IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2009-KA-00922-COA

LARRY TYRESE MINTER — APPELLANT

V.

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF APPELLANT

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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. Larry Tyrese Minter

THIS 8th day of January, 2010.

Respectfully submitted,

LARRY TYRESE MINTER

By: George T. Holmes

George T. Holmes,
Mississippi Office of Indigent Appeals

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of the First Judicial District of Harrison County, Mississippi where Larry Tyrese Minter was convicted of two counts of capital murder, and one count of robbery in a jury trial conducted November 18-21, 2008, with Honorable Lisa P. Dodson, District Two Circuit Judge, presiding. Minter was sentenced two concurrent life terms without parole plus fifteen (15) consecutive years and is presently incarcerated with the Mississippi Department of Corrections.

FACTS

According to the trial testimony, on December 15, 2006 between 9:30 a. m. and 11:00 a. m., Harold Joseph Levron, Jr., of Gulfport walked in on a daytime burglary in progress at his home and was shot when he struggled with the alleged burglars and refused to voluntarily relinquish his personal property. [T. 986, 1013]. Levron was said

to have been accidently shot with his own pistol which was allegedly taken from him during the fray. [T. 988, 999, 1014, 1028].

During the process, Levron's friend, Christiana Ann Suber, also arrived at Levron's home and was forced inside by one of the burglars, Junior Green. [T. 1000-03, 1015, 1029-30]. Suber was beaten and sexually assaulted by Green, bound with duct tape, and, according to Junior Green and Lazairias Murphy, was eventually shot and killed by Larry Minter the appellant. [T. 772, 783, 819, 986-87, 1000-03, 1015, 1029-30; Exs. 10, 11].

The burglars left in Levron's white pick-up truck, which was spotted by police later that evening with four occupants and stopped. [T. 854-55, 859-64, 929]. Two from the truck fled, two were arrested. *Id.* One of the two arrested was Roderick Minter, Larry's brother. [*Id.*, T. 929]. Roderick's interview led police to Lazairias Murphy, which led to the police arresting Junior Green, Darryl Simmons and Larry Minter. [T. 930-32]. All four would up being charged in the case. [R.15-18].

Green and Murphy implicated the appellant Larry Minter as the person struggling with Levron while he was shot, and also implicated Minter as the person who shot and killed Christina Suber. [T. 986, 999, 1007, 1016-17]. Junior Green admitted abusing Suber and hitting Levron with a baseball bat during the fight. [T. 999, 1002-03, 1028]. Both Murphy and Green said Minter acknowledged killing Suber. [T. 987, 1007]. Minter did not bring a weapon to the burglary. [T. 991].

Green pled guilty to two counts of capital murder on the agreement that the state would not seek the death penalty. [T. 989-90; Ex. Env. Trans. of Plea Hearing]. Murphy pled guilty to two counts of manslaughter and testified, against Minter. [T. 1009].

Darryl Simmons and Minter had separate trials. Minter was convicted of two capital murder counts, acquitted of two sexual battery counts, and convicted of one count of robbery. [R. 345, 390-91; T. 1148]. Minter's jury unanimously rendered two life sentences. [R. 389; T. 1275-76].

Green said the idea to burglarize Levron's home spawned from a belief that Levron had a large amount of cash in a safe in his home. [T. 990]. The burglars hammered, and drilled and clawed a hole in the side of Levron's gun safe trying to get their hands on this alleged stash. [T. 772, 828-29, 1012-13; Ex. 14]. Nothing was reportedly taken from safe by the burglars.

Besides leaving with Levron's pick-up truck, the burglars took with them Levron's pistol which was allegedly thrown in a creek after the incident. [T. 932]. A .380 caliber pistol was recovered from the creek bed where the weapon was reportedly tossed. [T. 884-89, 932, 988; Ex. 9]. No ballistic evidence was offered to match this pistol with either homicide, but a detective testified that U. S. Alcohol Tobacco and Firearms (ATF) records show the gun was registered to Levron. [T. 795]. A .380 pistol was also found at Darryl Simmons' house, but there was no comparison testimony and it did not come into evidence. [T. 941].

Police found two spent .380 shells at the crime scene and one .9mm casing. [T. 805-06, 837-42, 933; Exs. 23, 24]. There was an unexplained Mazda pick-up truck parked outside of Levron's house with a 9.mm pistol inside the Mazda along with insulation residue from Levron's safe. [T. 804, 807-08, 812, 845-46, 936-40]. Bloody show prints were also recovered, and shoes of suspects obtained; but, no matching evidence was presented. [T. 772, 796, 801-03, 842, 847, 950].

Latent fingerprints were lifted from a broken window pane near the burglar's reported point of entry into Levron's home. [T. 829-35, 850-51, 960-61; Exs. 16, 17]. An alleged match to Minter was offered by the prosecution. [T. 891-92, 960-61; Exs. 17, 26, 27, 28].[1]

Minter did not testify. He presented an alibi defense with testimony from his mother and "step father" that he was at home during the entire morning of December 15, 2006. [T. 1045-58].

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Trial counsel argued against the reliability of fingerprint evidence in general both during trial in Minter's motion for new trial. However, when asked if there was an objection to the qualification of the state's trial expert in the field of finger print comparison, counsel stated unequivocally, "no objection." [T. 954]. Currently, fingerprint evidence has been found admissible under similar challenge. *Wright v. State*, 915 So. 2d 527, 534-35 (¶ 22) (Miss. Ct. App. 2005) citing *Wilson v. State*, 574 So. 2d 1324, 1334 (Miss. 1990).

SUMMARY OF THE ARGUMENT

Minter was irreparably prejudiced by incompetent hearsay evidence and was prevented from fully exercising his constitutional right to fully cross examine his testifying co-defendant. The weight of evidence does not support the verdict.

ARGUMENT

ISSUE NO. 1: WHETHER MINTER WAS PREJUDICED BY THE ADMISSION OF INCOMPETENT HEARSAY?

The state offered the testimony of one of the investigators who said that federal ATF records indicated the .380 pistol found in the creek was registered to Levron. [T. 795]. Minter's objection to hearsay was overruled. *Id.*

Since this issue involves an evidentiary ruling, the standard of review is one of abuse of discretion. Rule 103(a) of the Mississippi Rules of Evidence. *Withers v. State*, 907 So. 2d 342, 345 (¶ 7) (Miss. 2005).

This issue, simply stated, involves a police officer testifying to what he was told during his investigation, tendered as substantive evidence. This constitutes an abuse of discretion on the part of the trial court and reversible error.

In *Edwards v. State*, 736 So. 2d 475, 477-79 (Miss. Ct. App.1999), the court reversed a murder conviction in part on the wrongful admission of hearsay. The *Edwards* opinion reflects the importance courts have traditionally placed on a defendant's

right of cross-examination and how the admission of hearsay evidence can thwart the exercise of this right.

In *Crawford v. Washington*, 124 S. Ct 1354, 1356-59, 541 U.S. 36, 158 L. Ed. 2d 177 (2004), Crawford was charged with and convicted of assault with a deadly weapon for stabbing a man who allegedly tried to rape his wife. 124 S. Ct. at 1356-58. The defendant's wife gave a recorded statement to investigating officers which was introduced at trial against Crawford. *Id.* Crawford was never given the opportunity to cross examine the wife's statement. *Id.* The *Crawford* court ruled that admission of wife's statement violated the Confrontation Clause. *Id.* at 1359.

> The Sixth Amendment's Confrontation Clause provides that '[i]n all criminal prosecutions the accused shall enjoy the right . . . to be confronted with the witnesses against him.'
>
> * * *
>
> The text of the Confrontation Clause . . . applies to 'witnesses' against the accused – in other words those who 'bear testimony'. Testimony in turn is typically a solemn declaration or affirmation made for the purpose of establishing or proving some fact.
>
> * * *
>
> An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes casual remark to an acquaintance does not." *Id.* at 1364.

The *Crawford* Court explained that statements given to police officers sworn to or not are clearly testimonial, "the Sixth Amendment is not solely concerned with testimonial hearsay. . ." it would also be concerned with "testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant

had a prior opportunity for cross-examination." *Id.* at1364-65.

Repeating what the ATF report said was most definitely testimonial hearsay. The record is also clear that Minter never had the opportunity to cross-examine the AFT report.

In the Mississippi Supreme Court's decision in *Clark v. State*, 891 So.2d 136 (¶16) (Miss. 2005), the Court applied *Crawford*, and found error in the fact that a police officer was allowed to restate to the jury what witnesses had told him. The *Clark* court did not overrule because the erroneous evidence was cumulative of other "overwhelming" evidence. *Id.* Here the evidence was highly prejudicial since it involved the murder weapon and more than corroborated other allegations of criminal conduct, and was not mere information.

The allowance of the hearsay evidence against Larry Minter resulted in the trial court erroneously limiting the defendant's cross-examination of state evidence thus preventing the defendant from exercising his rights under Sixth and Fourteenth Amendments to the U. S. Constitution and Article 3 § 26 of the Mississippi Constitution. A new trial is respectfully requested.

ISSUE NO. 2: WHETHER THE TRIAL COURT ERRONEOUSLY LIMITED MINTER'S CONFRONTATION RIGHTS?

Junior Green signed a hand-written affidavit dated February 20, 2008 swearing that Minter was innocent. [T. 904-22 ; Ex. D-5 (ID)]. The affidavit was notarized by a female Harrison County Sheriff's deputy who routinely notarized county jail inmates' legal documents. *Id.*

The state and Green asked that the affidavit be suppressed because it was made without counsel and was arguably obtained by "the state" since the deputy was involved in the notarization. *Id.*

Green said he did not write the affidavit, that it was presented to him by the deputy and he signed it. [T. 910-12]. Green said that he signed the document of his own free will, but it was not his "statement." *Id.* Nevertheless, Green said the statement was true. [T. 916].

The trial court ruled that Minter could only reference one paragraph from the statement, but not offer the affidavit into evidence. [T. 921-22]. Minter suggests this limitation of his ability to confront one of the state's most important witness with this prior inconsistent statement violated rights secured under the confrontation clause. Sixth and Fourteenth Amendment of the U. S. Constitution, Art. 3 §26 of the Mississippi Constitution. The ruling was also contrary to the long standing rule of wide open cross-

examination codified in Miss. R. Evid. 611(b).[2]

Concerning cross-examination, the Mississippi Supreme Court in reversing a murder conviction in *Myers v. State*, 296 So. 2d 695, 700, (Miss. 1974), stated that:

> The right of confrontation and cross examination . . . extends to and includes the right to fully cross-examine the witness on every material point relating to the issue to be determined that would have a bearing on the credibility of the witness and the weight and worth of his testimony.

In *Suan v. State,* 511 So. 2d 144, 146-48 (Miss. 1987), the Mississippi Supreme Court reversed an escape conviction because the trial court limited defense counsel's full cross-examine of a prosecution witness. The Supreme Court said, ". . . one accused of a crime has the right to broad and extensive cross-examination of the witnesses against him, . . . " *Id.* These rights of confrontation and cross-examination were not afforded to Minter as required, and a new trial should be granted. *Sayles v. State*, 552 So. 2d 1383, 1387-88 (Miss. 1989), is another case holding that arbitrary curtailment of cross-examination on a proper subject is grounds for reversal. See also *Hill v. State*, 512 So. 2d 883 (Miss. 1987).

The statement of Green would also be admissible under the decision in *Butler v. State,* 702 So. 2d 125, 128-29 (¶¶ 16-19) (Miss. 1997), where the Supreme Court reversed a Court of Appeals decision, and found that an exculpatory affidavit of a witness who

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Miss. R. Evid611(b) Scope of Cross-Examination. Cross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

refused to testify was admissible. All of these case support the conclusion that Minter is entitled to a new trial.

ISSUE NO. 3: DOES THE WEIGHT OF EVIDENCE SUPPORT MINTER'S CONVICTIONS?

Minter's convictions hinge on the testimony of Lazairias Murphy and Junior Green. Neither of these witnesses' testimony is reliable enough to support the guilty verdicts in this case.

Junior Green, besides having a motive to lie arising out of his plea bargain agreement, actually admitted lying during his testimony. [T. 1003]. Green's testimony also conflicted on whether Minter sexually assaulted Ms. Suber saying at one point yes, at another, no. [T. 986-87, 1006]. Lazairias Murphy denied doing anything that was really bad, claiming to be merely a look-out. [T. 1025-28, 1032]. But he got caught up in inconsistencies. He told police that he had taken a gun to the burglary, but said at trial he did not. [T. 1026].

The Gulfport Police Department's investigation was less than exhaustive to say the least. There was no testing of a good portion of the physical evidence. There were no shoe print comparisons, and most strikingly, no ballistic evidence offered at all. The matters involving the Mazda truck and the weapon and evidence found inside of it were never explained.

The lack of reliable supportive evidence and the slipshod investigation of the case

entitles Larry Minter to a reversal and rending of acquittal, or alternatively to a new trial, which is hereby respectfully requested. *Hall v. State*, 644 So. 2d 1223, 1228 (Miss. 1994), *Brown v. State*, 829 So. 2d 93, 103 (Miss. 2002).

When a jury's verdict is so contrary to the weight of the credible evidence or is not supported by the evidence, a miscarriage of justice results and the reviewing appellate court must reverse and grant a new trial. *Kelly v. State*, 910 So. 2d 535, 539-40 (Miss. 2005).

The court in *Edwards v. State*, 469 So. 2d 68, 70 (Miss. 1985), said:

> If the facts and inferences so considered point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty, granting [a motion for directed verdict] is required.

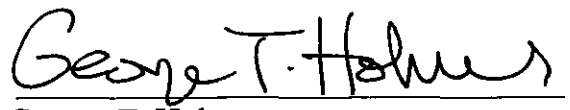
See also *Carr v. State*, 208 So. 2d 889 (Miss. 1968), *Foster v. State*, 919 So. 2d 12, 15 (Miss. 2005).

CONCLUSION

Larry Minter is entitled to have his convictions reversed with acquittal or remand for a new trial.

Respectfully submitted,

LARRY TYRESE MINTER

By: 

George T. Holmes,
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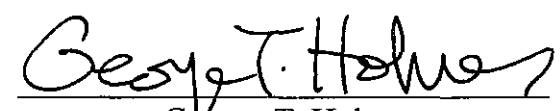
CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 8th day of January, 2010, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Lisa P. Dodson, Circuit Judge, P. O. Box 1461, Gulfport MS 39502, and to Hon. John Gargiulo, Asst. Dist. Atty., P. O. Box 1180, Gulfport MS 39502, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.



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