

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**SHAWN MICHAEL SINGLETON**

**APPELLANT**

**V.**

**NO. 2007-KA-00911-COA**

**STATE OF MISSISSIPPI**

**FILED**

**NOV 28 2007**

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COURT OF APPEALS

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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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.

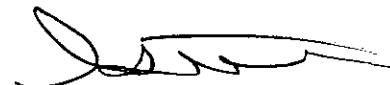
1. State of Mississippi
2. Shawn Michael Singleton, Appellant
3. Honorable E.J. (Bilbo) Mitchell, District Attorney
4. Honorable Robert W. Bailey, Circuit Court Judge

This the 28<sup>th</sup> day of November, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE CASE**

Shawn Michael Singleton was charged with the capital murder of Elmer “Shubbie” Dobbins. (C.P. 4; R.E. 3-4). The case was tried on May 1 and May 2, 2007, and Singleton was convicted of capital murder. (C.P. 43; R.E. 4). After a further hearing before the Court sitting without a jury, Singleton was sentenced to life imprisonment without the possibility of parole. (C.P. 43; R.E. 4). Shawn Michael Singleton is presently incarcerated with the Mississippi Department of Corrections.

**SUMMARY OF THE ARGUMENT**

The State in this case repeatedly and intentionally elicited prejudicial information from the confession of a deceased individual, Doris Vann, who allegedly participated in the crime for which the Appellant was charged. The Appellant did not have a prior opportunity to cross-examine Vann regarding her confession, and therefore his right to confrontation guaranteed by the Sixth Amendment to the United States Constitution, as well as Article III, section 26 of the Mississippi

constitution, was violated. *Crawford v. Washington*, 541 U.S. 36 (2004), controls, and the Court should reverse and remand for a new trial.

### FACTS

On or about July 26, 2005, Joseph McHenry called and asked the Appellant, Shawn Michael Singleton, to come over to his house and give him a ride to the liquor store. Singleton went over to McHenry's house and brought his fiancé, Doris Vann, with him. (Tr. 225). The three got into the car and drove to the liquor store where McHenry got out of the car and purchased a bottle of vodka. (Tr. 225).

The three then drove to Elmer "Shubbie" Dobbins' house. (Tr. 225). Singleton and Vann got out of the car in order to borrow some money from Dobbins. McHenry stayed in car. (Tr. 247). Singleton and Vann got back in the car, and after riding around for a while longer, the three returned to Dobbins' house. (Tr. 250). Singleton and Vann got out of the car again, and McHenry again stayed in the car where he laid down in the backseat because he was drunk. (Tr. 241-47). McHenry was drifting in and out of consciousness because of the amount of alcohol he had consumed that day. (Tr. 247).

McHenry testified that when Singleton got back in the car, he had blood on his hand and stated that he had stabbed Dobbins. (Tr. 244). However, McHenry admitted that he did not tell the police about the blood on Singleton's hands while being interviewed, and further, that he specifically told the police that Singleton did not state he had done anything when he got back into the car. (Tr. 245-46).

Dobbins was found by his son the next day. (Tr. 76-79). An autopsy revealed that Dobbins had been stabbed with a screwdriver and suffered severe and fatal head injuries. (Tr. 161-72). The wounds by the screwdriver were superficial and did not contribute to the cause of death. (Tr. 157;

172).

McHenry, Vann, and Singleton were all subsequently arrested by law enforcement. All three gave statements. (Tr. 134; 141; 221). Before she could be tried, however, Vann died. (Tr. 145). McHenry, also charged with capital murder, cut a deal with the State so that he would only have to serve four years on a reduced charge of accessory after-the-fact in exchange for testifying against Singleton. (Tr. 236-37). Thus, Singleton was the only one of the three who stood trial.

After a trial lasting two days, the jury found Singleton guilty of capital murder. The State of Mississippi had previously waived the death penalty, and Singleton waived a jury on the sentencing portion of the trial. (Tr. 318-19). Thus, the Court sitting without a jury, determined that Singleton should be sentenced to life imprisonment without the possibility of parole.<sup>1</sup> (Tr 326-27; C.P. 43; R.E. 4).

### **ARGUMENT**

#### **I. THE APPELLANT WAS DENIED HIS RIGHT TO CONFRONTATION WHEN THE TRIAL COURT, OVER THE OBJECTIONS OF DEFENSE COUNSEL, ALLOWED THE STATE TO INFORM DORIS VANN OF THE INFORMATION FROM THE CONFESSION DORIS VANN GAVE TO LAW ENFORCEMENT OFFICIALS.**

##### **A. Standard of Review.**

Generally, the standard of review regarding the admission or exclusion of evidence is abuse of discretion. *Yoste v. Wal-Mart Stores, Inc.*, 822 So.2d 935, 936 (Miss.2002). However, because this issue involves a constitutional right, the standard of review is de novo. *Morris v. State*, 963 So.2d 1170 (Miss.Ct.App. 2007); *Turner v. State*, 945 So.2d 992 (Miss.Ct.App. 2007); *Penny v. State*, 960 So.2d 533 (Miss.Ct.App. 2006); *Baker v. State*, 802 So.2d 77, 80 (Miss. 2001).

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<sup>1</sup>Functionally it makes no difference as to whether Singleton was sentenced to life imprisonment with or without parole as he would not have been eligible for parole even if sentenced to life imprisonment with parole. See Miss. Code Ann. § 47-7-3.

## **2. The Appellant Was Denied His Right to Confrontation.**

During Singleton's trial, the State on several occasions elicited information regarding Doris Vann's confession. Specifically, the State elicited testimony that Vann's confession corroborated Singleton's statement. Vann died before trial, and Singleton did not have a prior opportunity to cross-examine Vann regarding her confession, thereby violating his right to confrontation.

The Sixth Amendment to the United States Constitution and Article III, section 26 of the Mississippi Constitution guarantee the right of any person accused of a crime to be confronted with the witnesses against him or her. This right to confrontation applies to testimony in court, as well as statements made out of court. *Crawford v. Washington*, 541 U.S. 36, 50-51 (2004). Furthermore, the right to confrontation is deemed a fundamental right which cannot be waived for the lack of an objection. *Hobgood v. State*, 926 So.2d 847, 852 (Miss. 2006). Moreover, "Guarantees secured by the confrontation clause exist separate and apart from the hearsay rules of evidence." *Balfour v. State*, 598 So.2d 731, 750 (Miss. 1992).

As previously noted, the right to cross-examine is guaranteed by both the United States and the Mississippi constitutions. U.S. Const. amend. VI; Miss. Const. art. 3, § 26. In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held that "the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." *Crawford v. Washington*, 541 at 68-69. The *Crawford* Court went on to say, "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Crawford v. Washington*, 541 U.S. at 68-9 (footnote omitted).

In *Clark v. State*, the Mississippi Supreme Court observed:

Eight years after *Bruton* was decided, this Court announced the following procedural rule:



[I]n such cases, the prosecution should not offer, and the trial judge should not admit, in evidence, incriminating statements of a co-defendant (implicating the defendant) during the state's case-in-chief, since it could not be known whether the co-defendant would testify after the state rested.

*Brown v. State*, 340 So.2d 718, 721 (Miss.1976).

*Clark v. State*, 891 So.2d 136, 140 (Miss. 2004).

Indeed, *Clark* is almost directly on point. There, the Mississippi Supreme Court found, “Similarly, Clark's accomplice, Barnes, unquestionably gave a testimonial statement to Officer Rusty Keys regarding the armed robbery of the Amoco. Although Barnes initially took the stand at trial, he promptly informed the trial court that he would not testify. After deliberation by the trial court, Officer Keys was allowed to read Barnes's statement to the jury in spite of Clark's objection.” *Clark v. State*, 891 So.2d at 140. The Court went on to hold, that “Consequently, Clark was not afforded an opportunity to cross-examine Barnes. This is the very kind of violation that *Crawford* seeks to abolish. Therefore, the trial court erred in admitting Barnes' testimonial statement where and [sic] Clark lacked an opportunity for cross-examination of Barnes.” *Id.*

Here, the trial court did not allow Vann's confession into evidence. However, the trial court did allow the State to compare Vann's confession to Singleton's statement on several occasions and to elicit evidence as to whether *vel non* they were consistent with one another. (Tr. 141; 150; 205-06). Critically, one of the State's witnesses, Sheriff Todd Kemp, was allowed to testify over defense counsel's objection that Singleton's statement was corroborated by Vann's confession. (Tr. 141; 205-06). The following exchange took place:

Q. [W]hen you and Sheriff Lolley and Doris Vann went to – back to the crime scene and then took your trip where she was directing you to go to this place and go to that place and the items were found, how did that – that route compare to the route that described in Mr. Singleton's

statement?”

A. Pretty much to a T.

Q. Okay. And as a whole, the statement that Doris Vann gave and the statement that Mr. Singleton gave, were they – did they appear consistent to you?

(Tr. 141). Defense counsel objected before the witness could answer, but it was overruled by the trial court.

A. Yes, sir, it was.

(Tr. 142).

A few moments later, the following exchange took place:

Q. When you went back to interview him on the 28<sup>th</sup>; what, if anything, did you tell him about what had happened since the last time you had talked that would have made him give this statement?

A. I told him that I had spoken with Doris Vann and she had told me what we believed –

MR. STEPHENSON: – Judge

A. – at that point to be the truth.

MR. STEPHENSON: – I object to – I know what he’s getting at here; but, you know, once again, he’s getting into what Doris Vann said. And it’s – they’re going to argue that, you know, it’s consistent and all this kind of stuff, and it’s confrontation and hearsay.

MR. ANGERO: Judge, he didn’t say that.

THE COURT: Well, the objection is overruled. I think he can tell about what was different from prior statements, and he confronted him with a new statement from the alleged co-defendant. Is that what happened?

A. Yes, Sir, that’s correct, Judge.

(Tr. 149).

At the time the jury heard the above testimony, Sheriff Kemp had already testified that Doris Vann had agreed to cooperate with law enforcement when she gave her confession. (Tr. 134). Thus, once the jury heard that Vann cooperated with law enforcement and that her confession corroborated Singleton's statement, the jury could not help but know that Vann implicated Singleton in her confession. Vann died before trial, and Singleton did not have a prior opportunity to cross-examine Vann regarding her confession. Therefore, Singleton's right to confront Vann regarding her confession was violated, and the Court should reverse and remand for a new trial.

Undoubtedly, the State will argue that *Richardson v. Marsh*, 481 U.S. 200 (1987) is applicable here. The Mississippi Court of Appeals discussed *Richardson* in *Broomfield v. State*, 878 So.2d 207, 217 (Miss.Ct.App. 2004):

In *Richardson*, the co-defendant's testimony was not incriminating on its face, and became so only when linked with evidence introduced later at trial. The United States Supreme Court held "that the confrontation clause is not violated by the admission of a nontestifying co-defendant's confession **with a proper limiting instruction when ... the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence.**" *Id.* at 211, 107 S.Ct. 1702.

*Broomfield v. State*, 878 So.2d 207, 217 (Miss.Ct.App. 2004)(quoting *Richardson v. Marsh*, 481 U.S. 200, 207 (1987)(emphasis added)).

*Richardson*, however, is distinguishable from the present case. As can be seen, *Richardson* requires that any reference to the defendant's name and existence be redacted. In the present case not only was Singleton's name and existence was not deleted from the information conveyed to the jury from Vann's confession as required by *Richardson*, but the State intentionally sought to elicit information comparing Vann's confession to Singleton's statement. Furthermore, *Richardson* requires the trial court to give a proper limiting instruction to the jury regarding the co-defendant's

confession. No limiting instruction or any kind of admonition was given to the jury regarding the use of Vann's confession. Accordingly, *Richardson* is not applicable to the case *sub judice*.

### CONCLUSION

As shown above, the Appellant in this case, Shawn Michael Singleton was denied his constitutional right to confront his accuser, Doris Vann. Accordingly he prays that the Court will reverse his conviction and remand to the Circuit Court of Clark County for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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## CERTIFICATE OF SERVICE

I, Glenn S. Swartzfager, Counsel for Shawn Michael Singleton, 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 **BRIEF OF THE APPELLANT** to the following:

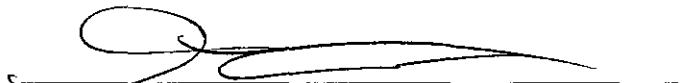
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:

This the 28<sup>th</sup> day of November, 2007.



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