

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**ERIC LEWIS WILLIAMS**

**APPELLANT**

**VS.**

**NO. 2008-KA-0438-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Pike County, Mississippi, Honorable Michael M. Taylor, presiding. On March 27, 2007, a Pike County Grand Jury returned a four count indictment against Eric Lewis Williams. On February 23, 2008, a jury convicted Williams of Capital Murder, Aggravated Assault, and Conspiracy to Commit the Crime of Aggravated Assault. The jury acquitted him of Conspiracy to Commit Capital Murder. The court sentenced Williams to life without parole in the custody of the Department of Corrections for the capital murder, ten years for the aggravated assault and five years for the conspiracy, with all sentences running consecutively. After post trial motions, Williams appealed.

## FACTS

On January 27, 2007, Eric Lewis Williams and Alexander Hymes borrowed Janice Bond's car to go to the MS Food Mart on Highway 48 near Percy Quin State Park. (T 271, 296). Trish Minton, a store clerk, testified Hymes entered the store first and approached her at the counter inquiring about the hats. (T 297-298) Williams entered and went to the back of the store near the coolers. *Id.* Minton recognized Hymes from a Southwest Community College identification card that had been found in the store days before. *Id.* After Hymes confirmed he had lost his school identification card, Minton started to retrieve it. *Id.* Minton testified as she approached the counter, Williams put a gun to her head and demanded she give him the money. *Id.* When Minton opened the register, Williams fired the gun, Minton dropped to the floor, and Williams took all the money in the register. Hymes took his college identification card. *Id.* While still on the floor Williams held the gun to Minton's head and she begged him not to shoot her because she was pregnant. *Id.*

As Hymes and Williams were looking at store merchandise, James Joseph Serigny entered the store. *Id.* He glanced at Minton on the floor and the two men; then walked to the back of the store. T 298 . Williams followed him. *Id.* Minton testified she then heard a shot and Mr. Serigny's body hit the floor. *Id.* The two men exited the store and Minton called 911.

The store surveillance video, admitted into evidence through the testimony of Davis Haygood, chief detective with the Pike County Sheriff's Department, corroborated Minton's account of events. (Ex. 28). In the surveillance video you see Hymes and Williams exit their vehicle, and then enter the store. When Serigny enters the store, Williams is seen walking up behind the victim and brutally shooting Serigny in the forehead. Next you see Williams running toward the door and the two exit the store. Janice Bond (T 273), defendant's friend and owner of the car, and Davis Haygood (T 240) both testified they viewed the video and identified Hymes and Williams.

Davis Haygood also testified as to his investigation and how it lead to Alexander Hymes and eventually Williams. After Hymes' arrest and the search of his residence, Hymes gave a statement implicating Williams in the murder and assault. A search of Hymes' residence turned up his college identification card, and a white hat stolen during the robbery. (Ex 22-25, 38). Upon a valid search of Williams' residence, officers found a black cap taken during the robbery. (Ex 26, 27, 37; T 261). Williams was subsequently arrested and gave a statement admitting to the crime. (Ex 41; T 262; 267-68).

Raymond Price, defendant's cousin by marriage, lived in close proximity to defendant. Price testified to the theft of his .40 caliber Smith & Wesson gun. Price testified that on January 5, 2007, the Sheriff's Department responded to a "shots fired" call from his neighbor. *Id.* Price, worried about his guns, returned home to find his house burglarized and his guns stolen. Price testified that Williams knew he had the guns but did not know if Williams knew where the guns were located in his house. (T278-81).

Steve Byrd, a forensic ballistic analyst from the State Crime Laboratory, testified that he matched a . 40 caliber bullet recovered from Mr. Serigny's brain (Ex 33) to shell casings recovered from the crime scene (Ex 29-32; T279); also to shell casings fired from Raymond Price's gun (Ex 34, 35; T279); and to shell casings recovered by the Pike County Sheriff's Department on a "shots fired call" near Price's house.(Ex 35; T 279). Byrd testified all the cartridge cases were fired from the same gun. (T290).

Dr. Steve Hayne, the State's forensic pathologist who performed the autopsy on Mr. Serigny, was the final witness to testify. Hayne testified as to the findings of the autopsy, such as the entry wound, tattooing of powder at the entrance wound, damage to the brain and skull, cause of death, and his retrieval of the fatal bullet.(T 304-06). The trial court admitted two autopsy

photographs to assist the jury in understanding Dr. Hayne's testimony. (Ex 46, 47; T 311-13).

The jury convicted Williams of the capital murder of James Serigny, the aggravated assault of Trish Minton, and the conspiracy to commit the crime of aggravated assault. The jury acquitted Williams of conspiracy to commit capital murder. Feeling aggrieved, Williams appealed alleging evidentiary error and ineffective assistance of counsel. Williams is requesting this Court to reverse the trial judge on evidentiary rulings and order a new trial. Williams is also requesting that in the event this Court should not find ineffective assistance of counsel, his appeal on that issue be dismissed without prejudice in order to supplement the record and preserve the issue for post conviction relief.

## **ISSUES**

- I. WHETHER THE TRIAL JUDGE ERRED IN ADMITTING AUTOPSY PHOTOGRAPHS INTO EVIDENCE?**
- II. WHETHER WILLIAMS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL?**



## **SUMMARY OF THE ARGUMENT**

Williams was not denied effective assistance of counsel. Evidence of Raymond Price's stolen Smith and Wesson .40 caliber gun and the matching shell casings was properly admitted by the trial judge pursuant to M.R.E. 403. The evidence at issue was relevant because it placed the murder weapon in William's possession. Pursuant to M.R.E. 404, the probative value of the evidence far outweighed the danger of any prejudicial effect on the jury. Appellee would submit that based upon the trial record, there is a lack of evidence for holding that Williams was somehow "prejudiced" because his trial counsel failed to object to the subject evidence.

In order to prove a claim of ineffective assistance of counsel, a defendant must show (1) that his defense counsel's performance was deficient, and (2) that his counsel's deficient performance was prejudicial to his defense. See *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674, 693-95 (1984). There was an overwhelming amount of evidence of William's guilt in the record so it is unlikely that Williams' would have been acquitted of the charges even if the stolen gun evidence had not been admitted.

The autopsy photographs were properly admitted into evidence. The State would submit that the trial court was correct in finding the photographs were more probative than prejudicial. The testimony of Dr. Steven Hayne shows that the two photographs were used, not only to show the entrance wound that resulted in the death of the deceased, but also to show that the barrel of the gun was close to the victim's head when he was shot and killed. This issue is also lacking in merit.

## ARGUMENT

### PROPOSITION I:

#### **THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING AUTOPSY PHOTOGRAPHS.**

In his first assignment of error, Williams contends that the trial judge erred in admitting autopsy photographs of the victim taken by Dr. Steve Hayne. Williams argues that the State presented the photographs to inflame and prejudice the jury against him. According to defense, the photographs were not probative because Dr. Hayne had already testified to the cause of death as well as to location of the victim's wound.

The State asserts that the trial judge did not abuse his discretion in admitting the photographs because the photographs were not gruesome, and as argued before the trial judge, they helped the jury understand the testimony of Dr. Hayne. Additionally, the State argues that the trial judge correctly held that the photographs were more probative than prejudicial.

Generally, the admission of autopsy photographs in evidence is left to the sound discretion of the trial judge. The trial judge's decision is upheld unless there has been an abuse of that discretion. See *Howard v. State*, 785 So.2d 297 (Miss.App.,2001) citing *Stringer v. Stringer*, 548 So.2d 125, 134 (Miss.1989). In *Howard* this court held autopsy photographs admissible, stating:

Dr. Hayne testified that he took the photographs of Gandy, and photographs are routinely taken when an autopsy is performed. Dr. Hayne explained that he believed the gunshot wound was fatal and further elaborated on how the photographs showed the bullet's entry and exit wound on Gandy, as well as tattooing on Gandy's eye. The tattooing was significant because if present it indicated that the firearm was shot at close range. The photographs assisted the jury in understanding Dr. Hayne's testimony, as well as confirming the information that was being provided by him. Additionally, the photographs of Gandy focused only on the gunshot wound and did not contain a lot of unnecessary blood or gore.

*Howard v. State*, at 302.

The post mortem photographs in the case *sub judice* are neither gruesome or inflammatory. The two photograph's of Mr. Serigny focused only on the gunshot wound in his forehead and did not contain a lot of unnecessary blood, brain matter or gore. The State would also contend that after viewing the shocking, cold-blooded, brutal murder of Mr. Serigny on the store surveillance video, the photographs are mild.

The record *sub judice* reveals that the two autopsy photographs taken of Mr. Serigny were admitted in evidence during Dr. Hayne's testimony. (Ex. 46, 47; T 308) Dr. Hayne testified that he took the photographs of the deceased during the postmortem examination *Id.* Hayne explained that the gunshot wound to the head was fatal and further elaborated on how the photographs showed the bullet's entry, as well as tattooing on Mr. Serigny's head. (T 308-13) . Dr. Hayne explained the tattooing was significant, because, if present, it indicated that the firearm was shot at close range to Mr. Serigny's head. The two photographs assisted the jury in understanding Dr. Hayne's testimony, as well as corroborating his testimony.

The trial judge examined the photographs and found them probative of the manner of death and the proximity of the weapon to Mr. Serigny's head when fired. (T 309). The State agrees with the trial judge and asserts this issue is without merit.

## PROPOSITION II.

### WILLIAMS WAS AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL.

In this second allegation of error, Williams claims he received ineffective assistance of counsel when his trial attorney failed to object to the evidence regarding Raymond Price's stolen gun. Williams argues the evidence is highly prejudicial and inadmissible under Rule 404(b) because it is introducing evidence of Williams prior bad acts and character. (Appellant's Brief 10).

Appellee submits that Rule 404(b) is inapplicable in the case *sub judice*. The evidence was not offered to show Williams' character, propensity for criminal conduct, or prior bad acts of breaking in Price's house. The evidence was offered to establish that the murder weapon was one-in-the-same gun as the weapon stolen from Price's house and that defendant knew the gun was in Price's house prior to it being stolen.

For Williams to be successful in his ineffective assistance claim, he must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064-65, 80 L. Ed. 2d 674, 693-95 (1984) and adopted by this Court in *Stringer v. State*, 454 So. 2d 468, 476-477 (Miss. 1984). Williams must prove: (1) that his counsel's performance was deficient, and (2) that this supposed deficient performance prejudiced his defense.

Williams bears the burden of proving that both prongs of *Strickland* have been met. *McQuarter v. State*, 574 So. 2d 685 (Miss. 1990). Williams fails the first prong of *Strickland*; the evidence is admissible and there is no need for defense to object to its admission. The evidence of the stolen gun is relevant and admissible under M.R.E. 402 and does not violate M.R.E. 403. The subject evidence establishes the gun used in the murder was the gun stolen from Price and ties Williams to the murder weapon. The probative value outweighs any prejudicial effect on the jury.

Finally, Williams must show that there is a reasonable probability that "but for" the errors

of his counsel, the result of his trial would have been different. *Nicolau v. State*, 612 So. 2d 1080, 1086 (Miss. 1992), *Ahmad v. State*, 603 So. 2d 843, 848 (Miss. 1992). The State contends that even if the subject evidence was inadmissible and his trial counsel's performance deficient for failing to object to its admission, Williams would have been convicted.

Even without the admission of Price's testimony and the shell casings tying the stolen gun to the murder weapon, the record reflects an overwhelming amount of evidence against Williams. The store surveillance video, the eye witness identification by the store clerk, the items recovered from the search of his house and his own admission of guilt were more than sufficient evidence to convict Williams. Williams fails both prongs of the *Strickland* test, therefore, this assignment of error totally fails.

### CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to deny Eric Williams' request for a new trial; and to affirm the jury's convictions of Capital Murder, Aggravated Assault and Conspiracy to Commit Aggravated Assault.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Lisa L. Blount, 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 15th day of October, 2008.

  
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