

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ERIC LEWIS WILLIAMS

APPELLANT

FILED

V.

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NO. 2008-KA-0438

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COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ERIC LEWIS WILLIAMS

APPELLANT

V.

NO. 2008-KA-0438

STATE OF MISSISSIPPI

APPELLEE

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 this court may evaluate possible disqualifications or recusal.

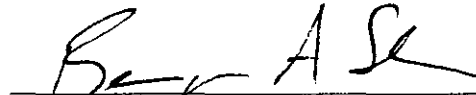
1. State of Mississippi
2. Eric Lewis Williams, Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable Michael M. Taylor, Circuit Court Judge

This the 15 day of July, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ERIC LEWIS WILLIAMS A/K/A E ERIC

APPELLANT

V.

NO. 2008-KA-00438-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO. 1

THE TRIAL COURT ERRED BY ALLOWING INTRODUCTION OF GRUESOME PHOTOGRAPHS THAT WERE UNNECESSARY AND PREJUDICIAL AGAINST WILLIAMS.

ISSUE NO. 2

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO IRRELEVANT AND PREJUDICIAL EVIDENCE OF OTHER CRIMES OR BAD ACTS.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Pike County, Mississippi, and a judgment of conviction for the crimes of Count I - Capital Murder, Count III - Aggravated Assault, and Count IV - Conspiracy to Commit Aggravated Assault. Williams was sentenced

to life without possibility of parole on Count I, ten (10) years on Count III, and five (5) years on Count IV with all counts running consecutively. Williams is in the custody of the Department of Corrections following a jury trial on January 22-23, 2008, Honorable Michael M. Taylor, presiding. Eric Lewis Williams is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On January 27, 2007, Eric Lewis Williams and Alexander Hymes borrowed Janice Bond's car to go to the store. Tr. 271. Bonds testified that Hymes asked Bonds if he could use her car. *Id.* She allowed Hymes to use her car. *Id.* She further stated that Hymes asked Williams to ride with him and Williams refused to go to the store with Hymes. *Id.* Hymes continued to pressure Williams, and he finally decided to go to the store with Hymes. *Id.* They drove to the MS Food Mart on Highway 48 near Percy Quin State Park. Tr. 296.

Trish Minton testified that Williams and Hymes came into the store. *Id.* When they entered the store, Hymes approached the counter and asked the clerk, Trish Minton, to show him the hats. Tr. 297. While Hymes was looking at the hats, Williams went to the back of the store near the coolers. *Id.* The clerk stated that she recognized Hymes from a Southwest Community College identification card that had been lost in the store days before. *Id.* After Hymes confirmed to Minton that he had indeed lost his school Id, Minton went to retrieve it for him. *Id.* As she approached the counter, Minton stated that the guy from the back of the store put a gun to her head and asked her to give him the money. *Id.* When she opened

the register, Williams allegedly fired the gun and Minton dropped to the floor. *Id.* Williams proceeded to take all the money from the register. *Id.*

While Minton sat on the floor, a small pickup truck entered the parking lot. Tr. 298. As Hymes and Williams began to head out the door, James Joseph Serigny gets out of his truck and walks into the store. *Id.* Minton testified that Serigny looked at her sitting on the floor and at the two young men before walking to the back of the store. *Id.*

Minton continued to testify that although she did not see Williams nor Hymes shoot Sergigny, she heard a shot and heard Serigny fall to the floor. *Id.* Minton also stated that Hymes was standing by the door waiting on Williams. She stated that they both exited the store and she called 9-1-1. *Id.*

Investigation into the armed robbery and murder lead police to Williams and Hymes. Williams was later charged and convicted of capital murder, aggravated assault and conspiracy to commit aggravated assault.

SUMMARY OF THE ARGUMENT

The trial court erred by allowing the introduction of gruesome autopsy photographs into evidence. The photographs served no probative purpose and were highly prejudicial.

Trial counsel was ineffective by not objecting to the irrelevant and prejudicial testimony of Raymond Price and Steve Byrd. Price testified that a gun was stolen from his house and that Williams knew about the gun. Tr. 281. Byrd stated that the ammunition used during the shooting at the case at hand was fired from the same gun as the ammunition found

at Price's house. Tr. 288-89. This was irrelevant and highly prejudicial. Hence, trial counsel was ineffective in not objecting to this evidence.

ARGUMENT

ISSUE NO. 1

THE TRIAL COURT ERRED BY ALLOWING INTRODUCTION OF GRUESOME PHOTOGRAPHS THAT WERE UNNECESSARY AND PREJUDICIAL AGAINST WILLIAMS.

The admissibility of crime-scene and autopsy photographs containing gruesome depictions of corpses or injuries to them must first be judged under the evidentiary rules proscribing relevancy and its limits. More specifically, a trial court must examine these type of photographs with an eye toward the balancing test of unfair prejudicial effect weighed against probative value required by Mississippi Rules of Evidence 402 and 403, even if the photographs are found to be relevant under Mississippi Rule of Evidence 401.

Williams objected to the graphic and inflammatory nature of the photographs introduced in State's Exhibit 46 and 47. Tr. 308. Exhibit 46 introduced during trial is an autopsy photograph of the gunshot wound to the victim's head. Exhibit 47, also in evidence, is a close-up autopsy photograph of the same gun shot wound to the victim's head. Both were introduced over objection as being unnecessary and more prejudicial than probative¹. *Id.* In *McFee v. State*, 511 So.2d 130, 135 (Miss. 1987), the Court reiterated that "photographs which are gruesome or inflammatory and lack an evidentiary purpose are always inadmissible."

¹When an objection was made to Exhibits 46 and 47 during the trial, the trial court overruled the objection. Tr. 310.

In *Welch v. State*, 566 So.2d 680, 681 (Miss. 1990), Welch, partly under duress, and two of his buddies beat Joe Ray Heath to death over a gambling argument and dumped Heath's body on the side of the road. Welch's two buddies pled guilty, Welch took his chances at trial and was convicted of murder. *Id* at 682.

The *Welch* court found several reversible errors, one of which was the introduction of autopsy photographs which were more gruesome and prejudicial than probative. The *Welch* court found fault with the photographs of the victim's "dissected cadaver." *Id* at 685.

The *Welch* court reiterated that the admissibility of photographs is at the trial court's discretion and there is no remedy on appeal without an abuse of that discretion. *Id*. One way a trial court abuses the discretion is to allow "[g]ruesome photos which have no evidentiary purpose or probative value except to inflame and arouse the emotion of the jury." *Id*.

The *Welch* court said the cadaver photographs had no probative value; because, they did not show "circumstances surrounding the death, the cruelty of the crime, the place of the wounds, or the extent of force or violence used, [and], were extremely unpleasant and used in such a way as to be overly prejudicial and inflammatory." *Id*.

In *Hewlett v. State*, 607 So.2d 1097, 1102 (Miss. 1992) the Court said, "[p]hotographs of a victim should not ordinarily be admitted into evidence where the killing is neither contradicted nor denied, and the *corpus delicti* and the identity of the deceased have been established." In the present case, the *corpus delicti* of the charges and identity of the deceased were clearly established and unchallenged. This is why it is obvious that the state's motive here was to merely inflame the jury.

In *McNeal v. State*, 551 So.2d 151, 159 (Miss. 1989), trial judges were instructed to carefully consider the circumstances surrounding the admission of photographs. The trial judge must specifically consider: (1) whether the proof is absolute or in doubt as to the identity of the guilty party, as well as, (2) whether the photographs are necessary evidence or simply a ploy on the part of the prosecutor to arouse the passion and prejudice of the jury.

When the state argued in *McNeal* that the gruesome photographs were needed to prove the *corpus delicti* of the crime, the Court said “we believe that the state could have shown the angle and entry of the bullet wound without the full-color, close-up view of the decomposed, maggot-infested skull.” *Id.* For the photographs to have “evidentiary value”, they must: “(1) aid in opening the circumstances of the killing; (2) describe the location of the body and the cause of death; (3) supplement or [clarify] witness testimony.” *Jones v. State*, 938 So.2d 312, 316-17 (Miss. App. 2006).

In the present case, the gruesome testimony about the victim’s fatal injuries from the pathologist were more than sufficient to establish everything the state needed to prove in this case. Therefore, there was not a legitimate reason here to display the gashed head of the victim. Tr. 308-13. This case was not complicated, the details of the injuries were not crucial to the prosecution.

Exhibits 46 and 47 served no probative purpose. There is no way from either Exhibit 46 or 47, for the jury to discern the nature or cause of injuries or any other probative matter. The sole purpose of the Exhibits was to arouse the inherent human emotions of viewing the head of the victim. The viewing of these photos is clinical to seasoned members of the Court and criminal bar; but, is highly traumatic to lay jurors. This juror trauma was what the prosecution wanted and obtained. The natural response of a juror is to remain in an

emotional state where the only satiation is to convict the person accused of this violent crime. The verdict is thus product of passion and emotion rather than reason and due process of law.

The appellant respectfully requests that this Court here find that the trial court should not have admitted Exhibits 46 and 47. Therefore, the appellant is requesting that a new trial be granted.

ISSUE NO. 2

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO IRRELEVANT AND PREJUDICIAL EVIDENCE OF OTHER CRIMES OR BAD ACTS.

A. Standard of Review

“When a defendant raises an ineffective assistance claim on direct appeal, the question before this Court is whether the judge, as a matter of law, had a duty to declare a mistrial or order a new trial *sua sponte*, on the basis of trial counsel’s performance.” *Roach v. State*, 938 So.2d 863, 870 (Miss. Ct. App. 2006)(citing *Colenburg v. State*, 735 So. 2d 1099, 1102 (Miss. Ct. App. 1999).

The benchmark for judging any claim ineffectiveness of trial counsel is whether counsel’s conduct undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). In order to successfully claim ineffective assistance of counsel, the Appellant must meet the two-pronged test set forth in *Strickland* and adopted by the Mississippi Supreme Court. *Stringer v. State*, 454 So. 2d 468, 576 (Miss. 1984).

Under the *Strickland* test, the Appellant must prove that (1) his attorney's performance was defective and (2) such deficiency deprived him of a fair trial. *Id.* at 477. Such alleged deficiencies must be presented with "specificity and detail" in a non-conclusory fashion. *Perkins v. State*, 487 So. 2d 791, 793 (Miss. 1986).

The deficiency and any prejudicial effect are assessed by looking at the totality of circumstances. *Hiter v. State*, 660 So. 2d 961, 965 (Miss. 1995). This review is highly deferential to the attorney and there is a strong presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. *Id.* The Appellant must show that there is a reasonable probability that, but for his trial attorney's errors, he would have received a different result in the trial court. *Stringer v. State*, 627 So. 2d 326, 329 (Miss. 1993). With respect to the overall performance of the attorney, "counsel's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections falls within the ambit of trial strategy." *Cole v. State*, 666 So. 2d 767, 777 (Miss. 1995). In order to find for the Appellant on the issue of ineffective assistance of counsel, this Court will have to conclude that his trial attorney's performance as a whole fell below the standard of reasonableness and that the mistakes made were serious enough to erode confidence in the outcome of the trial below. *Coleman v. State*, 749 So. 2d 1003, 1012 (Miss. 1999).

B. Counsel was ineffective for failing to object to irrelevant and prejudicial evidence of other crimes or bad acts.

The State presented the testimony of Raymond Price, who testified that a gun was stolen from his house and that Williams knew about the gun. Tr. 281. The State tried to imply that Williams was the one who stole the gun from Price. Tr. *Id.*

A. And when I returned home it had a deputy and one of my neighbors out there in the front of the street on Irene Road there. So me being curious, I asked the deputy what's going on. He said somebody was shooting in front of my house. I said, ok. So, I just kind of brushed it off, you know, because they shot back there all the time.

...

And when I open my screen door and put my key to my lock, I seen that my door had been pried open. So I opened my door, ran straight to my closet, because you know, I just said hey, you know, that could be mine, and saw that my guns were missing.

...

Q. Did you have an opportunity after that date to direct a - - the Pike County Sheriff's Department to an area near your house you had fired that gun before?

A. Yes, uh-huh.

Q. Okay. And did you direct them to some cartridge cases that were found on the ground where you had shot that gun?

A. Yes.

...

Q. Was Eric Williams aware that you owned a gun?

A. Yes, he was.

Q. Had he ever seen the gun that was stolen?

A. Yes, he did.

Q. What occasions would he have seen that gun?

A. He had come over shoot basketball with my daughter and his brothers, you know. And I would take my guns out, especially my rifle and handgun, and go out shooting. He had plenty - - Yeah.

Q. He had observed you shoot this gun?

A. Yeah.

Q. Did he know where you kept this gun?

A. I could not say.

Q. Where does he live in relation to your house? You said that - -

A. Yeah, he lives, you know, right as you turn in my driveway, he would be the trailer to the left, about 300 yards from I stay.

Tr. 278-81.

The fact that Price's gun was stolen and that Williams had seen the gun before have absolutely nothing to do with this capital murder or aggravated assault. By the State indicating that Williams stole the gun, the State is introducing evidence of Williams prior bad acts and character.

Mississippi Rule of Evidence 404(b) provides:

Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

A two-part analysis is conducted in order to determine whether to admit evidence under Rule 404(b). “The evidence offered must (1) be relevant to prove a material issue other than the defendants’s character; and (2) the probative value of the evidence must outweigh the prejudicial effect.” *Crawford v. State*, 754 So.2d 1211, 1220 (Miss. 2000).

This Court stated that in order to pass muster under Rule 404(b), evidence must “be such that it satisfies some other evidentiary purpose beyond simply showing that [the defendant] is the sort of fellow likely to commit the crime charged.” *Watts v. State*, 635 So.2d 1364, 1368 (Miss. 1994) (quoting *Jenkins v. State*, 507 So.2d 89, 91 (Miss. 1987)). Even if the evidence does pass muster under Rule 404(b), it must still pass the test of Rule 403. *Watts*, 635 So.2d at 1368. The Court in *Jenkins* also stated:

To be sure, evidence admissible under Rule 404(b) is also subject to the prejudice test of Rule 403; that is, even though the Circuit court considered the evidence at issue under Rule 404(b), it was still required by Rule 403 to consider whether its probative value on the issues of motive, opportunity and intent was substantially outweighed by the danger of unfair prejudice. In this sense Rule 403 is an ultimate filter through which all otherwise admissible evidence must pass. *Watts*, 635 So.2d at 1368 (Miss. 1994) (quoting *Jenkins*, 507 So.2d at 93 (Miss. 1987)).

In the present case, neither prong was met. Looking at the first prong, the evidence presented at trial claiming that Williams stole the gun was not relevant to this case at all. The testimony was not present for any other reason than to diminish his character and nothing else. Furthermore, the State did not offer any explanation that would indicate that the evidence was properly admitted pursuant to one of the exceptions enumerated in Mississippi Rules of Evidence 404(b). Even “[i]f prior bad acts evidence falls within a 404(b) exception,

its prejudicial effect must still be weighed against its probative value to determine admissibility under Mississippi Rule of Evidence 403.” *Underwood v. State*, 708 So.2d 18, 32 (Miss. 1998). See also *Edlin v. State*, 533 So.2d 403 (Miss. 1998); *Swington v. State*, 742 So.2d 1106, 1112 (Miss. 1999).

Even if evidence is relevant, Mississippi Rules of Evidence 403 provides that “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury,” *Watts*, 635 So.2d at 1368 (Miss. 1994). “Candor requires acknowledgment that, though technically relevant in the sense just mentioned, evidence of the character of that at issue here is not of great probative value.” *Id.* However, “[i]f presented to the jury, it has great prejudicial effect and it would arguably inject collateral issues into the case.” *Id.* See *Michelson v. United States*, 335 U.S. 469, 475-76, 69 S.Ct. 213, 218-19, 93 L.Ed. 168, 173-74 (1948); *McCormick, The Law of Evidence*, Section 190. The evidence in the case at hand was given directly to the jury in the form of testimony from Raymond Price and Steve Byrd. Tr. 278-81, 288-89. Byrd from the Mississippi Crime Laboratory testified that the ammunition used during the shooting at the case at hand was fired from the same gun as the ammunition found at Price’s house. Tr. 288-89. Furthermore, the gun was not introduced into evidence and no proof was submitted showing that Williams had the gun or used the gun. The evidence that a gun was stolen from Price’s house is irrelevant and prejudicial to Williams involving his trial for capital murder, aggravated assault, and conspiracy to commit aggravated assault.

The possibility arises that the jury improperly inferred that Williams “committed the crime for which he is on trial because he is a person who has displayed criminal propensities in the past.” *Watts*, 635 So.2d at 1368 (Miss. 1994) (quoting *Jenkins*, 507 So.2d at 92 (Miss. 1987)); *McCormick*, *the Law of Evidence*.

Evidence concerning this weapon and the that the gun was stolen from Price’s house, where there was no direct evidence of its purpose, was highly prejudicial. Hence, trial counsel was ineffective in not objecting to this prejudicial evidence.

Reversal of the trial court judgment, and a remand for a new trial is the appropriate remedy in this instance. *Id.* Therefore, the Appellant respectfully submits that the Court should reverse this case and remand to the Pike County Circuit Court for a new trial with the exclusion of the evidence from Price indicating that someone stole a gun from his residence. Also, the evidence from Byrd should be excluded relating the shell casing from Price’s house to that of the shooting at the store.

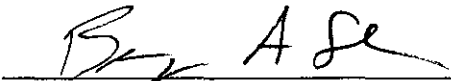

Finally, if this Court finds the record does not affirmatively show ineffective assistance of counsel, the appellant respectfully requests the issue be dismissed without prejudice to allow Williams to supplement the record with additional evidence on post-conviction. *Walton v. State*, 2006-KA-01065-COA (Miss. App. November 13, 2007).

CONCLUSION

Eric Lewis Williams is entitled to have his capital murder, aggravated assault, and conspiracy to commit aggravated assault convictions remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Eric Lewis Williams a/k/a E Eric, Appellant

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Eric Lewis Williams, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 15 day of July, 2008.



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