

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**DIONTE D. WILLIAMS**

**APPELLANT**

**V.**

**NO. 2008-KA-0963**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**CERTIFICATE OF INTERESTED PERSONS**

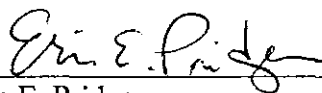
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Dionte D. Williams, Appellant
3. Honorable E.J. (Bilbo) Mitchell, District Attorney
4. Honorable Lester F. Williamson, Jr., Circuit Court Judge

This the 21<sup>st</sup> day of November, 2008.

Respectfully Submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
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**STATEMENT OF THE ISSUE**

**THE TRIAL COURT ERRED IN FAILING TO GRANT WILLIAMS' MOTION FOR A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Lauderdale County, Mississippi, where Dionte Williams (hereinafter referred to as "Williams") was convicted of Count I - Burglary of a Dwelling, in violation of Section 97-17-23 of Mississippi Code Annotated (Supp. 2008), and Count II - Armed Robbery, in violation of Sections 97-3-79 and 97-3-73 (Rev. 2006). The Honorable Lester F. Williamson, Jr., presided over the two-day jury trial that began on May 27, 2008.

Following the trial, Williams was sentenced to serve ten years on both counts, with the sentences to run concurrently. However, this sentence was to run consecutive to any sentences Williams was currently serving in the Mississippi Department of Corrections. Williams was also ordered to pay court costs in the amount of \$295.

On May 30, 2008, Williams filed his motion for a new trial and/or judgment notwithstanding the verdict. The court denied this motion and Williams timely noticed this appeal.

## FACTS

On Sunday morning, March 9, 2003, Betty Evans was asleep in her home in Meridian, Lauderdale County, Mississippi. [Tr. 106-108, State Exhibit 5]. She woke up to see two young men, wearing bandanas and gloves, running through her home, picking up her property. [Tr. 108]. Neither of the young men said a word. After discovering Evans was in the house, however, they came into her room and advanced toward her with a knife. [Tr. 109] Evans pulled out a gun that was in her purse, near her bed. [Tr. 114] The young men left the house through the same window they used to enter the house.

Around the same time the home invaders were in the house, Evans' sister - Dianne Young, and her aunt - Emma Newell, came by Evans' house concerning an unrelated matter. [Tr. 90, 94] When they arrived, they knocked on the door but no one answered. [Tr. 87]. The women walked down the alley that was adjacent to the side of the house and noticed that one of the windows was open. Newell heard a voice inside the house as she neared the window and ran back toward Young's car. [Tr. 87] Young testified that, as she neared the window, she saw someone climbing out of the window and she also ran back to the car. At trial, neither of the women could identify anyone that was in the house, leaving out of the window at that time. [Tr. 89, 96-97].

Young and Newell notified the police and the police began an investigation into the home invasion. In her statement, given May 11, 2008, Evans indicated that she recognized both of the perpetrators. [State Exhibit 5] Evans believed that the "tall one" was her next door neighbor's grandson and the other one was a young man named Donovan. [*Id.*] She did not give a name for the "tall one".

The police pursued and arrested Donovan Evans ("Donovan"), the grandson of Evans' next door neighbor, Ms. Gussie Harris. [Tr. 165] The second individual was not caught. According to

police, Donovan informed them that Dionte Williams was the individual that was with him in Evans' house. [Tr. 228].

At trial, Evans testified that she was sure that both Donovan and Williams were the young men that broke into her house. [Tr. 109-111] She testified that she recognized them from seeing them regularly outside of their grandmother, Ms. Harris' house. [Tr. 110] However, when asked by the prosecution to identify the perpetrator in the courtroom, Evans did not immediately identify Williams. After being informed by the State that it would not assist Evans in identifying the perpetrator, Evans then scanned the room and identified Williams.

### **SUMMARY OF THE ARGUMENT**

The trial court committed reversible error in failing to grant Williams' motion for a new trial as the verdict in this case could have only been based on weak and conflicting evidence. There was no physical evidence to tie Williams to the scene of this crime. Williams' conviction is based on the contradictory statements of the only eyewitness to the burglary, Betty Evans. The trial court should have determined that Williams' guilty verdict was against the overwhelming weight of the evidence and ordered a new trial.

### **ARGUMENT**

#### **THE TRIAL COURT ERRED IN FAILING TO GRANT WILLIAM'S MOTION FOR A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

Williams' guilty verdict was contrary to the overwhelming weight of the evidence and the court erred in failing to grant Williams' motion for a new trial. There was no physical evidence, presented at trial, that linked Williams' to the home burglary. The only evidence that tied Williams to the burglary was the contradictory eyewitness testimony of Betty Evans, the distraught homeowner who was understandably shaken from the traumatic events that occurred in her home. Likewise the police failed to undergo a proper and thorough investigation to corroborate Evans' claims.

Donovan Evan, Williams' cousin was captured by police shortly after the home invasion. Police took Evans at her word regarding the identification of the perpetrator that fled the scene. The police failed to conduct a sufficient investigation.

Detective Andy Harvard of the Meridian Police Department acknowledge at trial that Evans' statement, taken from police, did not include any questions from the police regarding the details of the perpetrators' height, weight, skin complexion, or any other statements that would give a physical description of the perpetrators. [Tr. 176].

[Defense]      Q. Where in [Evans]'s statement does it contain clothing description of the alleged perpetrators?

[Harvard] A. I don't see any in her statement/  
Q. Now, you would admit it is a one-page statement, correct?  
A. Yes

....

Q. And the investigation in the witness statement entails ... exactly four questions asked by the detective?

A. Yes.

Q. And it is not, What did the people look like? Is it?

A. No, I don't see where it says that.

Q. And it's not, What were they wearing? Is it?

A. No, I don't see it.

Q. How tall they were?

A. No.

Q. How much they weighed or if one was fat or one was skinny?

A. No, I don't see it in this statement.

Q. Well, if it was asked, it would certainly be in that statement, wouldn't you agree?

A. If it was asked during this statement, yes, it would be.

Q. And you don't think that an experienced law enforcement officer, detective, would ask those questions?

A. Should have, yes, sir.

[Tr. 176-77]

Likewise, there was conflicting testimony regarding the description of the individual the police were pursuing, after Donovan was captured. The police were pursuing a suspect with pigtails and shoulder length hair. [Tr. 193, 223] However, when questioned at trial, Evans testified that she did not notice the suspect with any pigtails (braided hairstyle). The "tall" suspect that the police pursued had "nice hair" that was not braided in pigtails. [Tr. 132] According to Evans, she would have distinctly remembered a braided hairstyle on the perpetrator. [Tr.133]. At any rate, the police failed to present Evans with a photographic lineup of the alleged perpetrators. [Tr. 226].

There were inconsistent statements of what Evans was doing the morning she caught the perpetrators. According to Officer Timothy Phillips of the Meridian Police Department, Evans informed him that she was just arriving home from church when she found the young men in her

home. [Tr. 218]. However, at trial, Evans testified that she had just come home early that morning from managing a nightclub and she was asleep when she discovered the home invaders.

Apart from the inconsistent descriptions, or absolute lack thereof, Evans was only able to view the partial faces of the perpetrators in her home due to the bandanas on their faces. From her own testimony, she saw the Donte Williams and Devontae Evans on a regular basis from across the street at their grandmother's home. She did not know them well enough to know their names. She had never testified that she had been in close proximity to the boys. Arguably, that morning in her bedroom might have been the closest that Evans had ever been to the youth. Viewing someone from a distance is distinctly different than viewing the person up close and personal, with a bandana around their face, and coupled with the eyewitness being in extreme fear for his or her life. Without some corroborating evidence, Evans' testimony alone should not be sufficient to prove Williams' guilt.

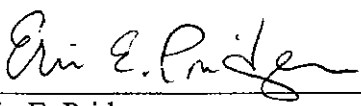
Betty Evans experienced a traumatic event on March 9, 2003. Two males violated the sanity of Evans' home by robbing her and threatening her with a weapon. There is no contradictory evidence to deny that this event occurred. The police arrested Donovan Evans, the named individual in Betty Evans' statement. However, the State failed to prove that Donte Williams was the unnamed accomplice of Donovan on that Sunday morning. Donte Williams' conviction is based on the flawed eyewitness testimony of Betty Evans. This, alone, should not be able to convict a young man of armed robbery and burglary of a dwelling.

### **CONCLUSION**

Based on the trial court's error in denying the motion for a new trial, together with any plain error noticed by the Court that has not been specifically raised, the judgement of the trial court and

Williams' conviction and sentence should be reversed and remanded to the trial court for a new trial.

Respectfully Submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:   
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**CERTIFICATE OF SERVICE**

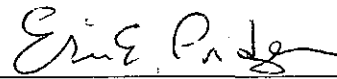
I, Erin E. Pridgen, Counsel for Dionte D. Williams, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Lester F. Williamson, Jr.  
Circuit Court Judge  
2104 8th Street  
Meridian, MS 39302

Honorable E.J. (Bilbo) Mitchell  
District Attorney, District 10  
Post Office Box 5172  
Meridian, MS 39302

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
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This the 21<sup>st</sup> day of November, 2008.

  
\_\_\_\_\_  
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