

**IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI**

WILLIAM TERRY DAVIS

APPELLANT

VS.

SUPREME COURT NO. 2006-KA-02124-COA

STATE OF MISSISSIPPI

APPELLEE

**ON APPEAL FROM THE CIRCUIT COURT
OF ADAMS COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

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

1. William Terry Davis, Appellant.
2. Hon. Gus Grable Sermos, Appellant's Attorney on appeal.
3. Hon. Robert Clark, Appellant's Trial Court Attorney.
4. Hon. Ronnie Harper, District Attorney for the Sixth Circuit Court District.
5. Hon. Forrest A. Johnson, Circuit Court Judge, Adams County, Mississippi.

Respectfully submitted,


GUS GRABLE SERMOS

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TABLE OF AUTHORITIES

CASES:

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Gleeton v. State, 716 So.2d 1083 (Miss. 1998)

McClain v. State, 625 So.2d 774 (Miss. 1993)

Esparaza v. State, 595 So.2d 418, 426 (Miss. 1992)

Wetz v. State, 503 So.2d 803 (Miss. 1987)

STATUTORY PROVISIONS:

Section 97-3-19(1), Mississippi Code of 1972

STATEMENT OF THE ISSUES

- I. WHETHER THE TRIAL COURT ERRED IN ITS DENIAL OF WILLIAM TERRY DAVIS' MOTION FOR A NEW TRIAL.
- II. WHETHER THE TRIAL COURT ERRED IN ITS DENIAL OF WILLIAM TERRY DAVIS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT.

STATEMENT OF THE CASE

William Terry Davis (Davis) was indicted by the Adams County, Mississippi, Grand Jury during its December 2005 Term for the offense of Murder, in violation of Section 97-3-19 of the Mississippi Code of 1972 as amended. The offense was allegedly committed on, during or about May 16, 1994.

After pre-trial motions were heard and ruled on by the Trial Court, Davis went before an Adams County Jury for a trial on the merits on March 21-23, 2006, with the Honorable Forrest A. Johnson, Circuit Court Judge, presiding. The jury found Davis "guilty" of the murder of Rena Davis as charged in the indictment.

Judge Johnson sentenced Davis to serve a term of life in the custody of the Mississippi Department of Corrections, as provided by law.

On July 26, 2006, Judge Johnson appointed the undersigned attorney to represent Davis on post-trial proceedings, including Davis' appeal to the Mississippi Supreme Court.

Thus, from the Trial Judge's denial of Davis' request for a new trial, or in the alternative, for a judgment notwithstanding the verdict, and from his conviction and sentence, Davis now appeals.

The significant issues Davis raises in his appeal is that the verdict of the jury is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand sanctions an unconscionable injustice; and that the evidence presented to the jury in this case is legally insufficient to sustain Davis' conviction for the murder of Rena Davis.

Therefore, the Trial Court erred in its denial of Davis' request for a new trial, and/or for its denial of a judgment notwithstanding the verdict (JNOV).

SUMMARY OF THE ARGUMENT

The appellant, Davis, contends that with respect to the offense, Murder (97-3-19), for which the jury found him "guilty," the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice; and that the evidence so considered is such that reasonable and fair-minded jurors could only have found him "not guilty" for the death of Rena Davis.

The events directly leading up to the charge of murder being filed against Davis happened in the summer of 2005 when Ricky Lee, a self-described old friend of Davis', gave testimonial and physical evidence to law officers regarding a statement Davis made to him and a wooden stake Davis gave him after the murder of Rena Davis.

Davis proceeded to trial on March 21-23, 2006. The State failed to present any physical evidence which tied Davis to the murder; and no witness placed Davis at the scene of the murder of his ex-wife. However, the jury convicted Davis of murdering his ex-wife, Rena Davis. Judge Johnson then sentenced Davis to a life-term in the custody of the Mississippi Department of Corrections. Davis asserts that the verdict of the jury went against the overwhelming weight of the evidence; and that the evidence presented at trial was not legally sufficient to sustain the guilty verdict as to the charge of murder.

Therefore, the Trial Court erred in its decision to deny Davis' motion for a new trial, and in its failure to grant Davis' requested judgment notwithstanding the verdict (JNOV) in that the evidence presented to the jury was such that reasonable and fair-minded jurors could only have found Davis not guilty of murder.

ARGUMENT

- I. WHETHER THE TRIAL COURT ERRED IN ITS DENIAL OF WILLIAM TERRY DAVIS' MOTION FOR A NEW TRIAL.
- II. WHETHER THE TRIAL COURT ERRED IN ITS DENIAL OF WILLIAM TERRY DAVIS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT.

(NOTE: For clarity and cohesiveness these two arguments will be addressed jointly.)

On March 21-23, 2006, an Adams County jury convicted the defendant/appellant, Davis, of the Murder.

The offense of murder as applied to this case is described in Section 97-3-19(1)(a) of the Mississippi Code of 1972 as follows:

Section 97-3-91(1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases:

- (a) When done with deliberate design to effect the death of the person killed, or of any human being.

In support of Davis' assertion that the Trial Court erred in its refusal to grant his motion for a new trial, Davis would show that the appellate court must accept as true all evidence which supports the verdict and will reverse only when it is convinced that the Circuit Court has abused its discretion in failing to grant a new trial. Swann v. State, 806 So.2d 1111, 1117 (Miss. 2002). Further, a motion for a new trial asks that the judgment be vacated on the grounds related to the weight of the evidence. Smith v. State, 802 So.2d 82, 85-86 (Miss. 2001). Moreover, it is "only

in cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice” that the Appellate Court will disturb the verdict on appeal. Dudley v. State, 719 So.2d 180, 182 (Miss. 1998).

Next, in support of Davis’ assertion that the Trial Court erred in denying his motion for JNOV, Davis would show that when reviewing a Trial Court’s denial of a motion for directed verdict, request for peremptory instruction, on Motion for JNOV, the legal sufficiency of the evidence is challenged. McClain v. State, 625 So.2d 774, 778 (Miss. 1993); Wetz v. State, 503 So.2d 803, 807-808 (Miss. 1987). Moreover, in appeals from a Trial Court’s refusal to grant a peremptory instruction or an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in the light most favorable to the verdict. McClain at 778; Esparaza v. State, 595 So.2d 418, 426 (Miss. 1992); Wetz at 808. Further, this Court will accept any credible evidence that supports guilt as true, granting the prosecution “the benefit of all favorable inferences that may reasonably be drawn from the evidence.” Wetz at 808. And, this Court will only reverse “where a reasonable, fair-minded juror could not have found one of the required elements of the crime.” Gleeton v. State, 716 So.2d 1083, 1087 (Miss. 1998).

Davis now presents a synopsis of the testimony and evidence which the jury heard and received at Davis’ trial on March 21-23, 2006.

The State called its first witness, Tom McGehee (T.103) McGehee testified that at the time of the murder in 1994 he was an evidence technician with the Natchez Police Department. (T. 104) Next, McGehee described the crime scene via photographs, video, and his observations. (T. 105-127) McGehee did not testify to, or present any evidence to the jury that implicated Davis as the killer.

As its second witness the State called Michael Mullins, Chief of Natchez Police Department. (T. 130) Mullins said that at the time of the murder in May 1994 he was a Sergeant at the NPD and he testified as to his role in the investigation and his interview with Davis. (T. 130-152) Mullins said that Davis denied killing his ex-wife, Rena Davis, and that at the time of her murder Davis told Mullins he was at his parent's home in Woodville, MS. (T. 135)

On cross-examination Mullins admitted that Davis signed a consent-to-search form for his residence and a medical release form allowing samples of hair, blood, and DNA to be taken from his body. (T. 153-155) Further, Mullins admitted that none of the body-sample evidence from Davis linked him with the crime scene. (T. 155)

For its third witness the State offered the transcription testimony of Wanda Lambert, marked for identification as State "B". (T. 157-158) Lambert died prior to trial and her testimony had been taken previously. Lambert offered no information to the jury about the murder of Rena Davis.

The State's fourth witness was Dr. John White. Dr. White described the injuries to Rena Davis he observed in February 1994. (T. 159-162) Dr. White offered no information concerning Rena Davis' death.

The State's fifth witness was Tammy Johnston. Johnston said she had previously been married to Davis' brother, John Lee Davis. (T. 162-164) Then, Johnston described what she had observed at Rena Davis' home after Rena and William Terry Davis had been in a fight about a year or so before Rena was murdered. (T. 164-167) Johnston offered the jury no information regarding Rena Davis' death.

Sam Wilkinson testified as the State's sixth witness. (T. 170) He said Rena Davis had

been his girlfriend. (T. 171-172) Wilkinson described how he found her body and said he called the Police. Then he stated that Rena Davis had taken a pregnancy test earlier and that the test result was "positive." Wilkinson also said that he and Rena and her kids planned to move to Colorado the next week. (T. 173-174) Wilkinson offered the jury no information about Rena Davis' murder.

The State called Ricky Lee as its seventh witness. (T. 183) Lee said he and Davis had been friends for about twenty (20) years. (T. 184) Lee went on to testify that Davis came to Lee's job site on or about May 17, 1994, at night, and told Lee, "I messed up. I beat her real bad this time." Then Davis left, crying and hysterical, according to Lee. (T. 185) Next, Lee said that Davis came to his house a few weeks later and gave Lee a wooden stake and told Lee to get rid of it. (T. 188-189) Lee admitted not coming forward with the stake until July of 2005 even though he had it in his shed for eleven (11) years. (T. 192)

Deputy Ricky Stevens testified as the State's eighth witness. (T. 201) Stevens described how the wooden stake was obtained from Lee's residence, tested by the crime lab and Reliagene, and he said the tests were inconclusive, negative for the presence of blood. (T. 202-207)

The State called Hank Haney as the ninth witness. (T. 207) He offered nothing.

As its tenth witness the State called Charles Sullivan. (T. 210) Sullivan said he had known Davis since the early 1990's and that Sullivan's ex-wife and Rena Davis were friends. (T. 211-212) According to Sullivan, he and Davis saw each other in a Domino's Pizza in Natchez and Davis told Sullivan that Rena Davis was supposed to move to Colorado with her new boyfriend and she planned to take his kids, and then Davis said, "I will kill the bitch." (T. 212)

The State called George Ward as its eleventh witness. (T. 215) Ward related to the jury

his recollections, as the Natchez City Prosecutor of domestic abuse issues between Rena Davis and William Terry Davis in the early 1990's. (T. 216-222)

Jody Waldrop testified as the State's twelfth witness. (T. 224) Waldrop said that Davis had never been eliminated as a suspect in the murder case and that Waldrop and another investigator at the Sheriff's Department began investigating "cold cases" in Adams County. Then Waldrop stated that the phone call which led to the discovery of the wooden tent stake came from Ricky Lee. (T. 225-226)

As its thirteenth witness the State called Bridget Davis to the stand. (T. 229) She identified herself as a seventeen-year-old daughter of Rena and William Terry Davis. (T. 229-230) Bridget said that when her mother, Rena, took her and Bridget's sister, Amanda, to a Texaco station so their father, Davis, could pick them up for a visit that the parents argued and hollered at each other in the parking lot. (T. 230-231) Further on Bridget said she remembered going to sleep on the couch with her father, Davis, at Davis' parent's house in Woodville, MS, and that Davis was not there with her when she woke up. Bridget did not know whether he left the residence or not that night. (T. 232)

For its fourteenth and final witness the State called Dr. Stephen Timothy Hayne. (T. 238) Dr. Hayne testified that Rena Davis' cause of death was due to multiple blunt force trauma. (T. 244)

The State rested its case after Dr. Hayne's testimony. (T. 251)

The defense moved for a directed verdict of acquittal (T. 252) which was denied by the Trial Court. (T. 262)

Next, the defense called its first witness, Nicole Davis Howell. (T. 266) Howell stated

she was Davis' niece and that she lived with Davis at his parent's house in Woodville, MS in 1994, at which time she was sixteen (16) years old. (T. 267) Howell further said she rode with Davis to pick up his two daughters from Rena at Arlene's One Stop. Howell testified that Davis was there at his parent's house that night and that Davis was still there when Howell went to sleep sometime between 2:00 and 2:30 a.m. and that Davis did not leave the house that night. (T. 268-271)

The defense called Boyce Davis as its second witness. (T. 284) He said he was William Terry Davis' father and that he lived in Woodville, MS with his wife, Jeanette. (T. 285) Boyce said that William Terry Davis and his two daughters were at Boyce's house in Woodville on the night of May 16, 1994 - the night before Rena Davis' body was found on May 17th. (T. 286-287) Boyce Davis went on to state that William Terry Davis was asleep on the couch in the living room at 10:00 p.m. when he, Boyce, went to bed and that William Terry Davis was still there when he, Boyce, woke up at about 4:00 a.m. on the morning of May 17, 1994. (T. 288-289)

For its third and final witness the defense called Jeanette Davis to testify. (T. 299) Jeanette said she and her husband, Boyce, lived together in Woodville and that William Terry Davis was their son. (T. 300) Jeanette said that on May 16, 1994, she (Jeanette), William and Nicole were at home in Woodville, and that later in the day William's two daughters, Amanda and Bridget, came to spend the night there. (T. 301-302) Jeanette further stated that William Terry Davis was there at the house when she went to bed and that William was still there when she woke up at 3:00 a.m. on the morning of May 17th. (T. 304-305)

After introducing certain reports by stipulation, the defense rested its case. (T. 320)

The burden is on the State pursuant to Section 97-3-19(1) to prove beyond a reasonable

doubt that Davis killed a human being, Rena Davis, with the deliberate design. The testimony presented at Davis' trial offered by various witnesses for the State produced no physical evidence that Davis caused the death of his ex-wife, Rena Davis.

For example, Tom McGehee, the former evidence technician with the Natchez Police Department, offered no evidence to the jury which implicated Davis in Rena Davis' death. (T. 103-127) Furthermore, Michael Mullins, formerly a Sergeant at the Natchez Police Department testified that Davis denied any involvement in Rena Davis' death and that Davis told Mullins he was at his parent's home in Woodville, MS, at the time of Rena's death. (T. 130-155)

Then, Ricky Lee described his coming forward eleven (11) years later to tell the Law Officers that Davis told him he "messed up" and "beat her real bad this time." Ricky Lee also provided the Law Officers with a wooden stake he said Davis gave him to "get rid of." (T. 183-192)

When Charles Sullivan testified he related to the jury that Davis told him that Rena Davis was supposed to move to Colorado with her boyfriend and take her and Davis' kids, and that he (Davis) "will kill the bitch" because she's not taking my kids away from me. (T. 212)

Bridget Davis, one of Davis' daughters, stated that on the night of May 16th she went to sleep with Davis on the couch at the Woodville residence, and when she woke up Davis was not there on the couch with her, but Bridget could not say whether Davis left the residence that night or not. (T. 232)

For his defense, Davis called his niece, Nicole Davis Howell; his father, Boyce Davis; and his mother, Jeannette Davis. All three of them testified that William Terry Davis stayed at the Woodville residence. (T. 268-305)

Simply stated, Davis' conviction is based on the uncorroborated testimony of Ricky Lee and Charles Sullivan, each of whom testified as to inculpatory statements allegedly made to them by Davis. Moreover, the State failed to produce even one piece of physical evidence that placed Davis at the crime scene or connected Davis to the death of Rena Davis.

Furthermore, four witnesses; Bridget Davis, Nicole Davis Howell, Boyce Davis, and Jeannette Davis testified that William Terry Davis was with them at their home in Woodville, MS, on the night of Rena Davis' murder - May 16, 1994.

In the case at bar, all the State offered the jury were unsupported conclusions based on circumstantial events and prior instances of domestic abuse to prove that Davis killed his ex-wife, Rena Davis in May 1994.

Therefore, Davis asserts that the State never proved beyond a reasonable doubt, via either direct evidence or reasonable inferences, that Davis killed Rena Davis. Hence, the verdict of the jury is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would sanction an unconscionable injustice. Furthermore, due to the insufficiency of the evidence presented at trial a reasonable, fair-minded juror could not have found one of the required elements of the crime.

CONCLUSION

William Terry Davis, the appellant, maintains that in this case the verdict is so contrary to the overwhelming weight of the evidence presented to the jury that to allow the verdict to stand would sanction an unconscionable injustice. Additionally, in view of the legal insufficiency of the evidence presented by the State of Mississippi against him at trial, a jury composed of reasonable and fair-minded persons could only have found Davis "not guilty" for the offense of Murder. For these reasons, Davis asserts that the Trial Court erred in denying Davis' motion for a new trial and in its denial of Davis' motion for a judgment notwithstanding the verdict.

William Terry Davis respectfully prays that this Court will reverse his conviction in this matter, render a decision of not guilty regarding the charged offense, and vacate his sentence.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, Gus Grable Sermos, hereby certify that I have this date mailed a true and correct copy of Appellant's Brief to: Hon. Ronnie Harper, District Attorney of Circuit Court District 6; Hon. Jim Hood, Attorney General of the State of Mississippi; Hon. Forrest A. Johnson, Presiding Judge; and William Terry Davis.

This the 15 day of June, 2007.


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