

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2008-KA-00800-COA

MICHAEL JEROME WILLIAMS JR.

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI**

REBUTTAL BY APPELLANT

William R. LaBarre, MSB No. [REDACTED]

HINDS COUNTY PUBLIC DEFENDER

Frank L. McWilliams, MSB No. [REDACTED]

Virginia L. Watkins, MSB No. [REDACTED]

Assistant Public Defenders

Post Office Box 23029

Jackson, Mississippi 39225

Telephone: 601-948-2683

Facsimile: 601-948-2687

Michael Jerome Williams Jr. v. State of Mississippi

2008-KA-00800-COA

Table of Contents

Table of Contents	i
Table of Authorities	ii
Argument in Rebuttal	1
Conclusion	6
Certificate of Service	7

Michael Jerome Williams Jr. v. State of Mississippi

2008-KA-00800-COA

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Denham v. State</i> , 67 So.2d 445; 218 Miss. 423 (1953)	1; 3; 4; 6
<i>Dye v. State</i> , 90 So. 180; 127 Miss. 492 (1922)	1; 2
<i>Emily v. State</i> , 191 So.2d 925; 78 Miss. 369 (1966)	4; 5
<i>Hawthorne v. State</i> , 58 Miss. 778 (1881)	5
<i>McDonald v. State</i> , 29 So. 171; 78 Miss. 369 (1901)	2; 5
<i>Pittman v. State</i> , 297 So.2d 888 (1974)	2
<i>Reed v. State</i> , 62 Miss. 405 (1884)	3
<i>Smith v. State</i> , 463 So.2d 1028 (Miss. 1985); overruled on other grounds, <i>Ferrell v. State</i> , 733 So.2d 788 (Miss. 1999)	2
<i>Wade v. State</i> , 748 So.2d 771 (Miss. 2000)	5
<u>Constitutions, Statutes and other authorities</u>	<u>Page</u>
MISS. CODE ANN. §97-3-19(e) (1972)	4
MISSISSIPPI RULE OF EVIDENCE (MISS.R.EVID) 401	1
COMMENT, MISS.R.EVID. 401	1
MISS.R.EVID. 402	1
MISSISSIPPI RULE OF APPELLATE PROCEDURE 31	1

REBUTTAL BY APPELLANT

Comes now Michael Jerome Williams Jr., Appellant, and pursuant to MISSISSIPPI RULE OF APPELLATE PROCEDURE 31 makes this, his Rebuttal to the arguments of the State as contained within the Brief of the Appellee. In so doing, Mr. Williams also incorporates herein by reference all arguments and authority recited in *Brief of Appellants on the Merits*.

I. The trial court abused its discretion to the fatal prejudice of Mr. Williams when it excluded evidence of his attempted suicide in the hours immediately following the shootings, and

MISSISSIPPI RULE OF EVIDENCE 401 defines relevant evidence as evidence which has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” The *Comment* to the rule states unequivocally, “If the evidence has any probative value at all, the rule favors its admission.” MISS. R. EVID. 402 declares that essentially, all relevant evidence is admissible subject to notable exceptions that do not apply to this case.

Evidence that Mr. Williams sought to kill himself after discovering and shooting the mother of his three children with her new lover as well as corroborating testimony by his mother, Beverly Williams, that Mr. Williams came to her immediately after the slayings, with his gun against his temple, finger on the trigger, is certainly relevant to his state of mind during the tragic shootings that claimed the lives of Latanya Thompson and Calvin Jennings. T. 269; 323; 331-332; RE 20-22. The defense of Mr. Williams is that he was caught up in a heat of passion after suddenly seeing his companion of several years in bed with another man, such that “it had the effect of arousing the angry passions of the mind to such an extent as to overthrow reason.” *Denham v. State*, 67 So.2d 445, 448; 218 Miss. 423, 430 (1953).

“In this state, ‘malice aforethought’ is equivalent to ‘premeditated design’ or ‘deliberate design.’ A *felonious* design is *not the same as premeditated or a deliberate design*,” the state

Supreme Court wrote in *Dye v. State*, 90 So. 180, 181; 127 Miss. 492 (1922). “One may have a *felonious* design to kill and *yet kill in the heat of passion*.” [emphasis added] In affirming the murder conviction in *Dye*, the Court held a manslaughter conviction was given in error, as no elements of manslaughter existed in the case.

The state of mind of the accused is the key element distinguishing manslaughter from murder. Many of the Mississippi cases differentiating the two offenses are decided on the basis of erroneous jury instructions which is not in issue in the case at bar. Nevertheless, the Court’s distinctions between the two offenses are helpful in discussing the error here.

In *McDonald v. State*, 29 So. 171, 172; 78 Miss. 369, 375 (1901), the Court reversed a murder conviction for erroneously instructing the jury on the requisite state of mind. “Now, manifestly, the *design to kill* might exist, and the killing be merely manslaughter,” the *McDonald* Court wrote. “This instruction pares away the rights of defendant, and requires the jury to convict of murder no matter what the provocation, and even though the killing was done in the heat of passion and on sudden provocation. *McDonald*, 29 So. at 172; 78 Miss. at 375. [emphasis added]. “One may have a deliberate design to kill and yet not be guilty of murder,” the Court wrote in *Pittman v. State*, 297 So.2d 888, 893 (1974) (Reversal of a murder conviction for erroneous instruction regarding amount of time necessary to form the deliberate design integral to a finding of the malice required for murder. “It will be noted that every homicide “without malice,” and “not in necessary self-defense,” and “in the heat of passion” shall be manslaughter. The distinction between murder and manslaughter is that the latter is without malice.” *Smith v. State*, 463 So.2d 1028 Miss. 1985) *overruled on other grounds by Ferrell v. State*, 733 So.2d 788, (Miss. 1999).

At trial, Mr. Williams testified to his recollection after an impulsive stop to see the mother of his children and then, through the front window, seeing her in bed with another man -- where he himself had lain just days before. "It's like two seashells on the inside of your [head]." T. 356. "And man, I snapped." *Id.* "So I just lost it. I couldn't stop. I couldn't stop." T. 357.

Upon seeing LaTanya with Mr. Jennings, the existence of whom Mr. Williams was completely unaware, he returned to his car, retrieved his gun and forced his way into the house. T. 354. "In *Reed v. State*, 62 Miss. 405, it was recognized as the law that, if a man catches his wife in adultery with another man and then and there slays her paramour, the provocation is so great that it extenuates his crime from murder to manslaughter; but if he does not slay the adulterer on the spot, but afterward, when sufficient time has elapsed for passion to cool, the killing, instead of manslaughter, is murder." *Denham v. State*, 67 So.2d at 447-448. This is analogous to the situation in which Mr. Williams found himself with the sudden discovery of a new paramour with LaTanya.

Mr. Williams acknowledges that he and LaTanya were not married. The two, however, were together for ten years and were the parents of three daughters. They were companions since LaTanya was 16 and Mr. Williams 18. T. 343. It is uncontroverted that the two contemplated marriage throughout their relationship. T. 349-350. For these reasons, Mr. Williams argues that the reasoning of these *Reed* and its progeny should be applicable to this situation.

Given the critical nature of ascertaining the state of mind when he committed the crime, Mr. Williams submits it was essential for the jury to hear evidence of his actions immediately after the event. Honored counsel for the state would have the Court believe that such events occurring after the slayings are irrelevant. Mr. Williams respectfully disagrees vehemently; Mississippi case law is replete with findings that rest at least in part on events adduced after the offense in question was committed. For instance, in *Denham*, discussed above, the defendant

claimed insanity at the time he killed his wife and her paramour. *Denham*, 67 So.2d at 428-429. Both the jury and the Court rejected Denham's defense due to evidence of his actions immediately *after* the slayings, including telephoning for an ambulance and asking that the police be notified. *Id.*

Depriving the jury of this evidence essentially deprived Mr. Williams of his ability to mount a meaningful and complete defense to the charge of deliberate design murder. The right to mount a defense is a fundamental and substantial right guaranteed under both federal and state constitutions and as such, Mr. Williams asserts it was an abuse of discretion to exclude the proffered evidence of his attempt at suicide immediately after the slayings.

II. The verdict of the jury was insufficient as a matter of law because the State failed to prove deliberate design on the part of Mr. Williams, an essential element of the crime.

Many of the cases discussed in Issue I are particularly applicable to this assignment of error as well, because those cases draw the substantive legal distinction between the premeditation and deliberate design necessary to constitute murder under Mississippi law. Had jurors had evidence of Mr. Williams' actions immediately following the shootings, they might well have found him guilty of manslaughter rather than murder. Therefore, Mr. Williams would respectfully request consideration of the authority cited in support of Issue I as incorporated herein by reference.

Under MISS. CODE ANN. § 97-3-19(2)(e), the state had to prove that Mr. Williams acted with deliberate design to (1) kill Latanya Thompson and Calvin Jennings (2) without any authority of law (3) while engaged in the crime of burglary.

In the case of *Emily v. State*, 191 So.2d 925, (1966), the conviction of Fred Emily for mayhem was affirmed despite Emily's challenge to instructions for the state. Emily had broken a soft drink bottle and wielded the jagged glass as a weapon, threatening Murphy that the bottle

CONCLUSION

In response to the arguments of the state, Mr. Williams respectfully disagrees with learned counsel for the state and contends his actions immediately after the shootings are relevant to his state of mind during events in issue. *Denham v. State*, 67 So.2d 445 (Miss. 1953) is a perfect example of how both the trial judge and the reviewing court viewed actions of the accused after shooting his wife and her lover to reject the defendant's insanity defense. As a result of Mr. Williams' uncontrollable rage at finding his companion of ten years in bed with another man, he also humbly asserts that the state failed to prove premeditation and deliberate design as contemplated by the statute under which he was charged.

For these reasons and for the case law recited here and in BRIEF ON THE MERITS BY APPELLANT, Mr. Williams moves this honorable Court to vacate these convictions and reverse and remand his cause for a new trial or to vacate the capital murder convictions and return his cause to the Hinds County Circuit Court for re-sentencing as manslaughter under the direct remand rule.

Respectfully submitted,



Virginia L. Watkins, MSB No. 9052
Assistant Public Defender

PUBLIC DEFENDER, HINDS COUNTY, MISSISSIPPI

William R. LaBarre, MSB No. [REDACTED]

PUBLIC DEFENDER

Frank L. McWilliams, MSB No. [REDACTED]

Virginia L. Watkins, MSB No. [REDACTED]

Assistant Public Defenders

Post Office Box 23029

Jackson, Mississippi 39225

Telephone: 601-948-2683

Facsimile: 601-948-2687

Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be hand-delivered a true and correct copy of the foregoing REBUTTAL BY APPELLANT to the following:

Honorable Robert Shuler Smith,
DISTRICT ATTORNEY
Hinds County Courthouse
Post Office Box 22747
Jackson, Mississippi 39225


Honorable Swan Yerger
CIRCUIT JUDGE
Hinds County Courthouse
Post Office Box 327
Jackson, Mississippi

Honorable James Hood III
ATTORNEY GENERAL
Charles W. Maris Jr.
Assistant Attorney General
Walter Sillers State Office Building
Post Office Box 220
Jackson, Mississippi 39205-0220

And by United States Mail, postage prepaid, to

Mr. Michael Jerome Williams Jr.
MDOC No. 62701
SMCI, SMCI No. 2
Post Office Box 1419
Leakesville, Mississippi 39451

So certified, this the 25th day of March, 2009.


Virginia L. Watkins, MSB No. [REDACTED]
Certifying Attorney