

COPY

IN THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI
FIFTEENTH JUDICIAL DISTRICT

STATE OF MISSISSIPPI

VS.

Criminal Action, File No. 2002-0061E

CORY J. MAYE

ADDENDUM TO AMENDED
MOTION FOR JUDGMENT *NON OBSTANTE VERDICTO* OR,
IN THE ALTERNATIVE,
FOR A NEW TRIAL

COMES NOW Defendant Cory J. Maye, by and through counsel, and, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, to analogous sections of Article 3 of the Mississippi Constitution and to Rule 10.05 of the Mississippi Rules of Circuit and County Court Practice, hereby moves this Court to enter its order setting aside the jury verdict as returned in this action and enter a judgment of "Not Guilty" in favor of Defendant Maye and thereby discharge him from custody of the MS Department of Corrections. Or, in the first alternative, Defendant Maye requests that this Court enter its order setting aside the said jury verdict and granting him a new trial. In the second alternative, Defendant Maye requests that this Court enter its order setting aside the death penalty as returned in this action and granting him a new penalty phase. In support of this Motion, Defendant Maye would set forth grounds as follow.

FILED
JERI L. LANDRY
CIRCUIT CLERK
DATE 11-17-05
BY DS
DEPUTY CLERK

I.

**INCORPORATION OF MOTION FOR NEW TRIAL AND
AMENDED MOTION FOR JUDGMENT *NON OBSTANTE VERDICTO* OR,
IN THE ALTERNATIVE, FOR A NEW TRIAL**

All allegations and averments set forth in Defendant's Motion for New Trial as filed in this action on February 02, 2004, are incorporated herein. All allegations and averments set forth in Defendant's Amended Motion for Judgment *Non Obstante Verdicto* or, in the Alternative, for a New Trial, as filed on November 07, 2005, are incorporated herein.

II.

CUMULATIVE ERROR

Even assuming, *arguendo*, that this Court were to decide that standing alone none of the errors as set forth in Defendant's Motion and Amended Motion for New Trial would require reversal of either the guilt or sentencing phase of Defendant's trial, the said errors, when taken cumulatively, require reversal of both trial phases because of their cumulative prejudicial effect on Defendant's fundamental right to a fair and impartial trial. As the Mississippi Supreme Court stated in *Byrom v. State*, 893 So.2d 836, 846 (Miss. 2003):

"The standard for this Court's review of an appeal from a capital murder conviction and death sentence is abundantly clear. On appeal to this Court, convictions upon indictments for capital murder and sentences of death must be subjected to "heightened scrutiny." *Balfour v. State*, 598 So. 2d 731, 739 (Miss. 1992) (citing *Smith v. State*, 499 So.2d 750, 756 (Miss. 1986); *West v. State*, 485 So.2d 681, 685 (Miss. 1985)). Under this method of review, all doubts are to be resolved in favor of the accused because "what may be harmless error in a case with less at stake becomes reversible error when the penalty is death." *Id.* (quoting *Irving v. State*, 361 So.2d 1360, 1363 (Miss. 1978)). *See also Fisher v. State*, 481 So.2d 203, 211 (Miss. 1985)."

Again speaking about cumulative error when errors occurred that standing alone do not require reversal, the Mississippi Supreme Court, in *Jenkins v. State*, 607 So.2d 1171, 1183-84 (Miss. 1992), stated:

“This Court has often ruled that errors in the lower court that do not require reversal standing alone may nonetheless taken cumulatively require reversal.” *Id.* (citing *Griffin v. State*, 557 So.2d 542, 552-53 (Miss. 1990).

And in *Manning v. State*, 726 So.2d 1152, 1198 (Miss. 1998), the Court stated:

This Court has held that individual errors, not reversible in themselves, may combine with other errors to make up reversible error. *Hansen v. State*, 592 So.2d 114, 142 (Miss. 1991); [(fn5)] *Griffin v. State*, 557 So.2d 542, 553 (Miss. 1990). The question under these and other cases is whether the cumulative effect of all errors committed during the trial deprived the defendant of a fundamentally fair and impartial trial.

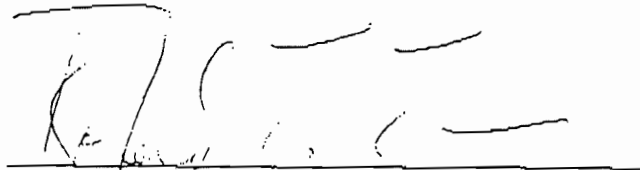
While each of the errors set forth in Defendant's Motion and Amended Motion for New Trial were sufficient to entitle Defendant to a new trial, even if this Court were to adjudge differently, said errors require reversal of Defendant's trial because of their resulting cumulative prejudicial effect which caused Defendant to be denied his fundamental right to a fair and impartial trial.

WHEREFORE, PREMISES CONSIDERED, Defendant Cory Maye hereby moves this Court to enter its order setting aside the verdict of the jury in this action and enter its judgment of “Not Guilty” in Defendant's favor and thereby discharging him from the custody of the Mississippi Department of Corrections. Or, in the alternative, Defendant moves this Court to enter its order setting aside the verdicts (both guilt and sentencing) of the jury and granting to him a new trial on each.

Respectfully submitted,

CORY J. MAYE

By:




Robert E. Evans
Attorney for Cory J. Maye

CERTIFICATE OF SERVICE

I, Robert E. Evans, attorney of record for Cory J. Maye, do hereby certify that I have this date served counsel for the State of Mississippi with a true and correct copy of the above and foregoing Addendum to Amended Motion for Judgment *Non Obstante Verdicto* or, in the Alternative, For a New Trial by putting said copy in the U.S. Mail in an envelope with adequate prepaid first class postage affixed thereto and addressed to Hon. Doug Miller, Ass't. District Attorney, 500 Courthouse Square, Suite 3, Columbia, MS 39429.

SO CERTIFIED on this, the 14th day of November, 2005.


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