

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WINDELL WASHINGTON, APPELLANT

VS.

STATE OF MISSISSIPPI, APPELLEE

CAUSE NO. 2009-KA-00947-SCT

APPEAL FROM THE CIRCUIT COURT OF HOLMES COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

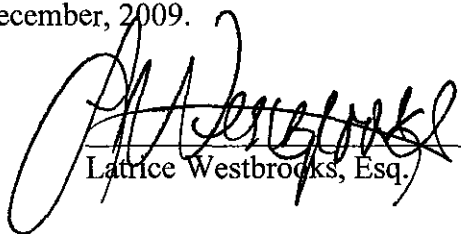
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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interested in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Windell Washington, Appellant;
2. Latrice Westbrooks, Esq., The Law Office of Latrice Westbrooks, PLLC, attorney of record for Appellee, R.B., a Minor by and through his Next Friend, D.L.B.;
3. James H. Powell, District Attorney of Holmes, Humphreys & Yazoo Counties, District 21; and

This the ~~18~~¹⁹ day of December, 2009.



Latrice Westbrooks, Esq.

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STATEMENT OF THE ISSUES

- I. WHETHER THE COURT ERRED WHEN IT ALLOWED A PREJUDICIAL PHOTOGRAPH TO BE ADMITTED FOR IDENTIFICATION PURPOSES WHEN THE DEFENDANT DID NOT CONTEST IDENTIFICATION OF THE DECEASED?**

STATEMENT OF THE CASE

I. Nature of the Case

¶1. The Appellant seeks to reverse the verdict finding him guilty of Manslaughter. The Holmes County Circuit Court sentenced the defendant on May 22, 2008 to twenty (20) years in the custody of the Mississippi Department of Corrections.

II. Course of Proceedings and Disposition Below

A. Procedural History

¶2. The Appellant appeals the verdict and sentence rendered in the Holmes County Circuit Court. The Appellant was indicted on January 8, 2007 by a Holmes County Grand Jury. On February 5, 2007, the Defendant waived arraignment and received a trial date of May 7, 2007. For reasons not stated in the record, the matter was reset for October 15, 2007. Due to the Court's docket, the matter came up for trial on October 17, 2007. A mistrial was had for failure to select a jury due to an insufficient amount of juror in the jury panel. The matter was reset for May 12, 2008. The trial commenced on May 12, 2008 with both parties announcing their readiness for trial. On May 13, 2008, the jury returned a verdict of not guilty of Aggravated Assault and guilty of Manslaughter. The Defendant was sentenced on May 22, 2008. On May 30, 2008, the undersigned filed a notice of appeal with the Holmes

County Circuit Clerk and hence brings forth this appeal.

B. Substantive Facts

¶3. On July 23, 2006, Windell went to the town square in Lexington, Mississippi and parked in front of Thurman's Hardware Store at approximately 7:00 P.M. He went there to speak with Patricia Gibson, his girlfriend who with another man, Anthony Collins. Collins was having an extra-marital affair with Gibson. When Windell pulled up he and Patricia started talking. Windell learned that Patricia brought Anthony to his house. Anthony intervened in the conversation and began a verbal confrontation with Windell. Anthony came at Windell once, Patricia managed to stop him. At that time Windell pulled out his gun and placed it on the car floor. Windell remained inside his truck, he never stepped outside.

¶4. After Pat managed to control Anthony Collins the first time, Windell and Pat started talking again. A witness, Angela Thomas, testified that the conversation involved Patricia and Windell. Once again Anthony Collins intervened in the conversation antagonizing Windell. Anthony then bolted around Pat reached into the back of his pocket. Windell noticed that Anthony had his hands in his pocket and acted as though he had a weapon in them. Anthony went towards Windell, who reached for his gun and shot Anthony Collins three times.¹ When Anthony Collins fell to the ground Windell drove off and went to his house.

¶5. When Windell went to his home he told his daughter Windella he had to turn himself in. Once he told her he was going to turn himself in he went to look for his neighbor Sam

¹ The pathologist Steven Haynes noted that the way the shots entered the body, the decedent was leaning. (T.Rec. 165-166, ln 28-29/1-6; 169, ln 11-18 166, 169); Angela Thomas also testified to Anthony "came at" Washington. (T.Rec. 235, ln 4-5; 242, ln 10-12).

Chambers. When he noticed that Sam was not at home he called the Sheriff and he turned himself in. Windell was arrested, charged and indicted for the offenses.

SUMMARY OF THE ARGUMENT

¶6. The Holmes County Circuit Court did abuse its discretion during the trial. The Court allowed prejudicial and inflammatory photographs of the deceased into evidence. The photographs had no probative value as the defendant did not contest the identification of the defendant. In the wake of this issue, Appellant/Defendant Windell Washington requests that the matter be reversed and remanded back to the Circuit Court.

ARGUMENT

I. WHETHER THE COURT ERRED WHEN IT ALLOWED A PREJUDICIAL PHOTOGRAPH TO BE ADMITTED FOR IDENTIFICATION PURPOSES WHEN THE DEFENDANT DID NOT CONTEST IDENTIFICATION OF THE DECEASED?

¶7. Dr. Steven Haynes testified for the state as the medical examiner. The State through his testimony, offered into evidence, autopsy photographs of the deceased, Anthony Collins. State's exhibits numbers S-2-A1, S-2-B and S-2-C covered the photographs of the decedent. S-2-C showed the face of the deceased. The photograph depicted a swollen eyes cheeks, and lips that looked deformed. (Rec.Ex. A, S-2-A1).

¶8. The standard of review that appellate courts must apply to admission of evidence is an abuse of discretion. *Price v. State*, 898 So.2d 641 (Miss. 2005). The admission of photographs is a matter left to the sound discretion of the trial judge. . .photographs are considered to have evidentiary value in the following instances: (1) aid in describing the

circumstances of the killing; (2) describe the location of the body and cause of death; (3) supplement or clarify witness testimony. *Williams v. State of Mississippi*, 3 So.2d 105 (Miss. 2009) citing *Noe v. State*, 616 So.2d 298 (Miss. 1993) and *McIntosh v. State*, 917 So.2d 78 (Miss. 2005).

¶9. The Court has also noted with regard to admission of autopsy photographs are only admissible if they have probative value. *Roden v. State*, 1998 Miss.App. LEXIS 181 citing *Noe*, 616 So.2d at 303. In the case of photographic evidence it is especially important that the photographs not be so gruesome or used in such a way as to be overly inflammatory or prejudicial. *Hurns v. State*, 616 So. 2d 313, 319 (Miss. 1993). The indiscriminate use of autopsy photographs showing where "a medical technician or pathologist has used the tools of his trade to puncture, sever, dissect and otherwise traumatize body parts" is discouraged. *Noe*, 616 So. 2d at 303. Gruesome photographs like the solitary instance of photographs being [sic] prejudicial involving a close-up photograph of a partly decomposed, maggot-infested skull. *Williams* citing *McNeal v. State*, 551 So.2d 151 (Miss. 1989).

¶10. Washington objected to Dr. Haynes identification of Collins via the use of autopsy photographs. (T.rec. 160). The objection was based on the contention that the photographs were prejudicial and that Dr. Haynes was not the proper witness to identify the deceased. (T.rec. 160-161). *McDavid v. State*, 594 So.2d 12, 15 (Miss. 1992). No other witnesses were used to identify Collins. There was nothing in S-2-C that aided the jury with regard to the injuries. It did not aid the description of the killing and the corpus delicti; or describe the location of the body and cause of death; or supplement or clarify another witnesses testimony. *Jackson v. State*, 766 So.2d 795 (Miss.Ct.App. 2000). Moreover, because the

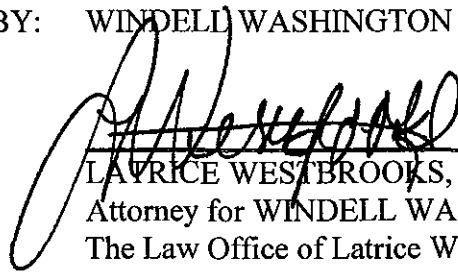
Collins's face was swollen and contorted, it was not logical that Haynes could identify Collins. The proper predicate was not established allowing Haynes to testify to the defendant's identity.

CONCLUSION

¶11. Appellant respectfully prays that this Court reverse the verdict of the Holmes County jury on the offense of Manslaughter and remand the case back to the Holmes County Circuit Court. The Appellant also request any relief under the principals of law and equity to which he may be entitled.

Respectfully Submitted this the 18th day of December, 2009.

BY: WINDELL WASHINGTON



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