

FILED

Serial: 248559

SEP 21 2023

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-M-00829

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

**DEVONTE EASTERLING A/K/A
DEVONTAE EASTERLING**

Petitioner

v.

STATE OF MISSISSIPPI

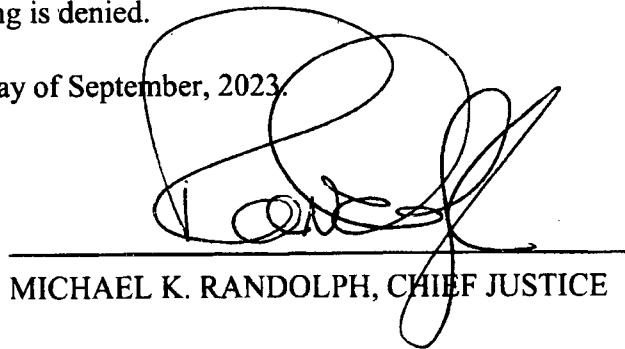
Respondent

ORDER

This matter is before the panel of Randolph, C.J., Coleman and Griffis, JJ., on the Application/Motion for Leave to Proceed in Trial Court filed by Devonte Easterling. After due consideration, the panel finds that Easterling's claims of ineffective assistance of counsel fail to meet the standard set out in *Strickland v. Washington* and that the petition should be denied.

IT IS THEREFORE ORDERED that the Application/Motion for Leave to Proceed in Trial Court filed by Devonte Easterling is denied.

SO ORDERED, this the 21 day of September, 2023.


MICHAEL K. RANDOLPH, CHIEF JUSTICE

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DEVONTE EASTERLING
MOVANT

VS. CAUSE NO. 2017-054-K

STATE OF MISSISSIPPI
RESPONDENT

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FILED

JUL 27 2023

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

2023-M-00829

APPLICATION/MOTION FOR LEAVE TO PROCEED IN TRIAL COURT

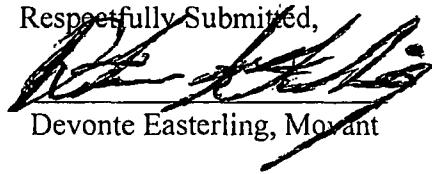
COMES NOW, Devonte Easterling, Movant, in the above styled and numbered cause and moves this Court to grant him leave to file his Motion for post-conviction collateral relief in the Circuit Court of Covington County Mississippi, pursuant to §99-39-27 of the Miss. Code Ann. (1972), and Miss. R. App. P. Rule 22, and in support thereof would show unto the Court the following facts, to wit:

1. Movant was convicted in the in the Circuit Court of Covington County, Mississippi, in Cause No. 2017-054-K for one count of Murder under §97-3-19(1)(a), Miss. Code of 1972.
2. Movant was sentenced to life imprisonment under the custody of the Mississippi Department of Corrections.
3. Movant has filed this Motion within the three-year limitation as provided for by §99-39-5 (2) Miss. Code Ann. by §99-39-5 (2).
4. Movant prays that upon receipt of said Motion for Leave, this Court will enter an

MOTION# 2023-2298

Order allowing Movant to proceed in the Trial Court.

Respectfully Submitted,


Devonte Easterling, Movant

CERTIFICATE OF SERVICE

I, the undersigned, Movant, Devonte Easterling, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Hon. Stan Sorey
Circuit Court Judge
P.O Box 861
Raleigh, MS 39153

Chris Hennis
District Attorney
100 Courthouse Ave., Suit 4
Mendenhall, MS 39114

Gerald Mumford
P.O. Box 683
Jackson, MS 39202

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

None.

This the 27 day of ^{June} May, 2023.


Devonte Easterling, Movant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DEVONTE EASTERLING
MOVANT

VS.

CAUSE NO. 2017-054-K

STATE OF MISSISSIPPI
RESPONDENT

AFFIDAVIT

STATE OF MISSISSIPPI:::::::

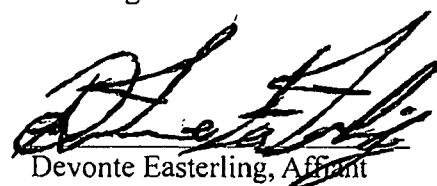
COUNTY OF SIMPSON:::::::

PERSONALLY appeared before me, the undersigned authority in and for said county and state, DEVONTE EASTERLING, who having been first duly sworn by the undersigned Notary Public, deposes and says:

1. Affiant is the Defendant, DEVONTE EASTERLING, in the above styled action.
2. This affidavit is based on information and belief, on the transcripts of Devonte Easterling's defense trial.
3. Devonte Easterling was charged with First-Degree Murder under §97-3-19(1)(a), Miss. Code of 1972.
4. Mr. Easterling was represented by Attorney Gerald A. Mumford during his defense trial State of Mississippi v. Devonte Easterling, Cause No. 2017-054-K.
5. During the defense trial of Mr. Easterling, his trial counsel's assistance was ineffective and as such severely prejudiced Mr. Easterling's defense.
6. Mr. Mumford's deficiencies at during the trial include:
 - a. Failure to raise any alternative theories to the jury;

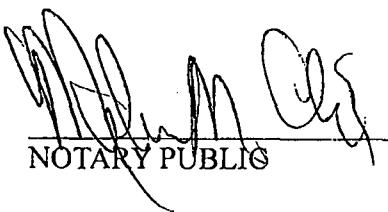
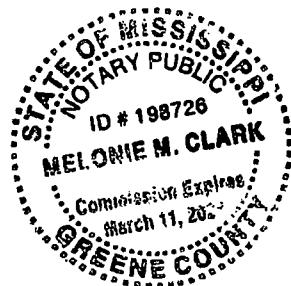
- b. Failure to request a continuance when multiple witnesses who were needed for an accurate adjudication were not present at the trial;
- c. Failure to cite proper hearsay exceptions;
- d. Failure to properly rebut State's expert witness; and
- e. Failure to hire expert witnesses.

7. Mr. Mumford's combined errors severely prejudiced Mr. Easterling's defense in violation of his Sixth Amendment Right to Effective Counsel.



Devonte Easterling, Affiant

27
SWORN to and subscribed before me, this the 27 day of June, 2023.



NOTARY PUBLIC

My Commission Expires:

03/11/2026

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DEVONTE EASTERLING
MOVANT

FILED

VS.

JUL 27 2023

CAUSE NO. 2017-054-K

STATE OF MISSISSIPPI
RESPONDENT

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MOTION FOR POST-CONVICTION COLLATERAL RELIEF

COMES NOW, your Movant, Devonte Easterling, and pursuant to the provisions of Miss. Code 1972, Ann., Sec. 99-39-1, et. seq., respectively moves this Court for its Order vacating his conviction and sentence as previously rendered by this Court in Criminal Action No. 2016-56K-1. In support of his Motion, Devonte Easterling, respectfully represents and would show unto the Court the following;

JURISDICTION

This Court has exclusive jurisdiction over the person and subject matter pursuant to §99-39-1 and §99-39-7 of the Miss. Code Ann. (1972). This Motion is based on claims made by the Movant arising under the law of the State of Mississippi. This Court has subject matter jurisdiction, and this Court has personal jurisdiction.

**IDENTITY OF THE PROCEEDINGS UPON
WHICH MOVANT WAS CONVICTED**

Movant was arrested in Covington County, Mississippi and was originally charged with first-degree murder, a violation of Miss. Ann. Code § 97-3-19(1)(a). At all times during the Court proceedings involving the above stated charges, the Movant was represented by attorney, Gerald Mumford.

After a jury trial, Movant was convicted of the following:

1. One Count of first-degree Murder, a violation of Miss. Ann. Code 97-3-19(1)(a).
2. Movant was sentenced to life imprisonment under the custody the Mississippi Department of Corrections.

**CONCISE STATEMENT OF THE CLAIMS AND GROUNDS
UPON WHICH THIS MOTION IS BASED**

Under a totality of the circumstances, the Defendant's trial was so fundamentally unfair that the trial did not produce a just result. Defendant's trial Counselor's cumulative errors prejudiced the Defendant and violated his Sixth Amendment Right to Counsel.

ARGUMENT

**MOVANT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF
COUNSEL WAS VIOLATED**

The Defendant's Sixth Amendment right to Effective Assistance of Counsel was violated due to the actions of his trial attorney, Gerald A. Mumford. To succeed on a Sixth Amendment claim of ineffective assistance of counsel, defendant must show that there is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different, *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Mr. Mumford's actions in preparing for and trying the case were deficient, and this deficiency prejudiced the Defendant's defense. Further, case law states that there need not be any one specific error alleged that would alone grant the finding of a new trial, and instead "When determining if both prongs of the *Strickland* test have been met, ... this Court must look to the totality of the circumstances." *Hibbler v. State*, 115 So.3d 832, 842 (¶ 32) (Miss.Ct.App.2012) (quoting *Payton v. State*, 708 So.2d 559, 563 (¶ 12) (Miss.1998)).

The combined errors of the Defendant's Counsel at trial were manifestly deficient, and the Defendant's defense was severely prejudiced due to said deficiency.

As stated, at trial Defendant was represented by Gerald A. Mumford, Esq. of the Mumford Law Firm, PLLC. Despite Mr. Mumford's familiarity with the Mississippi Rules of Evidence and Criminal Procedure, he failed to provide the Defendant with effective representation, the result of which severely hampered the Defendant's defense. Additionally, even if none of Mr. Mumford's errors would alone require a new trial, "This Court may reverse a conviction and sentence based upon the cumulative effect of errors that independently would not require reversal." *Jenkins v. State*, 607 So.2d 1171, 1183-84 (Miss.1992); *Hansen v. State*, 592 So.2d 114, 153 (Miss.1991). The statements of Tyisha Duckworth and Alexander Easterling, and the testimony given by Edmound Clark related to Corey Barnes having been at the scene the morning of the incident, when combined with the gunshot residue found on Edmound Clark portray an entirely different scenario than what the State and witness Edmound Clark purport as the truth. Mr. Mumford knew these facts before the trial and failed to explore their implications or cite the correct hearsay exceptions in order to present an effective defense. Mr. Mumford's errors, when viewed in their entirety, created an entirely different trial than what the Defendant was entitled to under the Sixth Amendment.

TRIAL COUNSELOR'S FAILURE TO RAISE ANY ALTERNATIVE THEORIES

During the course of the trial of the Defendant, Devonte Easterling, Mr. Mumford failed to provide any alternative theories to the jury. During cross examination of the State's only eyewitness, Edmound Clark, the witness made multiple inconsistent, and unusual statements that went largely unchallenged and unexplored by Mr. Mumford. The witness testified to having knowledge of drugs in the car, but then immediately changed his testimony that he did not know that there were drugs in the car at the time of the incident (Exhibit Vol 2 of 4, TR 69). This witness then further testified

that he could not remember the time of the alleged incident, and that he did not recall any other individuals being present on the morning of the shooting. However, the witness then immediately contradicted this testimony and admitted Corey Barnes and Dominique Williams were present the morning of the shooting (Exhibit Vol 2 of 4, TR 76-77). Additionally, testimony from Charlene Easterling further goes to prove there were more individuals at the scene of the crime at the time of the incident than Edmound Clark indicated (Exhibit Vol 3 of 4, TR 256). Despite these inconsistencies, Mr. Mumford did not ask further questions relating to the contradictions, and rather continued his cross examination focusing instead on questioning the witness what his course of action was immediately following the incident. Mr. Mumford knew multiple people could place Corey Barnes at the scene, and he failed to question this assertion made by Edmound Clark. Mr. Mumford's decision to not include any questions related to any alternative theories created a prejudicial effect on the Defendant, the relief of which is a new trial.

TRIAL COUNSELOR'S FAILURE TO REQUEST A CONTINUANCE

At the trial multiple witnesses were needed for an accurate adjudication that were not present. The record indicates that a subpoena was issued for both Corey Barnes and Santana Keyes, however neither party was present at the time of the trial. Mr. Mumford should have asked the Court for a continuance in order to properly secure the necessary witnesses for trial, but he did not. Santana Keyes was allegedly in custody at the time of trial, and Mr. Mumford was aware of her location (Exhibit Vol 2 of 4, TR 84 and 89). The whereabouts of Corey Barnes were allegedly unknown as to all the parties at the time of the trial, but Mr. Mumford should have continued the matter until he was able to secure the testimony of Corey Barnes. Corey Barnes and Santana Keyes were identified as having been at the crime scene the morning of the homicide, and as such, their testimony was necessary to fully ascertain the events of the morning.

Mississippi Code Ann. § 99-15-29 (2000), provides the proper avenue for an individual to petition for a continuance in circumstances where absent witnesses or documents are required. Mr. Mumford should have filed for a continuance pursuant to this statute. This statute further requires the filer has made due diligence in attempting to and procuring the missing evidence. Mr. Mumford did not file for a continuance pursuant to this statute, and it is uncertain as to whether he actually practiced due diligence. Mr. Mumford's failure to ask for a continuance, prejudiced the Defendant, was below the threshold of a competent attorney, and the Defendant should be granted a new trial as a remedy.

TRIAL COUNSELOR'S FAILURE TO CITE PROPER HEARSAY EXCEPTIONS

Mississippi Rules of Evidence 804(b)(3) allows for hearsay exceptions for statements that "a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it tends to expose the declarant to criminal liability and is offered to exculpate the accused." Additionally, M.R.E. 803 (3) Then-Existing Mental, Emotional, or Physical Condition, allows for, "statement(s) of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition, as exceptions to the hearsay rule. At trial, Mr. Mumford, proffered both Tyisha Duckworth and Alexander Easterling regarding statements that were made by Mr. Corey Barnes, who again was a witness but not present at trial. At trial the State made a motion to exclude statements as hearsay, and Mr. Mumford countered this assertion by citing the present sense impression hearsay exception (Exhibit Vol 3 of 4, TR 280). A further reading of Mr. Mumford's assertions regarding hearsay rules clearly indicate his lack of

understanding of the Rules' operation. Had Mr. Mumford properly cited either of the correct hearsay exceptions, there is a substantial likelihood that the outcome of the trial would have changed. Mr. Mumford's failure to cite key exceptions substantially prejudiced the Defendant, the remedy for which is a new trial.

**TRIAL COUNSELOR'S FAILURE TO PROPERLY REBUTT STATE'S EXPERT
WITNESS**

At the trial of this matter the State relied heavily on evidence and testimony provided by Lori Beall, employed by the Mississippi Forensic Laboratory as an expert in the field of firearms examination. Mr. Mumford attempted a *Daubert* challenge related to Ms. Beall regarding her qualification as an expert, during which a portion of her testimony stated tool marks on a gun are "just like your fingerprints," (Exhibit Vol 3 of 4, TR 198). This assertion is non-scientific, factually incorrect, and only served to confuse the jury regarding the applicable scientific standards and margin of error regarding the science of firearm identification analysis. Mr. Mumford further attempted to challenge this assertion at trial as follows:

Mr. Mumford: Q- Ms. Beall, what the mark of error for your results?

Lori Beall: A- No, there is no mark--

Mr. Smith: Your Honor

The Court: Sustained. Mr. Mumford, at this point you need to limit your questions to her educational background and training in firearms analysis and comparison (Exhibit Vol 3 of 4, TR 199).

When further questioned during cross examination Ms. Beall states "We do not have a margin of error with this type of result because it's based on visual comparison," (Exhibit Vol 3 of 4, TR 217). This statement is not true, and its misuse goes directly to one of the *Daubert* factors. Mr. Mumford

should have asked the Court to either strike Ms. Bealls testimony in its entirety or give a limiting instruction regarding application of the “standard of error” in relying on the witness’s testimony.

This lack of preparedness on behalf of Mr. Mumford was a substantial deviation from the standard of a reasonably competent attorney, and the result of which prejudiced the Defendant. In addition to challenging Ms. Beall at trial, Mr. Mumford should have filed pretrial motions asking for funds to hire a firearms expert for his defense, or at the minimum prepared himself to be able to rebut Ms. Beall’s incorrect statements. Mr. Mumford’s failure to challenge the subjective nature of the test, combined with his failure to hire an outside expert that would either contradict or corroborate the findings are deficient actions that fall below the level of effective assistance of counsel.

TRIAL COUNSELOR’S FAILURE TO HIRE EXPERT WITNESSES

Mr. Mumford acted deficiently in his failure to hire or ask for funds to hire expert witnesses. The State had multiple expert witnesses testify at trial as to the biological and forensic components of their case. Defendant’s counsel knew about the intended use of said expert testimony, but did not attempt to hire a qualified expert to examine the findings of the States expert testimonies. Due to the complex and scientific nature of the matters at trial, Mr. Mumford’s decision to not even attempt to rebut the State’s experts constitutes ineffective assistance as guaranteed by the Sixth Amendment. During the trial it was revealed that the State’s only eyewitness Edmound Clark had gunpowder residue on his hands (Exhibit Vol 2 of 4, TR 74). Mr. Mumford was aware of said fact before trial, but did not have any witnesses prepared to give any testimony as to the potential source or reasons for the presence of gun powder residue on the witness’s hands. Mr. Mumford’s failure to have any witnesses prepared to testify to the science of gun powder residue was below the standards of a reasonable attorney, and as such he was ineffective in representing the Defendant.

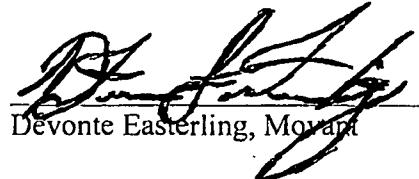
Mr. Mumford also failed to ask for funds to hire a forensic examiner to verify the findings of Lori Beall at the state crime lab. An expert in forensic analysis could have explained to the Court and the jury that the assertions made by Ms. Beall were incorrect statements of the science regarding firearms forensics, or possibly even contradicted her findings. The combined failures of Mr. Mumford as it relates to the testimony of Lori Beall was deficient and prejudiced the Defendant.

CONCLUSION

The combined errors of the Trial Court and the Defendant's Trial Counsellor prejudiced the Defendant, and a new trial should be granted as a remedy. The trial at this matter was so fundamentally unfair, that the results cannot be considered just. The errors made have cost the Defendant the rest of his life in prison. The Fourth and Sixth Amendments were created to guarantee that citizens would be protected from government injustice. The weight of the errors in this case should all be considered together cumulatively and balanced against the severe prejudice that occurred as a result; the Defendant will serve the rest of his life in prison. The Defendant should be granted a new trial.

RESPECTFULLY SUBMITTED,

BY:


Devonte Easterling, Movant

CERTIFICATE OF SERVICE

I, Devonte Easterling, Movant, do hereby certify that I have this day mailed postage prepaid, a true and correct copy of the above and foregoing Motion for Post-Conviction Collateral Relief to:

- a) Hon. Gerald Mumford,
P.O. Box 683
Jackson, MS 39202
- b) Hon. Chris Hennis
District Attorney, 13th District
100 Courthouse Avenue, Suite 4
Mendenhall, MS 39114
- c) Hon. Stan Sorey
13th Circuit Court Judge,
P.O. Box 861
Raleigh, MS 39153

This the 27 day of June, 2023.



Devonte Easterling, Movant

Devontae Easterling
P.O. BOX 1419 217929
EAKESVILLE, MS 39451

MS. SUPREME COURT CLERK
P.O. BOX 249
JACKSON, MS 39205

RECEIVED
MAY 29 2021

MS. SUPREME COURT CLERK