IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2008-KA-00313-COA

CHRISTOPHER KEON DRUMMOND APPELLANT

V.

STATE OF MISSISSIPPI APPELLEE

REPLY BRIEF FOR APPELLANT

BY: Christopher Drummond

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V.

STATE OF MISSISSIPPI **APPELLEE**

APPELLANT'S REPLY BRIEF

The State of Mississippi has filed its brief in this case and has failed to refute Appellant's claims that:

Whether verdict of Jury was against overwhelming weight of evidence

Appellant would again assert that the verdict of the jury was against the overwhelming weight of evidence and contrary to law, and the court should have granted Appellant's Motion to Dismiss or for Direct Verdict. Appellant Drummond defense at trial was actual innocence. Appellant Drummond moved for a directed verdict at the end of State presentation of evidence and at the close of State case due to the fact that the State failed to prove Appellant Drummond was guilty of the offense charged. The state failed to present adequate proof to allow the case to proceed to a jury. The brief filed by Appellee in this appeal did not refute this claim and demonstrates that the motion should have been granted. At trial, the state only presented the testimony of the Doris Duckworth as conclusive testimony that Appellant committed the crime.

The victim did not identify Appellant and only knew Ms. Duckworth when Duckworth lured the victim from his home into the street to be shot.

This Court should reject the unsupported argument advanced by the Appellee in it's brief filed in reply to the brief of Appellant.

Ineffective Assistance of Counsel At Trial, in violation of the Sixth Amendment to the United States Constitution

Appellant should prevail on this claim since to prevail on an ineffective assistance of counsel claim the complaining party must satisfy the well-established two prong test. First the party must show that counsel's performance was objectively deficient. Then the party must show that, but for counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different. Gilliard v. State, 462 So.2d 710, 714 (Miss. 1985).

Drummond was clearly subjected to ineffective assistance of counsel. Leatherwood v. State, 473 So.2d 964, 969 (Miss. 1985) (explaining that the basic duties of criminal defense attorneys include the duty to advocate the defendant's case" remanding for reconsideration of claim of ineffectiveness where the Appellant alleged that his attorney did not know the relevant law. There is no way around this claim since the record filed in this appeal demonstrates that Drummond was not adequately represented at trial.

This Court should conclude that here counsel rendered ineffective assistance of counsel and that such ineffectiveness prejudices Appellant's conviction in such a way as to mandate a reversal of conviction as well as the sentence imposed. Defense counsel was charged with knowing the law and being familiar with the record and evidence

Whether trial court erred in allowing witness to testify to hearsay information. (Tr. 17)

Appellant would again reiterate that Moffett's testimony at trial demonstrate that he could not identify the person who shot him on the right of the shooting and could not identify that person at trial. However, the prosecution, not accepting Moffett's testimony attempted to impeach his own witness by the following actions.

Q. Okay. Do you recall being on the scene when you were shot and giving any kind of information to the policemen who first arrived there about who a possible suspect might be?

A. All I remember saying that I got shot.

Q. Do you recall giving any information about where the suspect might have lived?

MR. RISHEL: Your Honor, could we object to the leading questions.

THE COURT: Overruled.

BY MR. SCHMIDT:

Q. If you recall, Mr. Moffett. If you don't recall, that's okay.

A. No, I don't recall.

Q. You don't remember?

A. What was the question again, sir?

Q. I was asking you if you remember telling the policeman anything about where the person responsible for your shooting you had lived, where he stayed.

A. I think I said something about he stayed on Stewart Avenue I think.

Q. Did you know the person that shot you?

A. I've heard of his name, you know, but, no, I've never seen the boy before in my life.

Q. As far as at the time you got shot --

A. Did I know who did it?

Q. Yes, sir.

A. No, I couldn't tell.

Q. Today if you saw any faces, would you know who the person was?

A. Right now, sir, I couldn't even tell you, you know what I mean, to be honest with you, I couldn't tell you who it was, you know, ***because she said who shot me***. But I never seen the boy before in my life.[1]

Q. I want to ask if your answers just reflect what you know from your own observations and not what anybody else has told you. As of today, you don't know the actual person who shot you, do you?

A. No, sir.

Q. Okay. Do you recall looking at some photographs later on in the hospital? Excuse me, recall looking at some photographs and being asked if anybody in there was the person responsible?

A. Yeah, I recall that, but, you know.

Q. At that time could you find the person?

A. I couldn't. No. I was delirious. I couldn't. (Tr. 16018)

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[1] The trial court should not have allow the witness to testify to this hearsay testimony. The witness was actually telling the Jury what he had been told to say by Doris Duckworth.

While the defense attorney objected to the state attempting to impeach it's own witness, there was not an objection when the state attempted and elicited hearsay testimony from the witness and the witness stated in his testimony that he was only testifying to what she had told him. Such action clearly constitutes ineffective assistance of counsel when counsel allowed this hearsay testimony to come before the jury without the state having first put on the witness who actually gave Moffett the statements to present, Doris Duckworth or Doris Price.

On cross examination Moffett again testified that he did not know who shot him and that he was unaware of any black male living on Stewart Avenue where he had moved furniture. (Tr. 23) Defense counsel never attempted to impeach Moffett with his prior testimony that he had testified Doris told him what to tell the Police as to who shot him. (Tr. 23)

Appellant was never identified by the victim. This lack of evidence is crucial to the state's case since the only person who did identify Appellant was an accused co-defendant who actually had much to loose if Appellant was not convicted.

This Court should reject the state's argument and find that the testimony should have been excluded as hearsay.

ISSUE FOUR

Whether Appellant was denied his constitution and statutory right to speedy trial.

Appellant Drummond was arrested and charged with this offense on July 14, 2006 (Tr. 105) Appellant Drummond was indicted May 1, 2007.(cp. 6) Appellant Drummond waived arraignment on August 6, 2007. (cp. 8). Drummond trial began on December 12, 2007. (Tr. 1) Drummond trial in order to get certain witnesses in a position which would force them to testify for the state, i.e., Doris Duckworth, Melissa Darr. Both witnesses testified favorable to the state after having criminal matters hanging in the balance.

"Miss Code Ann. §99-17-1 provides: Unless good cause be shown, and a continuance duly granted by the court, all offense for which indictments are presented to the court shall be tried no later than (270) days after accused has been arraigned."

Appellant Drummond waived arraignment which actions triggered the running of the clock for statutory speedy trial purposes. Miss. Code Ann §99-17-1. In Perry v. State, 419 So.2d 194 (Miss. 1992), the court stated the constitutional right to a speedy trial, unlike the statutory right under §99-17-1, attaches at the time of a formal indictment or information, or when a person has been arrested. In short, the constitutional right to a speedy trial attaches when a person has been accused. Beavers v. State, 498 So.2d 788, 789-90 (Miss. 1986); Bailey v. State, 463 So.2d 1059, 1062 (Miss. 1985). Appellant Drummond's constitutional speedy trial right commenced on May 30, 2006, the date he was arrested. (Tr. 105)

Where a defendant's rights to a speedy trial has attached, the balancing test set out in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2181, 33L.Ed2d 101 (1972) must be applied to determine whether that right has been denied. The Baker court identified for factors which are to be considered in making such a determination:

(1) the length of delay;

(2) the reason for delay;

(3) Whether Appellant has asserted his right to a speedy trial; and

(4) Whether Appellant has been prejudiced by the delay.

No one of these factors is in itself, dispositive. Rather, they must be considered together, in light of all the circumstances. Baker, 407 U.S. at 533, 92 S.Ct. at 2193.

Appellant would refer to the analysis made in his initial brief in support of this claim. The state did not refute such analysis.

Appellant suffered cumulative error which caused him to be deprived of his constitutional right to a a fair trial violation of the 5th and 14th Amendments to the United States Constitution.

Appellant would again assert that even in the event this Honorable Court hold that each of the aforesaid claims raised, standing alone, does not constitute cause to grant relief, the cumulative effect of each acted to deprive Appellant Drummond of his constitutional right to a fair trial, as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article 3, Sections 14 and 26 of our Mississippi Constitution. Rainer v. State, 473 So.2d 172, 174 (Miss. 1985); Williams v. State, 445 So.2d 798, 814 (Miss. 1984).

CONCLUSION

Drummond would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights to due process

. Appellant would ask the Court to find that the trial court erred in summarily dismissing the motion and that the ruling should be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Christopher Drummond, Appellant pro se, have this date delivered a true and correct copy of the above and foregoing Appellant's Reply Brief, to:

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This, the 5th day of February, 2009

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