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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANDRE L. CRAWFORD

APPELLANT

V.

NO. 2006-KA-01871-COA

STATE OF MISSISSIPPI

APPELEE

FILED

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COURT OF APPEALS

SUPPLEMENTAL BRIEF

ANDRE L. CRAWFORD #R5867
UNIT #29 J B-ZONE
PARCHMAN, MISSISSIPPI.
38738

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned pro se litigant 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.

1. State of Mississippi
2. Andre L. Crawford
3. Forrest Allgood, District Attorney
4. James T. Kitchens, Circuit Court Judge

This the ____ day of _____ 2007

Respectfully Submitted

Andre L. Crawford #R5867
UNIT #29 J-B-ZONE
PARCHMAN, MISS. 38738

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STATEMENT OF THE ISSUES

WHETHER THE INDICTMENT IS FATALY DEFECTIVE
BY THE OMISSION OF AN ESSENTIAL ELEMENT OF
THE WORD SERIOUS BODILY INJURY

WHETHER THE STATE PROVED ITS CASE BEYOND A REASONABLE
DOUBT AGAINST APPELLANT ANDRE L. CRAWFORD WHEN
THE ALLEGED VICTIM CLAIMED HE NEVER SEEN THE APP
ELLANT WITH A KNIFE OR PULL A KNIFE

STATEMENT OF THE CASE

The Appellant was indicted by the Circuit Court of Clay County, Mississippi Grand Jury on April 7, 2006 in cause No. 8902, for Aggravated Assault pursuant 97-3-7 (1972) Mississippi Code Ann.

At all time relevant to said indictment the Appellant was represent by Honorable Thad Buck of West Point Mississippi, during trial. The Honorable Thad Buck, has withdrawn from representing appellant on direct appeal and the appellant level the honorable Benjamin A. Suber of the Mississippi office of indigent Appeals is representing the appellant on direct appeal.

Appellant Crawford, was tried and convicted by a jury of his peers On October 5-6, 2006, for the crime of Aggravated Assault under MCA 97-3-7 (1972), appellant was given a sixteen (16) year sentence and four (4) years post release supervision.

FACTS

Appellant Crawford, was at home on the morning of January 3, 2006, with his mother, sister and brother Margaret Robinson, Crystal Crawford and Clyde Crawford Jr.

Appellant mother Margaret Robinson, testified that she was at home at 2:30 in the morning, and that C.J., Crystal and Andre and herself. [T. 109]

Q. And how do you know or remember that Andre Crawford, was at home at that particular time on January the 3rd of this year.

A. Because I gets up through the night and check ~~in~~ my rooms and look out my window all time of night.

Q. And on January the 3rd this particular morning you remember that Andre Crawford was at home at your residence.

A. Yes.

According to Cassandra Bennett, testimony that after she got off work she went to Appellant Crawford, house and C.J. and Crystal was there and Andre and her watched TV together until they passed to Sleep [T. 124, 125].

Q. And who was present when you went to Ms. Crawford's house?

A. Andre, his mother, C.J., and Crystal.

Crystal Crawford, also testified, that appellant Andre, was at home [T. 116]

Q. And who was in the home at that particular night?

A. Andre, me, my brother and my mom.

The jury also heard testimony from Michael Rice and his sister Lashonda Rice, whom both claim that appellant Andre Crawford was at her house on January 3, 2006 [T. 92]

Q. When you went to bed, where was your brother and defendant Andre Johnson? I mean, excuse me, Andre Crawford?

A. In my living room, watching TV.

Q. Did you get up in the middle of the night?
Did anything happen?

A. Yes, ma'am, I got up around I guess 2:30, 300, and I noticed my car was gone, And my brother--when I go to sleep, he always take my car, so I figured

And I went on back to sleep, locked my door and went back to sleep, And I got up the next morning, he was on my couch.

Michael D. Rice, testified that he was giving appellant Andre Crawford a ride home when they stop by the bootlegger house to get something to drink [T. 71-72]

Q. Okay, where were you giving him a ride to?

A. First I thought he was going home, but we stopped by the bootlegger. He want to get something to drink, so we went by the bootlegger.

Q. And what happened when you got there?

A. We got in the house, and he asked him for some -- for some whiskey, but he wanted a credit, and he told them that he wasn't doing no credit, so --

Q. Who wanted a credit?

A. Andre, And he told him he wasn't doing no credit.

Q. Who told him? You got to use names for me, Michael.

A. Mr. Harold Jordan.

Q. Okay, Told Andre he wasn't going to give him credit?

A. Right

Q. And what happend?

A. they had like a little argument, where they were talking back and forth. And I was telling him, he ain't going to give you nothing, man let's go. Like that.

So after then I walked out briefly and came back in, it wasn't even -- wasn't even a minute, You know, and

I just seen him push him. I didn't -- I never did see him cut him, I didn't see no knife.

According to Harold Jordan, testimony he didn't see whoever stabbed him in the throat [T.40]

Q. Tell the Ladies, and gentlemen of the jury what happened.

A. Well, they kept asking for beer, you know, a free beer and stuff, and I told them I couldn't give them one, because I had just gave Michael one that Thursday.

And then they kept -- kept saying they needed something to drink, needed something to drink.

And then Michael's standing up by the door, and Andre was standing in between me and -- I mean between me and Michael. And all of a sudden they called my name, and then he just lunged at me like this, and then I felt the knife in my throat, you know, And then it was still hanging in my throat, and then I pulled it out. They took off running. They opened -- Michael opened the door, and they took off running.

SUMMARY OF THE ARGUMENT

Appellant Crawford, assert that he was convicted of offense for which he had not been indicted. And that he is actual innocent of the crime he was convicted because he was at home when the crime of Aggravated Assault upon Harold Jordan, was alleged to have been committed.

In addition, Appellant Crawford, would assert that the state failed to prove it's case beyond a reasonable doubt, that he was not at home on the morning the crime suppose to have took place, nor did the state prove that he appellant Crawford own or possessed the alleged knife that was used to commit the Aggravate Assault upon Harold Jordan.

ARGUMENT I.

WHETHER THE INDICTMENT IS FATALY DEFECTIVE
BY THE OMISSION OF AN ESSENTIAL ELEMENT OF THE
WORD SERIOUS BODILY INJURY

Appellant Crawford would assert that the indictment against him omits the essential element of "serious bodily injury," which is an element of Aggravated Assault. See Peterson v. State, 671 So. 2d 647, 652 (Miss. 1996); Mack A. Hawthorne v. State 751 So. 2d 1090 (Miss. 1999) Appellant Crawford's indictment was titled "Aggravate Assault" and stated the crime charged as "Did unlawfully, wilfully, feloniously, purposely and knowing cause bodily injury to Harold Jordan, a human being, with a deadly weapon, to-wit: a knife, by cutting the throat of the said Harold Jordan with the said knife, without authority of Law and not in necessary self defense, contrary to the form of the statute in such case made and against the peace and dignity of the State of Mississippi. Mississippi Code Ann. 97-3-7 .

The Court stated in Peterson, the Court distanced itself from any suggestion in precedents that the failure to assert an essential element of an offense in the indictment could be cured by reference to a code section in which the element appeared Peterson, 671 So. 2d at 654-55. The dissent specifically called the majority to task for reinvigorating older law that in the dissent's view had been substantially modified on the issue. Id. at 660-61 (Pittman, J., dissenting). The result though, not changed by later precedents, is that every element must be alleged.

P19. Serious bodily injury is an element of aggravated assault. Therefore the absence of the word "serious" results in the omission of an essential element of

the offense. Here, however, the State was granted the right to amend the indictment. We must decide if that cures the problem.

P20. The propriety of an amendment is generally said to depend upon whether the amendment was one of form or substance. The supreme court has outlined the following test to be used in making such a determination;

Whether or not a defense under the indictment or information as it originally stood would be equally available after the amendment is made and whether or not any evidence that the accused might have would be equally applicable to the indictment or information in the one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance. Griffin v. State 540 So. 2d 17, 21 (Miss. 1989). The circumstances of Griffin are similar to those here. The charging portion of the indictment also omitted the word "serious" as a modifier of "bodily injury," but included the language "with a deadly weapon, to wit a pistol, by shooting..." The indictment was amended to add the phrase "a means likely to produce serious bodily injury" after the word "pistol." The addition of this phrase changed the defense's entire strategy because they had built their case around the theory that the firing of the gun was accidental.

See also Brewer v. State 351 So. 2d 535, 536 (Miss. 1977). In Brewer, the indictment failed to state that the substance named in the indictment "preludin" contained the controlled substance "phenmetrazine." The Court held that an essential ingredient of the indictment was omitted and the indictment was invalid. Under these circumstances the indictment could not be amended." Id. A later case described Brewer, as holding that "a substantive defect in an indictment cannot be cured by extrinsic proof and is not waived by the failure to demur thereto.

Copeland v. State 423 So. 2d 1333, 1336 (Miss. 1982).

In Copeland, the controlled substance was said to be "methylenedioxy amphetamine," when the proper name for it also contained the numerals "3, 4" immediately preceding the words. The Court held that State failed to include each element of the offense in the indictment was of substance and could not be cured and reversed.

Appellant Crawford assert that this Court should grant him the same relief in this instant case.

ARGUMENT II.

WHETHER THE STATE PROVED IT'S CASE BEYOND A REASONABLE DOUBT AGAINST ANDRE CRAWFORD WHEN THE ALLEGED STATE WITNESS MICHAEL RICE OR THE VICTIM HAROLD JORDAN CLAIMED THEY NEVER SAW A KNIFE

Appellant Andre Crawford, contends that he was at home with his family and there is no way possible he could have been present at Harold Jordan house along with Michael Rice on the morning of January 2, 2006, and the reason why the state could not prove that appellant Crawford, was the one who stab this man is because appellant Crawford wasn't there. This is also the reason why not one of them seen a knife Sloan v. State 368 So. 2d 228, 229 (Miss. 1979) The fact that the state witness, Michael Rice, claim that Appellant Andre Crawford was with him when he went to Mr. Harold Jordan house, dose not prove the fact that appellant Andre Crawford was there.

1.
According to Rice, testimony [T. 72] Rice saw Crawford push Jordan. Id. Rice never saw a knife and did not see whether Jordan had a weapon. Id. Then Crawford ran by Rice out of the house and Rice ran behind him and they left. [T. 73].

The burden of proof "never shifts from the State to the defendant. The State is required to prove every material element of the indictment beyond reasonable doubt." Sloan supra at 228. The State failed to prove that appellant Andre Crawford, was with the defendant Micheal Rice, and that appellant Crawford, own or possessed a knife.

Sloan v. State 368 So. 2d 228 (Miss. 1979). Every "defendant is entitled to have the jury clearly instructed that the State has the burden of proving beyond a reasonable doubt each and every material element of the offense." Beckwith v. State 707 So. 2d 547, 592 (1997). Appellant Crawford assert that State failed to meet it's burden because not one of the State witness claim they saw a knife and the reason they did not see him with a knife because he the appellant Crawford, was not there see Heidel v. State 587 So. 2d 835, 843. Warren v. State 709 So. 2d 415 420 (Miss. 1998).

Jordan stated that he never saw the knife until he removed it from his throat [T. 40, 41, 42, 43]. In view of Jordan, testimony, he assert that the two, Michael Rice, and whoever was with him shared in the crime equally because he used the word they kept saying they needed something to drink, indicating each one of them played

(8)

apart in it.

Jordan, testified that he was standing between the other person and Michael and all of a sudden they called my name and then he just lunged at me. [T. 40] and I felt the knife in my throat you know, And then it was still hanging in my throat, and then I pulled it out. They took off running. Mr. Jordan, just stated, that they both participated in the crime which is direct inconsistent with Michael Rice, testimony.

In re Winship 397 U.S. 358, 364 (1970) The reasonable doubt standard applies in both state and federal proceeding See Sullivan v. Louisiana 508 U.S. 275, 278 (1963).

Appellant Crawford, mother Margaret Robinson, Crystal Crawford, and Cassandra Bennett, testified that he was at home at 2:30 AM on January 2, 2006 whether the jury believed appellant Crawford's witnesses is beside the point the State failed to prove that appellant Crawford, was not at home or that the knife in question belong to him or that he had possession of the knife; therefore, appellant Crawford is entitled to have his conviction and sentence reversed on this ground.

CONCLUSION

Appellant Crawford, is the victim of a miscarriage of justice and this honorable court should issue an order discharging the appellant Crawford on the two grounds raise herein, this brief.

This the ____ day of ____ 2007

Respectfully submitted

Andre Crawford
UNIT #29 J B-Zone
Parchman Ms. 38738

CERTIFICATE OF SERVICE

I, Andre Crawford, do hereby certify that I have this day caused to be mailed via United States Postal Service, first class postage prepaid, a true and correct copy of the above and foregoing SUPPLEMENTA BRIEF, to the following:

Honorable James T. Kitchens, Jr.
Circuit Court Judge
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This the _____ day of _____ 2007

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