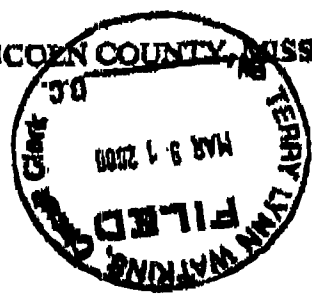


MAR-31-2008 08:37PM FROM

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSISSIPPI  
STATE OF MISSISSIPPI  
VS.  
MICHAEL LEGGETT



CAUSE NO. 07-069-LT-1

ORDER GRANTING NEW TRIAL

This matter is before the court on defendant, Michael Leggett's Motion For New Trial. Leggett is aggrieved because a Lincoln County jury convicted him of the murder of Jewel Dwayne Douglas. As an habitual offender, Leggett received a sentence of life - without the possibility of probation or parole.

Leggett asserts numerous errors occurred during trial and contends that those errors denied him a fair trial. The court will address each of Leggett's contentions individually.

Michael Leggett and Robert Culbertson Jr. were co-indictees for the murder of Jewel Dwayne Douglas. At trial Culbertson admitted throwing a tire iron that struck Douglas on the head. Neither Leggett nor Culbertson was charged with premeditated murder. Both were charged with "depraved heart murder".

The cases were severed for trial. Leggett's counsel moved for a continuance to conduct additional forensic testing. The motion was denied but the testing was accomplished because the court was unable to secure the attendance of enough jurors to conduct the trial on the date originally set. Leggett's trial was continued. As the time for Culbertson's trial approached, counsel for the state and Culbertson presented the court with a joint motion to continue the case. (Historically in this district the state has been allowed considerable latitude in setting the order of trials).

Counsel for Leggett filed numerous motions prior to the trial. Among them was a "Motion To Reveal the Deal". A hearing was held at which the state, through Assistant District Attorney Diane Jones, represented to the court that there was no deal for Culbertson.

5 BY MR. TATE: Your Honor, we had filed for the  
6 Court a request from the State of Mississippi to  
7 advise us if there had been any deal or any deal given  
8 to Mr. Culbertson by either express statements to him  
9 or his attorney or by implication. And the basis for  
10 that request -- and we'd ask for the State to put it  
11 on the record -- the reason for the request is that  
12 Mr. Culbertson was scheduled for trial after  
13 Mr. Leggett, that case was continued, and he is also  
14 listed as a witness against Mr. Leggett. And we're  
15 just asking for the State to state whether or not  
16 there was any offer of reduced sentence or any  
17 leniency from the DA's office in exchange for his  
18 testimony.

19 BY THE COURT: Okay.

20 BY MS. JONES: Your Honor, the State has no  
21 offers and has never had any offers on the table for  
22 Mr. Culbertson or for Mr. Leggett, nor have we told

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23 Mr. Culbertson or his attorney that we would consider  
24 an offer depending on what he -- whether he chose or  
25 did not choose to testify. It's my recollection I  
26/ simply asked Mr. Linzey to approach his client to see  
27 whether he would be willing to consider testifying.  
28 Mr. Linzey told me that he would be willing to  
29 consider that.

23

1 BY THE COURT: Okay. So there's no deal?  
2 BY MS. JONES: There is no explicit or implicit  
3 deal for him.  
4 BY MR. TATE: That was our request, Your Honor.  
5 BY THE COURT: Is he going -- well, I -- is he  
6 going to incriminate himself? Do you know?  
7 BY MS. JONES: I believe he will, Your Honor.  
8 BY THE COURT: Why would he do that?  
9 BY MS. JONES: Confer with Mr. Linzey.  
10 BY THE COURT: Okay.  
11 BY MS. JONES: I can't speak to what's in  
12 Mr. Culbertson's mind.

-3-

Prior to Culbertson's testimony the court heard counsel out of the presence of the jury on the issue of a deal for Culbertson. During this exchange counsel for Leggett suggested that Culbertson was talking in the jail about "getting manslaughter".

BY MR. FERNALD: Amended Motion to Reveal the

21 Deal.

22 (MR. LINZEY ENTERS COURTROOM.)

23 BY THE COURT: How are you doing, Mr. Linzey?

24 BY MR. LINZEY: I'm fine.

25 BY THE COURT: Let the record reflect that

26 Mr. David Linzey is in the courtroom. And,

27 Mr. Linzey, you are counsel of record for Robert M.

28 Culbertson, Jr., correct?

29 BY MR. LINZEY: Yes, Your Honor.

2

1 BY THE COURT: All right. And Mr. Linzey's

2 presence was requested for purposes of this motion.

3 Go ahead, Mr. Fernald.

4 BY MR. FERNALD: We'd call Robert Culbertson.

5 Well, Robert -- it's their witness that we want to

6 question, Your Honor. Don't they need to call --

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7 Mr. Culbertson is who we want to ask.

8 BY THE COURT: What's the motion?

9 BY MR. FERNALD: It's a Motion to Reveal the  
10 Deal.

11 BY THE COURT: Let me see the motion.

12 BY MR. FERNALD: Was filed on February 22nd, and  
13 based on the facts situation that we --

14 BY THE COURT: Let me see the motion.

15 BY MR. FERNALD: All right.

16 BY THE COURT: I'm sure it's in the court file  
17 somewhere, but it would be easier --

18 BY MR. FERNALD: It is. Let me give you mine.

19 BY THE COURT: -- if you'd just hand it to me.

20 Counsel, approach. You, too, Mr. Linzey.

21 (FOLLOWING PROCEEDINGS HAD AT BENCH:)

22 BY THE COURT: So you want -- what do you want?

23 BY MR. FERNALD: We would like to question him  
24 about the -- before he testifies, if, in fact, the  
25 circumstantial -- the fact pattern that followed this,  
26 we think it implies that there is some sort of tacit  
27 understanding. I want to ask him. I mean, the State  
28 says there is no deal. I want to know what his

29 understanding is, and I have some questions, what I

3

1 want to ask him. We think that's his position.

2 / BY THE COURT: That there's a tacit

3 understanding --

4 BY MR. FERNALD: Well, we think he's been telling

5 people he's going to get manslaughter.

6 BY MS. JONES: You think he's been telling them

7 that? Do you have proof of that?

8 BY MR. FERNALD: Well, we can call a witness, but

9 she's not at work today.

10 BY THE COURT REPORTER: I'm sorry. She's what?

11 BY MR. FERNALD: She's not at work today, and I

12 just wanted to question him and ask him.

13 BY THE COURT: Any objection to that, Mr. Linzey?

14 BY MR. LINZBY: I believe we've actually gone

15 through this before I think on the record that there

16 was no deal, and, as far as I know, nothing's changed,

17 so.

18 BY MR. TATE: Your Honor, something has changed.

19 BY THE COURT: But your question is -- I

20 understand, Mr. Linzey, your position is is, as his

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21 attorney, that as an officer of the Court, that  
22 there's no deal --

23 BY MR. LINZEY: Right.

24 BY THE COURT: -- that the attorney's position is  
25 that there's no deal, and Mr. Fernald is not  
26 necessarily disputing that.

27 BY MR. FERNALD: No.

28 BY THE COURT: His motion goes to  
29 Mr. Culbertson's subjective frame of mind; is that

4

1 correct?

2 BY MR. FERNALD: Yes.

3 BY THE COURT: Rather than there being an  
4 explicit --

5 BY MR. FERNALD: Yes.

6 BY THE COURT: -- agreement or even an offer of  
7 an agreement --

8 BY MR. FERNALD: Yes.

9 BY THE COURT: -- but rather what Mr. Culbertson  
10 understands --

11 BY MR. FERNALD: Yes, that's -- that's very

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120 well -- very well put.

The questioning of counsel continued.

BY THE COURT: Do you have any objection to

8 / Mr. Culbertson being asked his subjective  
9 understanding of whether or not there's a deal?

10 BY MR. LINZEY: Well, Your Honor, I'm not sure if  
11 his subjective understanding has anything to do with  
12 whether there's a deal in place or not.

13 BY THE COURT: And here's where -- and here's  
14 what I think about the motion. I understand the  
15 motion. I understand the difference between what has  
16 actually happened and what Mr. Culbertson may be  
17 hoping happens or what Mr. Culbertson may believe to  
18 happen. Whether that belief is rooted in any overt  
19 acts by the State or not, it goes to credibility and  
20 motive for testifying, which is always relevant. And  
21 I think you're permitted a wide open cross on that. I  
22 think as to the motion I will let the State announce  
23 what deals, if any, have been made, and then we will  
24 proceed, and it's cross-examination -- I don't think  
25 you're entitled to a -- put him on the stand --  
26 there's no reason to put him on the stand outside the

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27 presence of the jury and ask him what he thinks.

28 That's a discovery deposition. I think that's -- the

29 question is whether or not there's a deal by the

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1 State, and the State can speak to that, and then as to

2 his motivations for testifying, I think that's subject

3 to cross-examination. Is there anything else you need

4  on the record?

The state spoke to the motion only by insisting that no deal had been offered and by asking whether the defense had any witnesses to Culbertson's statements. Even when the possibility of a reduced charge was brought up by the defense the state failed to mention to counsel for either defendant or the court that the state, according to its subsequent pleadings, was no longer sure of its intention of pursuing a murder charge against Culbertson.

Not content to misrepresent the case to counsel and the court the state felt compelled to deceive the jury.

"Two men showed up at Duane Douglas's house that night. Make no mistake about that. Mark Culbertson threw that tire tool causing Duane to fall, whereupon the Defendant laid in to him picking up the tire tool and beating him into a senseless state from which he would not recover and inflicting injuries that would cause his death some 16 hours later at Baptist Hospital.

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Two men. Don't think for a moment that in putting Mark Culbertson on the stand the State was trying to convince you that he was innocent because for his role in this crime he ~~certainly~~ is not innocent. But today Mark Culbertson's guilt or innocence is not for you to decide, that's for another day."(emphasis added)

One can only wonder how "this crime" can be construed to mean two distinct crimes. In rebuttal closing Culbertson was again paraded in front of the jurors -- as if the state actually intended to pursue the murder indictment on Culbertson. Culbertson's guilt or innocence was before the jury since an accessory instruction was offered.

The state also allowed the court to advise the jury during voir dire of the allegations in the indictment and to further advise them that both Culbertson and Leggett were charged with murder when the state knew, or should have known it would not be pursuing such a charge against its star witness.

At this time the court lacks a complete transcript but the state's clear and unambiguous representation to the court, counsel and the jury was that both men were charged with murder and both would be tried for murder. If the state had doubts about the case against Culbertson disclosure should have been made.

Threads of the argument run throughout the portions of the trial that the court has before it. In closing it was all wrapped up for the jury.

"Aiding, abetting, encouraging, or assisting in the commission of the crime. We're not -- no one is getting singled out here.

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It's like Ms. Jones said, today is Mr. Leggett's day.

Mr. Culbertson will have his day. These two acted in concert."

The state was referring to a jury instruction on the culpability of an accessory. This instruction was especially egregious in that the state sponsored an instruction to the jury that Leggett could be found guilty of murder - if the jury believed Culbertson committed the murder and Leggett was an accessory.

Now that the state has finally spoken conceded that Culbertson was guilty only of manslaughter it should be clear to any practicing lawyer that the accessory instruction (to murder) should never have been proffered. The reading of the instruction at a time when the state - according to its own Motion to Amend - did not believe Culbertson committed murder requires a new trial and merits further proceedings. The state unequivocally announced in the jury instruction conference that manslaughter was not an option in this case. (Defense counsel did not want a manslaughter instruction).

Because of the concealment of material facts by the court had no reason to deny the instruction - nor did Leggett's counsel have any valid objection to it. When the state announced that it had not intended to pursue a murder charge against Culbertson since September 2007, everything changed. It became apparent that verdict against Leggett was procured through dishonesty, misrepresentations and in violation of almost every standard of due process.

When the State filed its Motion to Amend Indictment the State abandoned the theory of the case they had used to convict Leggett. Although the State has announced that it no longer believes the

theory of the case that was presented to the jury it somehow thinks the verdict based on this theory can stand. It cannot.

Constitutions, Rules of Professional Conduct, Uniform Rules of Circuit and County Court Practice, oaths and even the most basic rules of decency and fair play were all trampled by the state. The constraints of time and the lack of a complete transcript prevent the court from listing each and every violation but the instances of prosecutorial misconduct that are immediately apparent include:

- failure to notify Culbertson's counsel of exculpatory material
- failure to speedily seek to amend the indictment against Culbertson,
- failure to notify Leggett's counsel that Culbertson would be charged with manslaughter,
- representing to counsels opposite, the court and the jury that Culbertson and Leggett would face the same charge – murder
- offering a jury instruction that invited the jury to consider whether Culbertson had committed murder at a time when the state had quietly decided that he had not
- having Culbertson brought to court in jail clothing and restraints when the court had instructed jail personnel otherwise. (It turns out that this was another ploy to mislead everyone involved in the trial. The jail clothing and restraints were to show that Culbertson was receiving "no special treatment")
- denying Leggett a legitimate opportunity to cross examine Culbertson by concealing matters relevant to Culbertson's motive for testifying
- denying Leggett his right to effective counsel by misleading counsels opposite
- improper closing argument regarding what the state "believed" about Culbertson's guilt in "this crime"
- falsely stating to the jury that Culbertson was also "guilty of this crime" at a time when the state did not believe Culbertson was guilty of murder.
- Concealing indictments against state's witnesses and not notifying counsel that a state's witness had unserved indictments that were procured by and signed by this district attorney's office

In spite of the best efforts of the court, law enforcement, witnesses, defense counsel, court personnel and the jurors, this trial was a show trial. It cannot seriously be argued that Leggett received even the most basic "due process". The state's case revolved around their allegation that Culbertson and Leggett committed a murder and that Culbertson would also have to answer for the murder. Culbertson's testimony was improperly bolstered because the jurors were told that he was facing a charge of murder and testifying because he was so truthful. Now the State admits that Culbertson's testimony was a part of the decision to amend the indictment.

It has been said that there are two enemies of the orderly administration of justice. The first is violence, which in times of instability, can prevent courts from acting or corrupt them with fear. The other threat to courts is fraud or trickery which corrupts courts by misleading them. Schemers, tricks, and secret plans have no place in the prosecution of cases.

All defendants are entitled to a fair trial. The public also deserves fair trials. Law enforcement officers, attorneys, jurors and witnesses have an interest in knowing that trials are fair. Due process is not a formality. Trials are not games.

Since the issues addressed herein are dispositive and require a new trial the court will not address, at this time, all of the other claims of error raised by counsel. The court will not recite all of the various rules that should have governed the prosecution of this case.

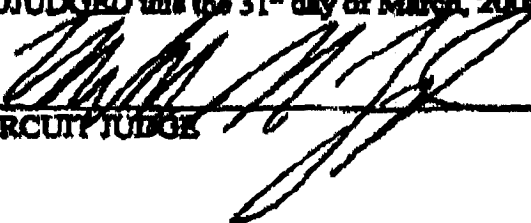
This ruling sets forth the court's finding that the Office of the District Attorney committed prosecutorial misconduct in the prosecuting of these cases. A copy of this ruling will immediately be forwarded to the Mississippi Bar Association Complaint Counsel. Complete transcripts and a list

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of persons that may have additional facts will also be forwarded to Complaint Counsel.

SO ORDERED AND ADJUDGED this the 31<sup>st</sup> day of March, 2008



CIRCUIT JUDGE

MICHAEL M. TAYLOR  
 CIRCUIT JUDGE  
 P.O. BOX 1350  
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