day that Williams was interrogated who were not called to testify. The prosecution told the court that Dexter Johnson not called because he had been called into active duty with the military. T. 161-162

The prosecution claimed that Kevin Ainsworth was not subpoenaed because prosecutors were not aware of his involvement until his name came up during the suppression hearing. T. 168. “[H]e is off duty today, home with three children and unavailable to come.” T. 168. In explaining why he was not called as a witness by the state, the prosecutor stated that “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.

In *Agee v. State*, 185 So.2d 671 (Miss. 1966), the Mississippi Supreme Court held that that if a defendant testifies 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 witnesses.

Agee, 185 So.2d at 673.

In *Lettellier v. State*, 598 So.2d 757 (Miss. 1992), a college student, Lettellier, was arrested for possession of ecstasy with intent to sell. Upon arrest, Lettellier told the officers that he was selling the pills to pay off a DUI fine. At

the suppression hearing, Lettellier testified that officers told him that if he remained quiet, he would be in Parchman for fifteen years. The officers told him that they had arrested other kids whose fathers were “hot shot” lawyers and had refused to talk and those kids were serving five to ten years in Parchman.

Lettellier, 598 So.2d at 759. There were four officers involved in arresting and interrogating Lettellier. Two of those testified at the suppression hearing. The prosecution explained that one of the officers no longer lived or worked in the county and that the other officer was unavailable.

The *Agee* rule, the Court in *Lettellier* explained, requires that whenever a defendant testifies to any fact which, if true, would tend to show that the confession was not voluntary, the trial court must require the prosecution to produce testimony from all officers present at the scene unless the prosecution can provide an adequate reason for the absence of the witness. *Lettellier*, 598 So.2d at 759. In Lettellier’s case, the explanations provided by the prosecution were not adequate to excuse the officers from testifying. *Lettellier*, 598 So.2d at 760. The same must be said of the excuses offered by the prosecution in this case. 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 defense was allowed to interview Adam White during the trial. T. 645. During that interview, Adam White told the defense that the officers questioning him told him that it would be better for him if he cooperated. T. 659. On cross-examination, the defense questioned White about this statement which White denied making. T. 655. The defense attempted to impeach White with a transcript of the interview that had taken place a few days earlier. The trial court, however, refused to allow the defense to do this ruling that a witness could not be impeached by a party with a statement made to that party. T. 659. The court also ruled that the questioning was error because the witness had not been previously 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 of course, was error.

First of all, there is no requirement that the statement be taken by someone other than the party doing the questioning. Moreover, M.R.E. 613 has done away with the requirement that the witness be shown to the witness at the time of the questioning. Rule 613 (a) specifically states “ In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.”

The trial court's "rules" concerning impeachment of a witness with a prior statement do not exist. The real rule has always been that a defendant is entitled to cross-examine a witness regarding any possible promises of leniency from prosecution in return for his testimony. *Hill v. State*, 512 So.2d 883 (Miss. 1987).

The trial court's ruling in this case that Adam White could not be impeached with a previous statement where the issue in question was White's motivation for cooperating with the police was reversible error.

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

There were several areas of cross-examination the defense wanted to pursue with Adam White. The court shut down the most important of these.

First of all, the trial court refused to allow the defense to question Adam White about his juvenile court record and his mental health problems. T. 304, 693, 696, 826, 829; RE. 30, 36. The youth court records, entered into evidence for identification only as D-38, show that prior to being charged with accessory after the fact of capital murder (in the instant case), Adam (was charged with being incorrigible in December, 2001, petit larceny in November, 2001 and again in February, 2002, and domestic violence in May, 2002.) (His mother filed in chancery court to have Adam committed in July, 2000, because he was physically and verbally abusing his mother and threatening the other family members. D-40 (for identification). (He had been treated at Whitfield in 1999 and confined in two youth treatment centers in Memphis and Jackson in 2000.) (The records indicate

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diagnoses of post traumatic stress disorder and bipolar disorder;) the records are replete with references to Adam's inability to control his temper. (The youth court records also indicate that Adam stood 5'11" and weighed 225 when he was charged with petit larceny in 2002. T. 693-94) This contradicts Adam's testimony that he was a mere 5'8", 180 pounds in January, 2003.

White had been institutionalized in Whitfield two times for physical violence, once in 1999 and again in 2000. T. 696. His file in chancery court showed that White had been diagnosed with ten mental illnesses including intermittent explosive disorder. T. 700.

During the cross-examination of Adam White, Adam admitted that he used Cynthia's ATM card to obtain some \$800 from the bank after James was taken to jail. T. 670. However, the trial court, *sua sponte*, refused to allow the defense to go any further with this line of questioning. T. 671. The defense proffered photographs of White taken at the bank when he was withdrawing funds with Cynthia's ATM card. T. 697. It was the defense's intention to take White through each photograph of him taking money out of the ATM.

And, finally, the trial court refused to permit the defense to have White stand next to James in order to show the jury how much bigger Adam is. T. 672.

The trial court's limiting the defense's cross-examination of the state's star witness against James requires reversal. The Mississippi Supreme Court has held that a witness on cross-examination may be interrogated regarding his interest, bias or prejudice in a case. *Hill v. State*, 512 So.2d 883, 884 (Miss. 1987). While

a judge has wide discretionary control over the introduction of evidence, where the trial court refuses to allow a defendant to question a witness regarding a proper subject for cross-examination, this may be grounds for reversal. *Suan v. State*, 511 So.2d 144 (Miss. 1987). This is especially true when the limitation is of the cross-examination of the state's principal witness. *Sayles v. State*, 552 So.2d 1383, 1386 (Miss. 1989).

In *Suan*, the defendant, who was being tried for helping an inmate escape from jail, attempted to cross-examine a state's witness about other criminal conduct for which the witness had been arrested but had not been prosecuted in order to show that the prosecution had extended leniency to the witness in exchange for his testimony against Suan. Suan was allowed to ask the witness whether he had gotten into trouble for certain alleged criminal activity but was not allowed to ascertain how the charges were resolved against the witness. *Suan*, 511 So.2d at 146-47. The Mississippi Supreme Court reversed Suan's conviction. "[O]ne accused of a crime has the right to broad and extensive cross-examination of the witnesses against him, and especially is this so with respect to the **principal prosecution witness**." *Suan*, 511 So.2d at 147. "Not only is this right secured by our rules of evidence, *see* Rule 611(b), Miss.R.Ev., it is a function of the confrontation clauses of federal and state constitutions." *Id.*

That some of the evidence sought to be used against Adam White consisted of information from White's youth court records makes no difference. In *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), the Supreme Court

held that Alaska's interest in the confidentiality of a juvenile's record of delinquency must yield to a criminal defendant's right to effective cross-examination where "serious damage to the State's case would have been a real possibility" had defense counsel been permitted to introduce the prior delinquency adjudication of the witness and his "vulnerable" status as a probationer as evidence of his pro-prosecution bias. *Davis*, 415 U.S. at 319, 94 S.Ct. at 1111.

It was James' theory of the case that Adam White was responsible for shooting James' father. Adam White's youth court record and psychological problems were clearly relevant on this issue. The trial court's refusal to allow James to cross-examine Adam White on these matters was reversible error.

5. The Court erred when it ruled that the defense could not call White as a witness in their case, that if they wanted to examine White under direct, they had to do it while he was testifying for the prosecution.

During Adam White's testimony for the prosecution, the defense asked whether White was under subpoena because, if not, they intended to serve him with a subpoena in order to testify during the defense case. T. 669. The trial court told the defense that they could serve him with a subpoena but that it would be meaningless. "He's going to be on the stand. If you want to take him on direct, you're going to have to take him on direct while he's here. But you can serve him with that subpoena. Because when he steps down, he's going to be finally excused." T. 668. "So cover your direct and your cross at one time," the court stated. T. 669.

While wide open cross-examination is generally permitted, there are limits. A party is not entitled to introduce issues or topics outside the scope of direct testimony. *Blanks v. State*, 547 So.2d 29, 37 (Miss.1989). A defendant has a Sixth amendment right to call witnesses on his own behalf. *Morris v. State*, 927 So.2d 744, 747 (Miss.2006). The trial court's ruling in this case prevented the defense from calling Adam White as a witness in the defense's case-in-chief. This violated James' right to compulsory process and constitutes reversible error.

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.

James took the stand and told the jury that James' father accidentally shot his wife and then Adam White shot James' father in self-defense. During the instructions conference, the defense requested that the jury be given an instruction on this theory (T. 833) and defense submitted an instruction on this theory which was refused by the trial court. *See instruction No. 21, Supp. C.P. 32; RE. 25*. In holding that the jury would not be instructed on accessory after the fact. The court noted that it was not a lesser included offense. T. 842, RE. 40. "If they had charged accessory after the fact, then I would have to look for evidence for it, and I find none. T. 843; RE. 41.

"[E]very accused has a fundamental right to have her theory of the case presented to a jury, even if the evidence is minimal." *Chinn v. State*, 2007 WL 1840388, *2 (Miss.). This right is absolute. Where the defendant asserts a legal

defense, this defense is to be submitted to the jury “even though based upon meager evidence and highly unlikely”. *O'Bryant v. State*, 530 So.2d 129, 133 (Miss.1988). “This Court will never permit an accused to be denied this fundamental right.” *Id.* The trial court’s refusal to grant an instruction on the defendant’s theory of the case where it is warranted constitutes reversible error.” *Phillipson v. State*, 943 So.2d 670, 671-72 (Miss.2006).

In *Chinn v. State*, 2007 WL 1840388, *2 (Miss.), the defendant was convicted of manslaughter in the death of his wife. Chinn did not testify. In fact, he put on no evidence. However, the Mississippi Supreme Court found that there was some evidence in the state’s case to support an instruction on the defendant’s theory that the shooting was an accident. The witnesses could not actually see inside the car where the shooting took place and after the shooting, the defendant tried to resuscitate his wife and pleaded with her not to die. *Chinn v. State*, 2007 WL 1840388, *3. In reversing the conviction and sentence, the Court stated, “Chinn was entitled to have his theory of the case submitted to the jury under proper instruction of the court. Denial of this fundamental right is grounds for reversal.” *Chinn v. State*, 2007 WL 1840388, *4.

The jury in *Sayles v. State* found the defendant guilty of burglary. *Sayles v. State*, 552 So.2d 1383 (Miss. 1989). The defendant contended that he was guilty, at most, of accessory after the fact of burglary. He testified that he came across his friend after his friend broke in to the store. He then agreed to help his friend dispose of the proceeds of the burglary. The Mississippi Supreme Court reversed

and remanded the case for a new trial based on the trial court's failure to instruct the jury on the defendant's theory of the case. *Sayles*, 552 So.2d at 1384. What is clear from the facts and holding in *Sayles* is that there is no requirement that the instruction embodying the defendant's theory of the case be a lesser included offense of the crime with which the defendant is charged. The trial court thoroughly misunderstood the law in this regard.

In this case, James took the stand and testified as to facts that would make him only an accessory after the fact. The law is clear that he was entitled to an instruction on this theory. The trial court's refusal to so instruct the jury is reversible error.

7. The errors taken together are cause for a new trial.

The Mississippi Supreme Court has recognized that several errors not individually sufficient to warrant a new trial may, when taken together, require reversal. *Stringer v. State*, 500 So.2d 928, 946 (Miss. 1986); *Hickson v. State*, 472 So.2d 379, 385-86 (Miss. 1985). In this case, the court made several errors in its rulings that, cumulatively, had the effect of denying James Williams, III, a fair trial. *Chambers v. Mississippi*, 410 U.S. 284, 298, 93 S.Ct. 1038, 1047 (1973) (reversing based on various evidentiary errors resulting in a denial of due process). If this Court finds that no single error in this case calls out for reversal of the convictions and/or sentences, it should

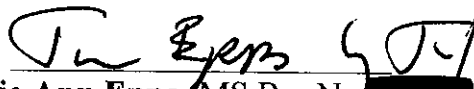
nonetheless consider a new trial based on the plethora of errors that prevented James Williams, III, from obtaining due process.

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,

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CERTIFICATE OF SERVICE

I, Julie Ann Epps, hereby certify that I have this day mailed by first-class mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following:

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This, the 23rd day of July, 2007.


Julie Ann Epps