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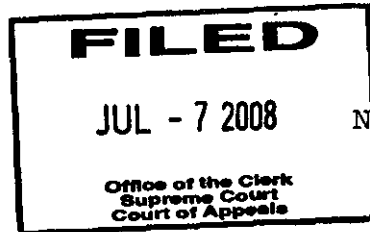
IN THE SUPREME COURT OF MISSISSIPPI

CHANCELLOR CHRISTMAS

APPELLANT

VS.

STATE OF MISSISSIPPI



NO. 2007-KA-1450 - SCT

APPELLEE

APPEAL FROM
THE CIRCUIT COURT OF THE
SECOND JUDICIAL DISTRICT OF HINDS COUNTY

REPLY BRIEF FOR APPELLANT

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STATEMENT OF ISSUES

ISSUE TWO

THE TRIAL COURT ERRED IN NOT ALLOWING CHRISTMAS TO QUESTION INVESTIGATOR REEVES CONCERNING CHRISTMAS'S NON-PARTICIPATION IN THE ALLEGED CRIMES.

ISSUE THREE

THE TRIAL COURT ERRED IN ALLOWING IMPROPER REDIRECT BY THE STATE.

ISSUE FOUR

THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT CHRISTMAS'S CONVICTION OF HOUSE BURGLARY.

ISSUE FIVE

THE TRIAL COURT ERRED BY DENYING CHRISTMAS'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND HIS PREEMPTORY INSTRUCTION CONCERNING COUNTS I AND II.

ARGUMENT OF ISSUES

ISSUE TWO

THE TRIAL COURT ERRED IN NOT ALLOWING CHRISTMAS TO QUESTION INVESTIGATOR REEVES CONCERNING CHRISTMAS'S NON-PARTICIPATION IN THE ALLEGED CRIMES.

The State essentially argues that had Investigator Reeves' response been, "No, Christmas did not admit participation, "that was harmless error, because the jury was instructed that "mere presence" would not have made Christmas guilty of the alleged crime. That argument is flawed, because Christmas was denied the opportunity to have Investigator Reeves say that Christmas did not admit participation. Had Investigator Reeves been permitted to answer the question, and had his answer been that Christmas did not admit participation, the State's argument would have merit.

Further, as argued in the Brief for Appellant, if Reeves' answer had been simply "No," there would not have been any hearsay. However, even if the question is deemed to call for a hearsay response, Christmas was under no duty to offer a proffer. In Bishop v. State, 755 So. 2d 1269, 1272 (Miss. App. 2000) 1272, this Court said:

It is true that when "cross-examination on a material issue is restricted, the party complaining of it on appeal need not make a proffer for the record." Horne v. State, 487 So. 2d 213, 216 (Miss. 1986). This was said in reliance on the following authority:

[O]n cross-examination, the examining counsel does not necessarily know how the witness is going to respond, and so can make no reliable proof of what the testimony may have been.

Obviously, whether Christmas admitted participation in the alleged crime was material, and no proffer was required.

ISSUE THREE

THE TRIAL COURT ERRED IN ALLOWING IMPROPER REDIRECT BY THE STATE.

The State contends that the prosecution was allowed on re-direct to make further inquiry concerning Christmas' statements to Investigator Reeves. In other words, the State's contention is that it was permitted to question Investigator Reeves, because the "subject" of the re-direct examination was Christmas' statement. Christmas disagrees, because the "subject" was Christmas' running, not that he had made a statement. The critical issue was not the fact that Christmas made a statement, but that Reeves was permitted to say that Christmas ran. Presumably, Christmas would not have been permitted to conduct re-cross-examination concerning the subject of Christmas saying that he ran.

ISSUE FOUR

THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT CHRISTMAS'S CONVICTION OF HOUSE BURGLARY.

The State essentially admits that the prosecution failed to submit a jury instruction on "constructive breaking," and thus, Christmas could not be guilty of that. However, the State now says that Christmas was guilty of house burglary, because he gained entrance into the house by the use of force on Mrs. Sellers. However, Jury Instruction No. 11 said that for Christmas to be found guilty of house burglary the entry would have had to been gained by, "such as turning a knob or opening or pushing a door or window." (C.P. 33). In other words, the jury instruction narrowly

defined the means of entry, and because there was no evidence that Christmas used such means, he should not have been found guilty of house burglary.

ISSUE FIVE

THE TRIAL COURT ERRED BY DENYING CHRISTMAS'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND HIS PREEMPTORY INSTRUCTION CONCERNING COUNTS I AND II.

If, there was evidence that Christmas was present at the scene, the only evidence that Christmas participated, aided, abetted, assisted, or in any way acted in concert with others, was the testimony of Raymond Echols, an accomplice. As argued in the Brief for Appellant, Echols' testimony was substantially impeached in a number of material respects, and according to Jury Instruction No. 5, Christmas could not be found guilty based upon the "substantially impeached" testimony of Echols.

CONCLUSION

The evidence was insufficient to convict Christmas of either count of the indictment, and the conviction should be reversed and rendered. In the alternative, Christmas should be granted a new trial.

Respectfully submitted,

CHANCELLOR CHRISTMAS

by:


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ATTORNEY FOR CHANCELLOR CHRISTMAS

CERTIFICATE OF SERVICE

I, Donald W. Boykin, hereby certify that I have this day mailed by United States Mail or hand delivered, a true and correct copy of the Reply Brief for Appellant to:

- a. La Donna C. Holland
Special Assistant Attorney General
- b. Hon. Bobby B. Delaughter, Circuit Judge; and
- c. Hon. Robert Shuler Smith, District Attorney.

This the 7th day of July, 2008.



DONALD W. BOYKIN