IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TIMOTHY B. WILLIAMSON — APPELLANT

VS. — NO. 2007-KA-1719-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

I. THE TRIAL COURT PROPERLY FOLLOWED THE PROCEDURE OUTLINED IN UCCCR 9.04(I).

II. WILLIAMSON WAS NOT PREJUDICED DURING PLEA NEGOTIATIONS.

STATEMENT OF FACTS

On April 12, 2003, Brian Canton drove to The Dock in Ridgeland where he was scheduled to work an 8 p.m. shift. T. 71. After pulling in to the parking lot, Canton walked around to the passenger side of his truck to retrieve a backpack and cell phone. T. 73. At that time heard Timothy Williamson yell at him because Williamson thought Canton was meddling with his truck T. 73, 350. Williamson then punched Canton in the face at least once, and Canton fell to the ground. T. 75, 207, 308, 351. While Canton was on the ground in a defensive position, Williamson continued pummeling him. T. 75, 207. As patrons, including an off duty highway patrol officer, from a nearby restaurant began to approach the scene, Williamson fled. T. 209, 281.

As a result of the beating, Canton underwent three surgeries to repair his broken nose, which

had shifted and caved in. T. 85-86, 96. The collapse of his nose restricted him from breathing out of one nostril at all, while the other nostril had only 15% airway. T. 94. He also suffered fractures in his cheekbone. T. 94. Canton's surgeon testified that his injuries were serious and that but for the surgeries he would have been permanently disfigured. T. 97.

Williamson was ultimately convicted by a Madison County Circuit Court jury of aggravated assault and sentenced to twenty years in the custody of the Mississippi Department of Corrections with twelve years to serve.

SUMMARY OF ARGUMENT

On appeal, Williamson argues that his sentence and conviction should be reversed because the State failed to comply with UCCCR 9.04. However, the State admitted this much at trial. The real question is whether the trial court properly adhered to UCCCR 9.04(I), which outlines the procedure the trial court must follow when a discovery violation has occurred and the violating party wishes to have the nondisclosed evidence admitted at trial. In the instance case, the trial court did follow the proper procedure before admitting the testimony in question. As the trial court did not abuse its discretion in admitting the testimony, Williamson's conviction and sentence must be affirmed.

ARGUMENT

I. THE TRIAL COURT PROPERLY FOLLOWED THE PROCEDURE OUTLINED IN UCCCR 9.04(I).

The State discovered on the day of trial that Captain James McGraw had witnessed the beating. T. 146. As McGraw's name had not been furnished during discovery, defense counsel moved for a continuance. T. 149. The trial court then recessed for the day so that McGraw could be made available to defense counsel for interview. T. 149-51. The next day, after hearing argument from both sides, the trial court ruled that McGraw's testimony was admissible.

In his first assignment of error, Williamson does nothing more than argue that the State committed a discovery violation by not divulging McGraw's name and proposed testimony prior to trial. This fact, however, is not in dispute as the State admitted such at trial. T. 183. Accordingly, the real issue on appeal is whether the trial court properly complied with UCCCR 9.04(I). The State submits that the trial court adhered to UCCCR 9.04(I) and properly admitted McGraw's testimony. Uniform County and Circuit Court Rule 9.04(I) states in pertinent part,

> If during the course of trial, the prosecution attempts to introduce evidence which has not been timely disclosed to the defense as required by these rules, and the defense objects to the introduction for that reason, the court shall act as follows:
>
> 1. Grant the defense a reasonable opportunity to interview the newly discovered witness, to examine the newly produced documents, photographs or other evidence; and
>
> 2. If, after such opportunity, the defense claims unfair surprise or undue prejudice and seeks a continuance or mistrial, the court shall, in the interest of justice and absent unusual circumstances, exclude the evidence or **grant a continuance for a period of time reasonably necessary** for the defense to meet the non-disclosed evidence or grant a mistrial.
>
> 3. The court shall not be required to grant either a continuance or mistrial for such a discovery violation if the prosecution withdraws its efforts to introduce such evidence.

UCCCR 9.04(I) (emphasis added).

The supreme court has held that in some instances where a defendant is entitled to a continuance due to a discovery violation, "postponement of a day or two, or in some cases even an hour or two, will suffice." *Adams v. State*, 772 So.2d 1010, 1013 (¶11) (Miss. 2000). Recently in *West v. State*, this Court found that twenty-five minutes was a reasonable amount of time for defense counsel to review undiscovered evidence which the State produced on the day of trial. 969 So.2d 147, 150 (¶13) (Miss. Ct. App. 2007). In the case *sub judice*, defense counsel had much longer than twenty-five minutes to review the recently discovered evidence. The trial court recessed early for the day so that defense counsel could interview McGraw, giving defense counsel overnight to respond. As such, the trial court properly followed the mandate of UCCCR 9.04(I), and the court's decision should be affirmed.

Alternatively, if this honorable Court finds that the trial court erred in its application of UCCCR 9.04(I), the State submits that any such error would be harmless. "Failure to follow Rule 9.04(I) does not inexorably require reversal." *Ross v. State*, 954 So.2d 968, 1000 (¶67) (Miss.

2007). See also, *Isom v. State*, 928 So.2d 840, 845-46 (¶15)(Miss. 2006); *Payton v. State*, 897 So.2d 921, 942 (¶67) (Miss. 2003). Canton, Williamson, and Williamson's own witnesses testified that Williamson did in fact punch Canton in the face at least once. Dr. Canton testified that as a result of the punch or punches, Canton received serious bodily harm and would have been permanently disfigured but for the surgeries he underwent. T. 97. McGraw's testimony added nothing new. Although he and Canton recalled that Williamson hit Canton more than once, whereas Williamson and his witnesses testified that Williamson hit Canton only once, nothing about McGraw's testimony altered Williamson's defense. As such, Williamson suffered no prejudice from the admission of McGraw's testimony.

II. WILLIAMSON WAS NOT PREJUDICED DURING PLEA NEGOTIATIONS.

Williamson's second argument implies that had he known of McGraw's testimony, he would have taken the plea offer. However, as previously stated, McGraw's testimony added nothing new. Williamson knew going into plea negotiations that if he went to trial the jury was going to be presented with conflicting evidence regarding whether Canton's serious bodily injury was caused by one blow or more than one blow.

Williamson cites to *Morris v. State*, 436 So.2d 1381, 1386 (Miss. 1983) to support his argument, but *Morris* is easily distinguishable from the case sub judice. In *Morris*, defense counsel put forth an "it wasn't me" defense at trial. *Id.* at 1385-86. The State then presented a statement which had not been produced during discovery in which the defendant admitted to the crime. *Morris* was reversed based on the discovery violation, and the court noted in dicta that Morris had also been prejudiced during plea negotiation due to the nondisclosure of the statement. The case *sub judice* is a far cry from *Morris*, because McGraw's testimony simply duplicated Canton's testimony and that of Williamson and his cronies except as to the number of blows.

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Williamson's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 31st day of March, 2008.

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