

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00135-SCT

MICHAEL WAYNE WILLIAMS

APPELLANT

FILED
VERSUS
DEC 14 2007

STATE OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS**

APPELLEE

**APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF THE
1ST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

REPLY BRIEF BY THE APPELLANT

Appellant Respectfully Requests Oral Argument


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Michael Wayne Williams v. State of Mississippi

Cause No. 2007-KA-00135-SCT

REQUEST FOR ORAL ARGUMENT

Mr. Williams respectfully asks for oral argument before this honorable Court in order to more fully present his argument that he was denied due process of law by the refusal of the trial court to permit him to exhibit his most significant physical feature, large gold teeth. By so doing, Mr. Williams contends the trial judge denied him the opportunity to present his theory of defense.


Virginia L. Watkins, MSB No. [REDACTED]
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REPLY OF APPELLANT

I. The trial court denied Mr. Williams the fundamental right to mount a meaningful defense when it refused to allow him to display prominent gold teeth displaying his initials;

The State would have this Court believe that this is a mere issue of abuse of discretion, subject to the broad deference afforded to the trial court, and additionally, that Mr. Williams was fully afforded an opportunity to be heard and present his case through cross-examination. *Brief of Appellee*, pg. 4-5.

“The right to a hearing embraces *not only the right to present evidence*, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. *Gonzales v. United States*, 348 U.S. 407 (1955), quoting *Morgan v. United States*, 304 U.S. 1, at 18 (1938) (emphasis added) (Conviction of *Gonzales* for refusal to submit to induction into military service due to conscientious objector status reversed due to denial of due process, i.e., Justice Department failed to provide copy of advisory recommendation to local Selective Service Board and thus deprived *Gonzales* of the right to reply to the recommendation).

With all due respect, counsel for the State also appears to believe arguments of counsel are evidence, and the fact that counsel for Mr. Williams mentioned the theory of misidentification in closing, coupled with cross-examination, is sufficient to meet the minimum requirements of due process under both state and federal constitutions. *Brief of Appellee*,

Mr. Williams begs to differ. In *Manzo v. Armstrong*, the United States Supreme Court held it was a denial of due process sufficient to invalidate a Texas adoption decree when the adoptive parents failed to give the biological father notice of the parental termination

proceedings. Upon discovery of the adoption, the biological father immediately moved to set aside the decree and was given a hearing into the matter, which was ultimately affirmed by the Texas high court. In invalidating the adoption decree on due process grounds, the Supreme Court noted the hearing granted Manzo *after* termination of his parental rights was insufficient to cure the constitutional error. “A fundamental requirement of due process is ‘the opportunity to be heard.’ [internal citations omitted] It is an opportunity which must be granted at a *meaningful time and in a meaningful manner*.” *Manzo v. Armstrong*, 380 U.S. 545, at 552 (1965). [emphasis added].

The manner in which Mr. Williams sought to present his case was through exhibition to the jury of his prominent gold teeth with initials carved in them. This was not testimony, as *Schmerber v. California* makes clear; it was, however, presentation of evidence crucial to demonstrate his theory of misidentification. *Schmerber*, 384 U.S. 757 (1966). Curtis Johnson made no mention of this characteristic until prompting by defense counsel on cross-examination. T. 74. As the jury weighs the credibility, weight and worth of all testimony and other evidence, the refusal of the trial court to permit Mr. Williams to display his teeth deprived the jury of a vital opportunity to test the validity of Johnson’s identification of Mr. Williams as his assailant.

Therefore, with all due respect for learned counsel for the state, Mr. Williams respectfully disagrees that the matter is one only of abuse of discretion and that Mr. Williams was denied his fundamental right to a meaningful opportunity to present a defense.

II. The trial court abused its discretion when it permitted prosecutors to use an audio tape recording of a 911 call to police deliberately withheld from the defense until the midst of trial, in violation of court rules regarding discovery;

Respectfully, Mr. Williams would note that counsel for the state makes a rather disingenuous recitation of the facts, making much of the fact that prosecutors only received the disputed 911 recording, pursuant to a subpoena, the night prior to the second day of trial. *Brief of Appellee*, p. 7; T. 138. This ignores the fact that prosecutors failed to notify defense counsel of the existence of the tape *when they learned of it*, in violation of Uniform Rule of Circuit and County Court Practice 9.04 and the motion for discovery propounded upon the state by counsel for Mr. Williams. CP 5 . Furthermore, there was no listing in the police evidence log for the recording, which might have put defense counsel on notice of the existence of the recording. T. 140; 163. Finally, counsel for the state also ignores the fact that this type of discovery violation is a continuing course of conduct in this circuit court district by this same prosecutor, as detailed in *Brief of Appellant on the Merits*, pgs. 10-11.

The recording of the 911 call to police ostensibly made by the wife of Curtis Johnson after the incident was indeed crucial, because Officer Anthony Reginal's initial report indicated the vehicle in which Johnson was held was an Escalade, not a Lexus. T. 119. As Mr. Williams first argued to this Court, the issue of whether the white Lexus depicted in store surveillance tape is the *same* Lexus in which Mr. Williams was later arrested. This is particularly crucial since the license plate number is not decipherable from the store videotape displayed to the jury. T. 213.

As to authentication of the 911 recording, which consumed a great deal of the trial court's time, Mr. Williams contends that *Frierson v. State*, 606 So.2d 604 (Miss. 1992) is dispositive. Furthermore, under *Box v. State*, 437 So.2d 19 (Miss. 1983) and the procedure of URCCC 9.04, it was error severely impacting the ability of Mr. Williams to effectively defend against the

State's accusation against him, particularly since there was no opportunity to investigate whether changes or other tampering had taken place with the copy played for the jury.

Consequently, Mr. Williams argues that given the blatant disregard for court rules and the case law of this Court, and the significant effect on his ability to meet the charges of the state with such little time to prepare, this cause should be reversed and remanded for a new trial, consistent with the safeguards of discovery and the rules of evidence.

III. The trial court abused its discretion when it denied the motion of Mr. Williams to sever counts against him or alternatively, to stipulate to a prior conviction for armed robbery, as introduction of evidence of a prior conviction for armed robbery was more prejudicial than probative, and

Counsel for the state seems wedded to the same argument as the prosecutors in this cause and that is prosecutors may prove their case any way they wish.

Contrary to the argument of honorable counsel for the state, Mr. Williams respectfully contends *Old Chief v. United States*, 519 U.S. 171 (1997) is dispositive of this issue. In its analysis of FEDERAL RULE OF EVIDENCE 403 (upon which MISSISSIPPI RULE OF EVIDENCE 403 is based), the Supreme Court found that recitation of Johnny Old Chief's prior assault convictions were more prejudicial than probative. Federal prosecutors had refused a stipulation, as offered here by counsel for Mr. Williams, to the prior convictions of Old Chief which necessary to prove the federal charge against Old Chief.

Furthermore, in adoption of MISS.R.EVID. 403, our *Comment* specifically states, "Mississippi is following existing federal and state practice."

Mr. Williams deferentially asks his honorable Court to reverse and remand his conviction, as in *Old Chief*, due to the admission of evidence which was far more prejudicial than probative.

IV. The trial court abused its discretion when it denied the *Motion in Limine* of Mr. Williams to refer to his arrest in a stolen vehicle, in violation of the Mississippi Rules of Evidence.

Again, Mr. Williams would simply respond that it was the right of Mr. Williams to be tried on the indictment with which he was charged, not potential robbery or possession of a stolen vehicle, the infamous white Lexus sports utility vehicle at issue in this case. As such, it was an abuse of discretion by the trial court to refuse the *Motion in Limine* by Mr. Williams to bar mention of charge of possession of a stolen vehicle. T. 22; RE 18.

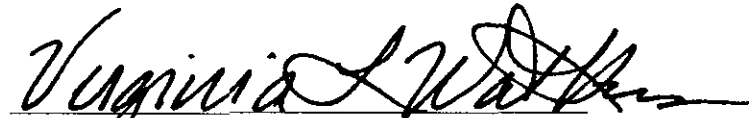
To accept the prosecutors' stated purpose that the charge of possession of a stolen vehicle was necessary to show identity swallows the entire principle underpinning Miss.R. EVID. 404(b), which bars mention of other bad acts unless offered for a variety of other purposes, including identity. Nevertheless, this argument fails to take into account the fact that Mr. Williams was arrested some ten *days* after the incident. T.22; RE 18. Nothing adduced at trial demonstrated with any specificity that the vehicle depicted in the store surveillance tape played for the jury was the same vehicle in which Mr. Williams was arrested on February 10, 2005.

Again Mr. Williams would assert that *Campbell v. State*, 750 So.2d 1280 (Miss.Ct.App. 1999), addresses this error. Mr. Williams would again recite the principle enunciated from the United States Supreme Court in *Parr v. United States*, 363 U.S. 370, 394 (U.S. 1960) "[U]nder our vaunted legal system, no man, however bad his behavior, may be convicted of a crime of which he *su* of testimony as to the charge against him of possession of a stolen vehicle.

CONCLUSION

For these reasons and the authority cited herein and *Brief of Appellant on the Merits*, Mr. Williams respectfully requests this Court reverse and vacate his conviction and remand for a new trial. Mr. Williams was denied the most fundamental of rights in this case, the right to mount a defense, and this error, among the other errors recited here, necessitate reversal and remand.

Respectfully submitted,


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Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be delivered via hand delivery a true and correct copy of the foregoing *Repy Brief by Appellant*, to the following:

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And via United States Mail, postage prepaid, to:

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So certified, this the 14th day of December, 2007.


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