

IN THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI
 STATE OF MISSISSIPPI
 VS. CAUSE NO. K2002-61E
 CORY J. MAYE DEFENDANT

MOTION FOR NEW TRIAL

COMES NOW defendant, Cory J. Maye, by and through undersigned counsel, and files this Motion for New Trial pursuant to Rule 10.05, U.C.C.C.R. This motion arises out of newly discovered evidence and information that has been brought to counsel's attention since the conclusion of this trial on Friday, January 23, 2004 as well as misconduct by the prosecutor and jury throughout the course of the trial. As the defense investigated the alleged shooting of Ron Jones by Cory Maye on December 26, 2001 in Prentiss, Mississippi and prepared for trial, counsel sought diligently to obtain certain evidence and information. Because of the social and political climate regarding the law enforcement officials at issue in this particular case, counsel was unable to successfully obtain the evidence and information that was sought in advance of trial. However, now that the trial is concluded, and a jury of twelve (12) citizens from Marion County, Mississippi returned a verdict of guilty against Cory Maye for capital murder and sentenced him to suffer death by lethal injection, certain evidence and related information has come forth in abundance. It is for these reasons, *inter alia*, that this Motion for New Trial is being submitted, and Cory Maye would state unto this Honorable Court the following, to-wit:

FILED
 JERI L. LANDRY
 CIRCUIT CLERK
 DATE 02-02-04
 BY Jeri L. Landry
 DEPUTY CLERK

NEWLY DISCOVERED EVIDENCE**OFFICERS' ACTIONS NEGATE CAPITAL MURDER CHARGE*****Auxiliary Officers Have No Authority/Jurisdiction***

1. The defense has been advised that auxiliary/volunteer officers do not have jurisdiction or authority to participate in the issuance or execution of search warrants outside of their own municipality.
2. Based on this, the defense submits the auxiliary/volunteer officer with the Bassfield Police Department who kicked in Cory Maye's back door did not have jurisdiction or authority to participate in the execution of the search warrant Ron Jones allegedly had for the Prentiss apartment into which he entered after the door was kicked in by the auxiliary officer.
3. The defense submits the officers' actions in connection with the execution of the alleged search warrant in this regard were a violation of the Mississippi Bureau of Narcotics Standards as well as the Bassfield and Prentiss Police Department's General and Standing Orders.

Non-Medical Professionals Cannot Transport Injured

4. The defense has also been advised that non-medical professionals cannot move/handle/transport the victim of a shooting.
5. Based on this, the defense submits the way in which the individuals, including, but not limited to, those who attended him after he had been shot in the abdomen, handled him after he removed himself from Cory Maye's apartment caused and/or contributed to his death in that these individuals were not medical professionals and should have sought and/or waited for assistance from those properly trained to attend to such gun shot injuries before moving Ron Jones about.
6. The defense submits the handling and transporting of Ron Jones by non-medical professionals, namely, fellow police officers, after he was

shot in the abdomen was a breach of the duty owed Ron Jones by the City of Prentiss and the City of Bassfield as well as a violation of the Prentiss and Bassfield Police Department's General and Standing Orders.

No Firearms/Weapons Surrendered for Testing

7. The defense has also been advised that none of the officers who accompanied Ron Jones to 1728 Mary Street surrendered their firearms/weapons for testing to determine whether any of the firearms/weapons possessed by them at that time had been discharged while at the premises.

8. Based on this, the defense submits the officers' failure to surrender their firearm/weapons for testing and the municipalities' and county's failure to collect the weapons and/or cause them to be surrendered for testing was a violation of the Mississippi Bureau of Narcotics Standards and the General and Standing Orders of both Municipalities and Jefferson Davis County.

9. The defense submits these actions by the county, municipalities, and officers, individually and collectively, serve as superceding, intervening causes that negated any charge of capital murder against Cory Maye (assuming, for the purposes of this Motion, a bullet from the gun possessed and fired by Cory Maye at the time did in fact enter Ron Jones' abdomen).

10. Based on this, the defense submits the violative actions by the county, municipalities and officers warrant the granting of a new trial.

MISCONDUCT THROUGHOUT TRIAL

PROSECUTORIAL MISCONDUCT

Crying During Closing Argument

11. The defense has been advised that the prosecutor cried during his closing argument.

12. Based on this, the defense submits the prosecutor could only have engaged in this conduct so as to invoke sympathy for the deceased and to prejudice the minds of the jurors.

13. The defense further submits this highly improper and prejudicial tactic obviously impressed the jurors and directly influenced their verdict.

References to God/Deity During Closing Argument

14. The defense submits the prosecutor's repeated references to God and the Deity during his closing argument was wholly improper and warrants a new trial.

15. Although the defense posed an objection to these prejudicial and inflammatory references, the defense submits they were not stricken from the jury's minds and impressed them; thus, directly influencing their verdict.

Testifying During Witness Examination

16. The defense also submits the trial transcript is replete with testimony from the prosecutor regarding facts not in evidence. Although counsel made timely objections that were either sustained or overruled, the prosecutor continued to testify before the jury with regard to facts not in evidence.

17. The defense submits these continuous comments/remarks/tactics/antics in the form of testimony by the prosecutor were improper and prejudicial and an attempt to sway and influence the jury.

18. The defense further submits the prosecutor's repeated testifying obviously impressed the jurors and directly influenced their verdict.

19. Based on this, the defense further submits these improper, prejudicial and inflammatory comments/remarks/tactics/antics by the prosecutor throughout the course of trial constitute prosecutorial misconduct and is the basis for the granting of a new trial.

JURY PARTIALITY AND MISCONDUCT

Discussing the Case Before Submission

20. The defense has been advised that members of the jury talked openly and continuously as they sat to hear testimony during the examination of witnesses.

21. The defense submits any discussion among jurors about any aspect of the case or trial before the case was submitted for deliberation warrants a new trial.

Undue Influence by the Foreperson

22. The defense has been advised that several members of the jury were unduly influenced by the foreperson and felt pressure from him in their deliberations due to the nature of their jobs/careers as well as their level of education.

23. The foreperson of the jury was Donald Sturdivant, a retired dentist. The defense submits Donald Sturdivant, having attained more education than other members of the jury, used his education and professional standing to unduly influence and persuade the other jurors in their deliberation.

24. The defense submits Donald Sturdivant's undue influence compromised the integrity of the jury by disabling the other jurors from voting according to their own individual consciences and convictions.

Veniremen Not Truthful During Voir Dire

25. The defense has been advised that several members of the original venire feared jury service in this trial because of the racial issues, i.e., Ron Jones was a white police officer and Cory Maye is a young black man, and stated reasons during the Court's voir dire that would guarantee their discharge.

26. The defense submits that because Cory Maye was charged with capital murder of a white police officer, he was not afforded a fair trial where the veniremen were fearful and untruthful during voir dire examination.

27. Moreover, the defense submits the integrity of the entire venire was compromised due to racial and socio-economic issues that are completely misplaced in a death penalty case.

28. Based on this, the defense submits Cory Maye did not receive a fair trial in that he was not tried by a jury of his true peers.

Jury Able to Hear Arguments by Counsel When Excused

29. The defense has been advised that because of the location of the jury room relative to the areas occupied by counsel during sidebar conferences, the jury was able to hear the arguments of counsel when excused to retire to the jury room.

30. Based on this, the defense submits there was never any time that the jury was not aware of the issues being discussed or argued by counsel even in the jury's absence.

31. Based on this, the defense opines a new trial is warranted and justice requires another jury pass upon the guilt or innocence of Cory Maye.

SUFFICIENCY AND WEIGHT OF THE EVIDENCE

Evidence of Only One Issue Insufficient To Support Verdict

32. The defense submits that because the jury was only allowed to hear testimony and review evidence relative to the one issue the prosecutor deemed easy to prove at trial, i.e. whether Cory Maye knew Ron Jones was a police officer, the testimony and evidence submitted to the jury was insufficient to find Cory Maye guilty of capital murder beyond a reasonable doubt.

33. The defense also submits that because the Court granted the State's Motion in Limine regarding the legal sufficiency of the search warrant, the jury was not allowed to hear any testimony or view any evidence relative to the alleged probable cause that existed for Ron Jones to obtain the alleged search warrant.

34. The defense submits the jury was precluded from rightfully and judiciously deciding the more paramount and critical factor, i.e., whether Ron Jones had probable cause to be at/around/inside Cory Maye's apartment when there was no confidential informant to identify Cory Maye as the occupant of the apartment unit under surveillance; as the owner or possessor of any illegal narcotics within the apartment unit; or as the suspect from whom he had purchased a substance proven to be marijuana.

35. The defense submits without the necessary probable cause to support Ron Jones' entry into Cory Maye's apartment with the alleged search warrant, the jury's verdict is contrary to the overwhelming weight and sufficiency of the evidence adduced at trial.

Officers' Testimony Lacked Credibility

36. The defense submits the testimony of the police officers at trial was replete with inconsistencies relative to contemporaneous trial testimony; prior hearing testimony; and written statements.

37. The defense submits that these inconsistencies in the officers' testimony resulted from the officers having to address only one issue in their trial testimony, i.e., whether Cory Maye knew Ron Jones was a police officer, when the officer, better than anyone, Ron Jones had only one search warrant and there was no probable cause for entry into Cory Maye's apartment.

38. Based on this, the defense submits the officers' testimony relative to the one issue of whether those present at Cory Maye's apartment knocked and announced their presence and purpose was manufactured and fabricated.

No Evidence to Support/Establish Reason for Shooting

39. The defense submits, despite the prosecutor's repeated testimony, he failed to offer or provide any evidence in support of a reason for which Cory Maye would shoot and kill Ron Jones, a police officer.

40. The defense submits that it is incredulous that Cory Maye, with no apparent reason and/or cognitive motive, then twenty-one years of age; no criminal history; two minor children to support; and a future for which to live, would take the life of anyone, least of a police officer.

41. The defense submits the prosecutor's testimony that Cory Maye shot Ron Jones to conceal a negligible amount of marijuana (a misdemeanor at best if prosecuted for possession) is mere speculation and conjecture and unsupported by any factual basis.

42. Based on the above, the defense submits to allow this verdict to stand as supported by insufficient evidence and discredited testimony sanctions an unconscionable injustice; thus, warranting a new trial.

DISCOVERY VIOLATIONS

43. The defense submits the prosecution failed to disclose all of the evidence and information requested by the defense in its Motions for (Supplementary) Discovery.

44. The defense submits that given there is sufficient testimony and evidence to support the fact that only one search warrant was obtained by Ron Jones on December 26, 2001 from Donald Kruger and that it was for execution on Jamie Smith's apartment, the prosecution's Motion in Limine as discussed above was an abuse of the discovery process so as to conceal the truth from the jury.

45. The defense further submits that the law enforcement agents'/officials' failure to surrender all of the officers' firearms/weapons for testing and/or failure to cause the firearms/weapons to be surrendered for testing was a blatant cover-up of possible exculpatory evidence and information.

46. Based on this, the defense submits these actions by the subject law enforcement agents/officials and the prosecutor were a deliberate attempt to prejudice the defense and an intentional violation of Cory Maye's rights.

47. Based on the above, the defense submits that these discovery abuses and violations require a new trial.

INSTRUCTIONS ON THE LAW

48. The defense submits the jury's verdict is contrary to the law.

49. The defense submits the jury was instructed to consider lesser included offenses based on the evidence.


50. The defense submits there was no evidence adduced at trial, beyond a reasonable doubt, to support the jury's verdict of capital murder.

51. Based on this, the defense submits the jury did not follow the instructions of law.

52. Based on the above, the defense submits the jury's verdict should be set aside and/or a new trial granted.

WHEREFORE PREMISES CONSIDERED, the Cory Maye prays that this Motion for New Trial be received and filed, and that after a hearing hereon, this Court will enter an Order granting a new trial. Cory Maye further prays for such other and further relief as this Court may deem just and proper under the premises.

RESPECTFULLY SUBMITTED, this the 2nd day of February, 2004.


RHONDA C. COOPER
MSB NO. 6511
POST OFFICE BOX 11556
JACKSON, MISSISSIPPI 39283
(601) 354-2594
ATTORNEY FOR CORY J. MAYE

CERTIFICATE OF SERVICE

I, RHONDA C. COOPER, do hereby certify that I have this day caused to be delivered, via United States Mail, postage prepaid thereon, a true and correct copy of the above and foregoing document to

Honorable Michael R. Eubanks
District Fifteen Circuit Court Judge
Post Office Box 488
Purvis, Mississippi 39475

Claiborne McDonald, Esq.
District Fifteen District Attorney
500 Courthouse Square, Suite 3
Columbia, Mississippi 39429

SO CERTIFIED, this the 2nd day of February, 2004.


RHONDA C. COOPER