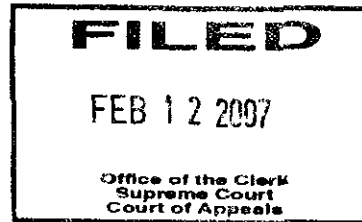


COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ALPHONSO HAYDEN



APPELLANT

VS.

NO. 2006-KA-0854-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Lowndes County indicted defendant, Alphonso Hayden, for the crime of Possession of Stolen Property in violation of *Miss. Code Ann.* § 97-17-70. (Indictment, c.p.4, amendment & order, c.p.40, 59, 88 & 113). After a trial by jury, Judge James T. Kitchens presiding, the jury found defendant guilty beyond a reasonable doubt. The trial court sentenced defendant to 10 years in the custody of the Mississippi Department of Corrections as an habitual offender. Additionally defendant was fined \$10,000. (Sentencing order, c.p. 115).

After denial of post-trial motions this instant appeal was noticed.

STATEMENT OF FACTS

Defendant was basically involved in selling taking possession of stolen vehicles and then using false certification and documentation try to legitimize the title and tag. Upon reselling the vehicle to an innocent buyer the fraud was found out. The tag and title and certificate did not match.

On the day of his trial, defendant presented to his attorney some documents that purported to show his original purchase. Defense counsel dutifully showed the documents to the State prosecutor. The prosecutor was livid for this late discovery. The trial court granted time for the State to become familiar with the documents. These were original documents not copies. Upon closer examination the documents clearly showed defendant *should or could* have been aware the vehicle was stolen. The prosecutor subpoenaed the attorney as he is the one the presented the originals to the State.

At this point the trial court found defendant's counsel was hopelessly conflicted and dismissed him from the case. A mistrial was granted.

Now, to the case at hand. Trial was rescheduled for this habitual defendant and his former attorney was called as a witness to introduce the documents showing defendant's original purchase. Trial counsel objected and requested a mistrial.

The judge overruled the motion. Many additional documents, physical and testimonial evidence were admitted into evidence and the jury found defendant guilty.

SUMMARY OF THE ARGUMENT

Issues I. & II.

**DEFENDANT'S ATTORNEY CLIENT PRIVILEGE WAS NOT
VIOLATED NOR HIS CONSTITUTIONAL RIGHT TO COUNSEL.**

ARGUMENT

Issues I. & II.

DEFENDANT'S ATTORNEY CLIENT PRIVILEGE WAS NOT VIOLATED NOR HIS CONSTITUTIONAL RIGHT TO COUNSEL.

The appellate counsel on appeal have presented a ponderous brief raising two issues and multiple sub-issues. However, it is the succinct position of the State there is but one issue and the response will address that issue.

As noted in the statement of facts and the facts carefully delineated and cited in the brief by defendant's counsel it is clear the trial court did the correct thing.

Defendant's retained counsel was presented documents by defendant. Clearly defendant wanted them to be presented at trial to show defendant was a mere 'innocent owner' that he bought the vehicle outright. Defense counsel showed these original documents to the State in order that he, defense counsel, might use them in defense of the charge.

When it became apparent that the very documents that defense counsel gave to the State were inculpatory, counsel became hopelessly conflicted. The trial court was correct to grant the mistrial in the first case, (which is *not* at issue here) and for the same reason the trial court was correct in not granting the mistrial when defendant's first attorney was called to testify.

It is clear when the attorney gave the documents to the State it waived any privilege with respect to those documents.

¶ 13. This Court has said that “the privilege relates to and covers all information regarding the client received by the attorney in his professional capacity and in the course of his representation of the client.” *Barnes v. State*, 460 So.2d 126, 131 (Miss.1984). And while “[o]nly the client may invoke the privilege,” the client may also waive the privilege in certain circumstances. *Id.* “Once the client has effectively waived the privilege, the attorney is competent as a witness regarding matters otherwise within the scope of the privilege.” *Id.*

Jackson Medical Clinic for Women, P.A. v. Moore, 836 So.2d 767, *771 (Miss. 2003).

It is the position of the State that once defendant presented the documents to his counsel for the purpose of being used at trial in his defense he waived and privilege with regard to those specific documents.

All told, in this case, when the issue did arise, and defense asked for a mistrial the trial court was absolutely correct in denying the motion.

¶ 5. The standard of review for denial of a motion for mistrial is abuse of discretion. *Walton v. State*, 806 So.2d 333, 334(¶ 4) (Miss.Ct.App.2002) (citing *Gossett v. State*, 660 So.2d 1285, 1290-91 (Miss.1995)). Whether to grant such a motion for a mistrial is within the sound discretion of the trial court. *Id.* (citing *Ladner v. State*, 584 So.2d 743, 753 (Miss.1991)).

Watson v. State, 941 So.2d 881 (Miss.App. 2006).

The trial court took a complex attorney-client conflict and reduced it to the level assuring defendant of a fair trial -- free of potential conflict from an attorney who would be a witness against his client. Upon trial, with the circumstance of a former attorney producing evidence in the State’s case against defendant, again, the trial

court, prosecutor and defense counsel all worked to limit the testimony to avoid potential attorney-client privilege conflict or exposure.

There was no error in the rulings of the trial court. Under the rather unique circumstances there was no error and no relief should be granted.

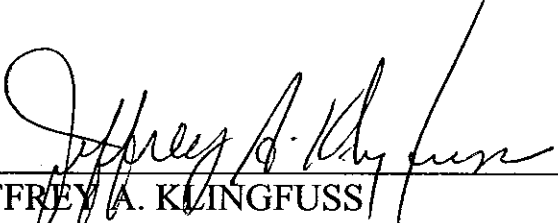
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdict of the jury and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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:

Honorable James T. Kitchens, Jr.
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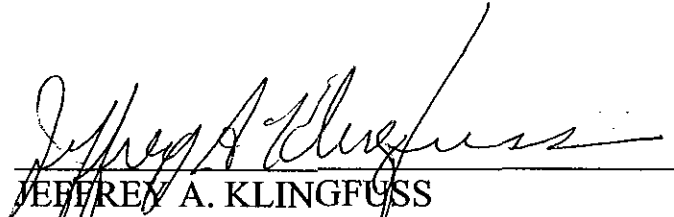
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