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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TIMOTHY B. WILLIAMSON

APPELLANT

VS

CASE NO. 2007-KA-01719-COA

STATE OF MISSISSIPPI

APPELLEE

FILED

FEB 21 2008

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SUPREME COURT
COURT OF APPEALS

**APPEAL FROM CIRCUIT COURT
OF MADISON 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 listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or refusal.

Timothy B. Williamson, Defendant.

Jerry Campbell, Attorney for Defendant on Appeal.

Jerry Campbell and Jacob M. Ritchey, Attorneys for Defendant at Trial.

Thomas L. Kesler, Esq. and Armstrong Walters, Esq. Assistant District Attorneys
for the Twentieth Circuit Court District.

Jim Hood, Attorney General for the State of Mississippi



Jerry Campbell
Attorney of Record for
Timothy B. Williamson

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STATEMENT OF THE ISSUES

1. THE DEFENDANT WAS UNFAIRLY SURPRISED AND UNDULY PREJUDICED BY THE STATE'S FAILURE TO DISCLOSE THE NAME OF A WITNESS, JAMES BOYD MCGRAW, WHO WAS OFFERED BY THE PROSECUTION AT TRIAL.
2. BY THE STATE'S FAILURE TO DISCLOSE THE NAME OF A WITNESS, JAMES BOYD MCGRAW, THE DEFENDANT WAS SUBSTANTIALLY PREJUDICED IN HIS PLEA BARGAIN NEGOTIATIONS.

STATEMENT OF THE CASE

Timothy B. Williamson comes before the Court to appeal his conviction of aggravated assault rendered in the Circuit Court of Madison County, Mississippi on June 29, 2007. As a result of this conviction he was sentenced to a term of twenty years and after serving twelve years he was to be released from custody with five years post release supervision. (CP 63-64; RE 11)

Timothy B. Williamson was indicted for the aforementioned crime of aggravated assault on June 20, 2003. (CP 5-6; RE18)

On March 17, 2004, the Public Defender team was assigned to represent Timothy B. Williamson (CP-12)

On June 3, 2004, a Motion for Discovery was filed by Walter E. Wood, Esq., on behalf of Timothy B. Williamson. (CP16-17; RE 20)

On June 3, 2004, a discovery response was made by the State. (CP-15; RE 23) This discovery response did not include the name of James Boyd McGraw whose testimony was offered by the State. (T 182 -183) James Boyd McGraw at the time of the alleged aggravated assault was a highway patrolman who witnessed the alleged assault. (T-183,207) Neither his testimony nor his name was offered until one day after the trial started. (T-167)

On September 30, 2004 the State offered to Timothy Williamson to make the following recommendation to a guilty plea: five years in custody with release after two years. This offer was withdrawn after October 4, 2004. (State's Exhibit 7; RE 24-25)

This trial of this cause commenced on June 28, 2007. (T-1)

During the afternoon of June 28, 2007, the State offered the testimony of James Boyd McGraw without ever stating he would be a witness in response to discovery. The State further admitted, by the eliciting of this testimony, that Uniform Circuit and County Court Rule 9.04 has been violated. (T-183)

The Trial Court rejected a motion for continuance by the defendant. (T-182)

The defendant was found guilty of aggravated assault on June 29, 2007.

STATEMENT OF THE FACTS

Timothy Brian Williamson at the time of alleged crime was 33 years of age and a resident of Moselle, Mississippi. (T326)

On April 12, 2003, he was fishing at the Ross Barnett Reservoir with some of his friends. Around 5:00 p.m. he and his friends went to eat at the Dock, a restaurant in Madison County, Mississippi. (T341)

When he left the Dock he thought someone was stealing tools from the back of his truck. (T344) He immediately ran to his truck and confronted the alleged victim, being Brain Canton, about his (Timothy Williamson's) suspicion. (T350) Timothy B. Williamson testified he hit Canton one time. (T354)

Brain Canton testified he was hit by Timothy B. Williamson at least once and possibly two or three more times. (T75)

Dr. Adair Blackledge testified the injury to Brian Canton's nose was serious. (T96-97)

Assistant District Attorney Tom Kesler announced to the Court on June 18, 2007, after the trial had commenced, that he had just been informed that an off-duty highway patrolman had witnesses the whole incident. He further stated that the testimony to be offered by the off-duty highway patrolman is "quite damaging to the defendant" (emphasis added). (T147)

James Boyd McGraw, the off-duty highway patrolman, testified he never saw the victim Brain Canton do any aggressive action towards Timothy B. Williamson. He further testified that he saw Timothy B. Williamson strike Brain Canton in the face

repeatedly. (T208) This writer emphasizes the testimony of James Boyd McGraw was never divulged before trial nor during any plea bargain negotiations.

David Wellborn testified he could not see the altercation between Canton and Williamson but stated “you could hear gravel being kicked around and everything else.” (T249)

Lindsay Wellborn testified she did not see the altercation but immediately after saw Williamson try to help Canton to his feet. (T260)

William Mack Kitchens testified that Williamson only hit Canton once. (T308)

The only witness who testified Williamson hit Canton more than once other than Canton was James Boyd McGraw.

SUMMARY OF THE ARGUMENT

Timothy Williamson was convicted of aggravated assault basically on the testimony of James Boyd McGraw. The only witnesses to the number of blows delivered by Timothy Williamson were McGraw, the victim Brian Canton, William Mack Kitchens, and Timothy Williamson. Brian Canton testified that he thought he was hit probably two or three times. Timothy Williamson testified he hit Brian Canton one time. William Mack Kitchens testified that Timothy Williamson hit Brian Canton one time. The only witness not involved in the altercation who testified that Timothy Williamson hit Brian Canton more than one time was James Boyd McGraw.

McGraw's name was never offered by the prosecution before trial as a witness nor was any statement provided before trial. His statement was critical to the conviction of Timothy B. Williamson.

The Assistant District Attorney said that a discovery violation had occurred. He further said that the testimony to be offered by the witness James Boyd McGraw was very damaging to the defendant.

Plea bargain offers were made by the State to Timothy B. Williamson. He and his attorney's consideration of said offers were without the benefit of knowing that James Boyd McGraw's testimony would be offered at trial. Further all plea bargain offers were withdrawn before trial. No plea bargain offers were made where Timothy B. Williamson had knowledge of the damaging testimony of James Boyd McGraw.

This case should be remanded to offer Timothy B. Williamson the opportunity to consider any plea bargain offer with full knowledge of the testimony against him and to give his attorney an opportunity to investigate the statement of James Boyd McGraw and

the credibility of James Boyd McGraw. Further, if a trial is required, Timothy B. Williamson should be able to prepare for it with full knowledge of all witnesses to be presented.

AGRUMENT

1. THE DEFENDANT WAS UNFAIRLY SURPRISED AND UNDULY PREJUDICED BY THE STATE'S FAILURE TO DISCLOSE THE NAME OF A WITNESS, JAMES BOYD MCGRAW, WHO WAS OFFERED BY THE PROSECUTION AT TRIAL.

Timothy B. Williamson was indicted for aggravated assault for an altercation with Brian Canton. (CP5; RE 18) A discovery response was made by the State on June 3, 2004. (CP15; RE 23) This discovery response did not name James Boyd McGraw as a witness. (T147, 183) After the trial commenced the State offered James Boyd McGraw as a witness. The defendant objected and the trial Court made McGraw available for interview purposes. (T148) After interviewing McGraw, his defense attorneys moved for a continuance which was denied. (T182) The defense pursuant to Uniform Circuit and County Court Rule 9.04 I 2 claimed unfair surprise or undue prejudice.

There is no question the defendant suffered unfair surprise because the Assistant District Attorney said he was surprised:

“But I had no knowledge of this until about 20 minutes ago ...I have never seen it myself, as I stated. I didn't have any idea it existed.”
(T147)

No question exists the defendant suffered undue prejudice. The Assistant District Attorney stated:

“... and your Honor, needless to say, it, (referring to the testimony of James Boyd McGraw) is quite damaging to the defendant. (T147)

An offer was made for a plea bargain to Timothy Williamson on September 30, 2004. (State's Exhibit 7) This offer was considered by the defendant with a grievous discovery violation existing, i.e., the failure to disclose the name of James Boyd McGraw and his testimony. At the time of trial no plea offer existed. (T 471)

URCCC 9.04 A. reads as follows:

Subject to the exceptions of subsection “B”, below, the prosecution must disclose to each defendant or to defendant’s attorney, and permit the defendant or defendant’s attorney to inspect, copy, test, and photograph upon written request and without the necessity of court order the following which is in the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the persecution:

1. Names and addresses of all witnesses in chief proposed to be offered by the prosecution at trial, together with a copy of the contents of any statement, written, recorded or otherwise preserved of each such witness and the substance of any oral statement made by any such witness;

URCCC 9.04 I governs the procedure where a discovery violation exists.

Once the defendant became aware of James Boyd McGraw and expected his testimony and after interviewing James Boyd McGraw, the defendant moved for a continuance. This was denied. (T182)

In *Box v. State*, 437 So. 2d 19, 25 (Miss. 1983) it is stated:

“Finally, the general guidelines suggested above would realistically and effectively tell the state its obligation to conform to discovery orders must be taken seriously. The state ought not be heard to say “we only discovered this evidence last night”, or “the defendant should have known about this witness all along anyway” or, “ this evidence is merely cumulative or corroborative”, or the like.”

This directly addresses the Trial Judge attempts to fault the defense attorneys for not knowing of the highway patrolman’s testimony. (T171)

The only witness besides the victim who testified that Timothy B. Williamson hit Brian Canton more than once is James Boyd McGraw. To not divulge his name and his testimony is a grievous discovery violation that can only be corrected by a continuance.

2. BY THE STATE'S FAILURE TO DISCLOSE THE NAME OF A WITNESS, JAMES BOYD MCGRAW, THE DEFENDANT WAS SUBSTANTIALLY PREJUDICED IN HIS PLEA BARGAIN NEGOTIATIONS.

The defendant was basically offered a two year sentence well before trial. At the time of his rejection of this plea, he was completely unaware of the testimony of James Boyd McGraw. When the trial commenced the offer had been withdrawn. (T471)

The ramifications of this discovery violation is discussed in *Morris v. State*, 436 So. 2d 1381, 1386 (Miss. 1983) where it is stated:

“The point to be emphasized is that the Defendant is entitled to enter plea negotiations with all the cards on the table. He is entitled to the opportunity to evaluate his chances at trial with full knowledge of the contents of a statement such as that which we are here concerned. Rule 4.06 gives him this opportunity. The State had the statement. It is substantially incriminating. It should have been produced, but was not. One does not have to have tried many criminal cases to know that such was substantially prejudicial to the Defendant on the question of whether or not he would plea bargain.”

Morris directly voices the thoughts of the Mississippi Supreme Court to stop and prevent what happened to Timothy B. Williamson. Lawyers cannot prepare for cases and truly represent their clients without full knowledge of all expected testimony.

CONCLUSION

The defendant is clearly entitled to a new trial with complete and accurate discovery provided before this trial.

CERTIFICATE OF SERVICE

I certify that I have this day hand delivered a true and correct copy of the foregoing document to the Honorable William E. Chapman, III, Circuit Court Judge for the Twentieth Judicial District, Michael Guest, Esq., District Attorney for Madison County, and Jim Hood, Attorney General for the State of Mississippi, Jackson, Mississippi.

So certified this the 21st day of February, 2008.


JERRY CAMPBELL