IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2009-KA-01560-COA

RILEY LAFATE ADAMS
a/k/a Riley Lafayete Adams — APPELLANT

V.

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. Riley L. Adams

THIS 23d day of February, 2010.

Respectfully submitted,

RILEY L. ADAMS

By: George T. Holmes

George T. Holmes,
Mississippi Office of Indigent Appeals

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## STATEMENT OF THE CASE

This appeal follows a murder conviction of Riley Adams out of Clarke County. A jury trial was conducted August 25-27, 2009, with the Honorable Lester F. Williamson, Jr., Circuit Judge, presiding. Adams was sentenced to life imprisonment with the Mississippi Department of Corrections where he is presently incarcerated.

## FACTS

Clarke County deputies and investigators responded to a 911 call out of Shabuta on April 2, 2008 at approximately 6:00 p. m., on the report that Ruth Ellen Davis had committed suicide at her home in the Carmichael community. [T. 82-85, 96-99 149-50, 156-57, 163]. When the officers arrived they found the appellant Riley L. Adams, with whom Ms. Davis had lived with since 1995, outside the mobile home with a cordless

phone. [T. 151, 165].

Adams was intoxicated, and was reported to have said at the scene that Ms. Davis committed suicide by shooting herself in the bedroom where her body remained. [T. 98-99, 151-55, 159-61, 173-74]. Adams was also reported as stating, at the scene, that Ms. Davis was killed by two intruders and alternatively that she died of the single gunshot when she interrupted a suicide attempt by Adams. [T. 84-85, 98-99, 113-15, 169-71, 199-204].

Adams was described by the Clarke County Sheriff as being "a little incoherent." [T. 86]. His speech was slurred according to the Sheriff as well, and he was "definitely under the influence of something." [T. 86- 88].

No weapon was near the body of the deceased. [T. 153, 158]. Adams purportedly said he threw the gun in the woods. [T. 207]. The Clarke County sheriff found a .22 caliber pistol behind some pictures in the couple's trailer home, but that pistol was not shown to have been the one which fired Ms. Davis' fatal wound. [T. 178-81, 205, 207; Ex. 3]. Adams said the gun the Sheriff found was not the gun used. [T. 207, 371-72]

Adams was requested to report to the sheriff's office which he did. [T. 183]. According to the investigators, interrogation of Adams produced three written statements, all somewhat different. [T. 103-05, 113-15, 184, 188-92; T. Exs. 5, 6, 7].

The first written statement offered into evidence was dated April 3, 2008, the day after the shooting. [T. 103, 112-15, 184, 187-88; T. Ex.5]. The statement was actually

made the evening before, but typed out the next day and signed. *Id.* This statement explains that Adams went fishing and started drinking. The fish were not biting, so Adams came home and worked on a puzzle continuing to drink. He decided to kill himself and grabbed his .22 out of a china cabinet. He walked back to the bedroom where Ms. Davis was. Adams sat on the bed with the gun, as he said he had done before. Ms. Davis grabbed the pistol and it went off. Adams tried to resuscitate her in vain and then called her brother. *Id.*

Adams' typed second statement, also dated April 3d, alleges that when he went back to the bedroom after returning from fishing, he shot Ms. Davis during a "psychotic episode." [T. 103, 112-15; T. Ex.6]. No mention of suicide is made. *Id.*

The third statement of Adams was hand written and was made the next day April 4, 2008. [T. 103-05, 112-15; T. Ex. 7]. This cryptic note describes an argument of sorts with Ms. Davis about pills, and Adams said he pulled the trigger, but it was like an out of body experience. *Id.* There was no reference to suicide. *Id.*

Adams testified at trial that he did not remember giving any of the statements to investigators and that he did not remember calling 911. [T. 365, 368-69, 378]. Adams said at trial that he had been fishing on the day of the incident and he came home, worked on a puzzle, retrieved one of his .22 caliber pistols and went to the back bedroom where Ms. Davis was resting on the bed and watching television. [T. 370-71]. Adams said he intended to commit suicide. *Id.* Adams said when Ms. Davis tried to interrupt the suicide,

the weapon discharged accidently striking her in the right neck or jaw area. *Id.*

The autopsy concluded that Ms. Davis died from a single gunshot wound, fired within 3 to 7 inches. [T. 228–30, 240 ]. The projectile perforated both the right carotid artery and jugular vein. *Id.*

Subsequent gun shot residue analysis showed that, although there was no actual complete gun shot residue, there were indicative particles on Ms. Davis' right hand and on both of Adams' hands. [T. 305, 310]. All of the chemical elements not present and the shape of the particles were not conclusive. *Id.*

## SUMMARY OF THE ARGUMENT

Adams' third statement should not have been admitted into evidence. The trial court excluded proper defense evidence and the jury was not properly instructed. The verdict of murder was contrary to the weight of evidence.

## ARGUMENT

### ISSUE NO. 1: WHETHER LACK OF MIRANDA WARNING RENDERS ONE OF ADAMS' STATEMENTS INADMISSIBLE?

On April 4, 2008, two days after Ms. Davis' death, Adams was interviewed for a third time. [T. 103-05, 187-90; T. Ex. 7]. Adams was not given the Miranda warnings at this questioning which produced yet a another written statement. *Id.* The only written Miranda waiver form submitted by the state was dated April 2, 2008 at 8:50 p. m. [Supp.

Mot. Ex. 1, Trial Ex. 4].

Involuntary confessions are inadmissible. *Carley v. State*, 739 So. 2d 1046, 1500 (Miss. Ct. App. 1999), *Neal v. State*, 451 So. 2d 743, 750 (Miss. 1984); *Morgan v. State*, 681 So. 2d 82, 87 (Miss. 1996), Fifth and Fourteenth Amendments to the U.S. Constitution and Article 3, § 26 of the Mississippi Constitution.

Statements made by a suspect while under custodial interrogation are inadmissible at trial where the suspect is not given the warnings required by *Miranda v. Arizona*, 384 U. S. 436, 478-479, 86 S. Ct. 1602, 1630, 16 L. Ed. 2nd 694, 726 (1966), absent a knowing and intelligent waiver of his rights. *Tolbert v. State*, 511 So. 2d 1368, 1374 (Miss. 1987), cert. denied, 484 U.S. 1016, 108 S. Ct. 723, 98 L.Ed.2d 672 (1988). It has been shown that it is proper to reissue the Miranda warnings to a suspect in custodial interrogation where questioning stops or is interrupted for any considerable length of time. *Underwood v. State*, 708 So. 2d 18 (Miss. 1998).

The state has the burden to prove voluntariness of a confession beyond reasonable doubt, and may meet this burden "by offering the testimony of those individuals having knowledge of the facts that the confession was given without threats, coercion, or offer of reward." *Carley, supra*, 739 So. 2d 1500.

The *Carley* the court confirmed that the trial judge is the "fact finder" in the determination of voluntariness and the trial court's decision is reviewed under a standard of clearly erroneous, but added, "[h]owever, our review of the voluntariness of an

accused's confession is less constrained where the trial judge fails to make detailed and specific findings on critical issues." *Id.*

Here the interrogating officer admitted not reissuing the Miranda warnings to Adams before his third written statement. [T. 103-05, 187-90; T. Ex. 7]. The previous questioning had stopped the prior day. *Id. Cf. Taylor v. State*, 789 So. 2d 787, 793-94 (Miss. 2001), where there was a brief pause in questioning requiring no new Miranda warning. Here the custodial interrogation was clearly terminated on April 3 the day before the third statement.

It follows that since there were no new Miranda warnings, the state did not meet its burden of proving a free, voluntary and knowing waiver of rights against self incrimination. The error is not harmless, because, Adams' third statement arguably contains admission of deliberate design to effect the death of Ms. Davis. A new trial is respectfully requested.

**ISSUE NO. 2: DID THE TRIAL COURT ERRONEOUSLY EXCLUDE DEFENSE EVIDENCE?**

As confirmed in Adams' detailed medical history obtained for his mental capacity report to the trial court, there was a pattern of suicide attempts. [Pretrial Ex.1]. An attempt from 1996 is documented. Adams reported several more. *Id.* [T. 372-76].

When Adams offered this information to the jury as proof of lack of deliberate design to effect the death of Ms. Davis, the trial court hastily excluded it. [T. 372-76]. A

proffer was made. *Id.* Adams' position is that the evidence was relevant and vital to his defense.

Adams acknowledges that, generally, "diminished capacity is not a recognized defense in Mississippi," as stated in *Cannaday v. State*, 455 So. 2d 713 (Miss. 1984) and elsewhere. See, also, *Garcia v. State*, 828 So. 2d 1279, 1284 (Miss. Ct. App. 2002), *Stewart v. State*, 790 So. 2d 838, 841 (Miss. Ct. App. 2000), and *Smith v. State*, 880 So. 2d 1094, 1097 (Miss. Ct. App. 2004).

However, "diminished capacity" is relevant in determining whether an act, in this case homicide, was committed with or without intent or deliberate design. In *Bieller v. State*, 275 So. 2d 97, 98-99 (Miss. 1973), Bieller was convicted of killing his girlfriend with a shotgun. Since he was so drunk, Bieller had no memory of the event. Bieller did not claim mental illness, but requested a jury instruction for a defense of lack of intent due to intoxication. In reversing, the *Bieller* court said:

> The [trial] court refused the instruction as the evidence bearing upon Bieller's condition at or about the time of the homicide did no more than raise a question as to the degree of his voluntary intoxication. In this situation it was for the jury to say whether Bieller was intoxicated to such an extent that he was incapable of forming the malicious intent, or 'malice aforethought' necessary in the crime of murder. The jury gave Bieller the benefit of this and found him guilty of manslaughter only.
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> * * *
>
> The applicable rule is stated in 22 C.J.S. Criminal Law § 70 (1961) as follows:
>
> Temporary insanity resulting from use of intoxicants, however, may be sufficient to deprive accused of the capacity to entertain a specific intent

> essential to commission of a particular crime, which is just another way of stating the rules, . . . to the effect that drunkenness does not excuse crime but may preclude the existence of a specific mental condition essential to commission of a particular kind or degree of offense.

The facts of *Bieller* are similar to the present case and require application of the principals explained. Therefore, Adams, like Bieller, was entitled to give the jury the relevant information about his previous suicide attempts. Not only to show what his mental capacity was, but to also show that Ms. Davis would have taken Adams' suicide attempt seriously enough to try and grab the gun, thus supporting a manslaughter verdict under more than one theory of defense. Moreover, evidence of Adams' prior suicide attempts corroborated his testimony about his intent on the day Ms. Davis was shot.

In *Taylor v. State*, 452 So. 2d 441, 449-50 (Miss. 1984), the court established that in Mississippi, when there is no insanity defense tendered in a particular case, testimony is generally not admissible to show the mental state of a defendant *prior* to a homicide as evidence of lack of intent or heat of passion; because, in a heat-of-passion-manslaughter versus deliberate-design-murder case, the factual determination to be made by the jury is all based on *objective* evidence, where in an insanity defense case, the jury deliberates the *subjective* intent of the defendant. However, this does not stop the analysis.

Neither *Taylor* nor the usual cases on diminished capacity are controlling here, because, the state's evidence of malice aforethought against Adams was based, at least in part, on his actions *after* the homicide, rather than *before*. The state emphasized that no gun was near Ms. Davis' body and that Adams made conflicting statements.

The appellant's position is that, on the question of intent, diminished capacity would be relevant to rebut the state's evidence and corroborate Adams under the authority of *Garrison v. State*, 726 So. 2d 1144, 1151 (Miss. 1998). In *Garrison*, the Court held that evidence of a defendant's "mental state after the murder was admissible as rebuttal to the State's assertions since it would assist the jury in understanding the evidence and determining facts in issue." *Id.*

The *Garrison* court said:

> In the case sub judice, ... the State built its case, to some extent, on testimony about Melissa's actions *after* her mother's murder, focusing on statements she made which later were proven to be untrue. *Id.*

If follows, therefore, as a matter of law, that Adams should have been allowed to introduce evidence concerning his prior suicide attempts.

**ISSUE NO 3: WHETHER A JURY INSTRUCTION FOR DIMINISHED CAPACITY WAS REQUIRED?**

Assuming the arguments under Issue number 2, *supra*, are valid, Adams would have been entitled to his requested instruction D-6 concerning diminished capacity to form deliberate design, which was refused by the trial court. [T. 424-26; R. 53, R. E. 13]. Criminal defendants are entitled to jury instructions embodying their theories of defense if the same have a factual basis. *Welch v. State*, 566 So. 2d 680, 684 (Miss. 1990). Failure to afford the same constitutes reversible error. *Id.*

In *Chinn v. State* 958 So. 2d 1223 (Miss. 2007), the Court made it clear that "every

accused has a fundamental right to have [his] theory of the case presented to a jury, even if the evidence is minimal. The trial court's denial of the accident instruction in *Chinn* was determined to be a denial of a fundamental right requiring reversal. *Id.*

According to *O'Bryant v. State*, 530 So. 2d 129, 133 ( Miss. 1988):

> It is, of course, an absolute right of an accused to have every lawful defense he asserts, even though based on meager evidence and highly unlikely to be submitted as a factual issue to be determined by the jury under proper instructions of the court. This court will never permit an accused to be denied this fundamental right.

A new trial is respectfully requested.

**ISSUE NO 4: WHETHER THE VERDICT IS CONTRARY TO THE WEIGHT OF EVIDENCE?**

Adams' statements were so incoherent and obtained under the veil of his obvious mental problems renders the verdict in this case unreliable and unreasonable. Without these alleged confessions, the state's case here is less than circumstantial. The verdict of guilty was clearly contrary to the evidence entitling Adams to a reversal and rending of acquittal, or alternatively to a new trial. *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).

In *Tait v. State*, 669 So. 2d 85, 86-88 (Miss. 1996), the defendant was convicted of depraved heart murder. On appeal he challenged the weight and sufficiency of the evidence arguing that his conviction should have instead been culpable negligence manslaughter. In *Tait* the victim was killed accidently when the defendant place the gun against the victim's head during what was described as horseplay. The *Tait* Court ruled that the only appropriate verdict under this set of facts was for manslaughter by culpable negligence. *Id.* at p 90. The *Tait* facts are similar to the facts here in that there was no evidence of premeditation.

This case is also similar to *Towner v. State*, 726 So. 2d 251, 253-54 (Miss. Ct. App. 1998). In *Towner* the defendant had a pistol inside his coat and the victim grabbed his arm to try and find it out of curiosity. Unintentionally, the weapon discharged killing the victim. Since Tait was carrying a concealed weapon, the misfortune could not be ruled excusable, and the Court found that his conviction of culpable negligence manslaughter was supported by the evidence. *Id.* at 254-55. Such was the case here.

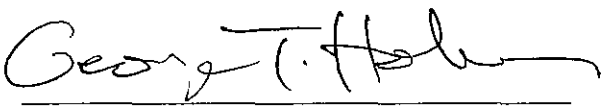
Therefore, the trial court erred in denying Adams' request for a judgment notwithstanding the verdict for manslaughter. This Court is respectfully requested to render such verdict, or remand the case for a new trial.

## CONCLUSION

Riley L. Adams is entitled to have his convictions reversed and rendered or remanded for a new trial.

Respectfully submitted,

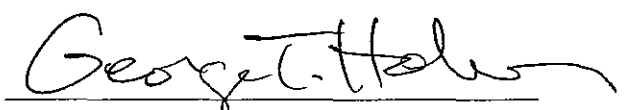
RILEY L. ADAMS

By: 

George T. Holmes,
Mississippi Office of Indigent Appeals

## CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 23rd day of February, 2010, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Lester F. Williamson, Jr., Circuit Judge, P. O. Box 86, Meridian, MS 39302-0086, and to Hon. Dan Angero , Asst. Dist. Atty. , P. O. Box 5172, Meridian MS 39302, and to Hon. Jim Hood, Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.



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