

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-1559
LT Case No. 2018-CF-2054-A

JOSEPH A. CRENSHAW,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.850 appeal from the Circuit Court for Marion County.
Lisa D. Herndon, Judge.

Joseph A. Crenshaw, Lowell, pro se.

Ashley Moody, Attorney General, Tallahassee, and Daniel P. Caldwell, Assistant Attorney General, Daytona Beach, for Appellee.

November 21, 2023

PER CURIAM.

AFFIRMED.

WALLIS, SOUD, and MACIVER, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JAMES A. EDWARDS, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: December 15, 2023

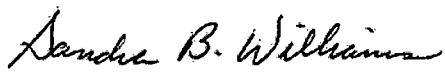
FIFTH DCA CASE NO.: 5D 23-1559

CASE STYLE: JOSEPH A. CRENSHAW v. STATE OF FLORIDA

COUNTY OF ORIGIN: Marion

TRIAL COURT CASE NO.: 2018-CF-2054-A

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.



SANDRA B. WILLIAMS, CLERK

Mandate and Opinion to: Clerk Marion
cc: (without attached opinion)

Daniel P. Caldwell

Office of the Attorney
General

Joseph A. Crenshaw

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO.: 2018-CF-2054-A

JOSEPH A. CRENSHAW, II,
Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE came before the Court on Defendant's *pro se* Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850, filed on March 16, 2023. The Court considered the Motion, reviewed the record, and being otherwise duly advised, finds as follows:

Defendant was charged, via an Amended Information, with robbery with a firearm while wearing a mask – poss (Count I) and possession of firearm by felon while wearing a mask – poss (Count II). See, *Exhibit A, Amended Information*. Defendant proceeded to a bifurcated trial, and, on June 3, 2021, a jury found Defendant guilty, as charged, on all counts. See, *Exhibit B, Verdicts*. This Court adjudicated Defendant guilty and sentenced him to the Florida Department of Correction for a term of natural life for Count I and a maximum of 15 for Count II. See, *Exhibit C, Amended Judgment, Sentencing, Court Verification Form, and Felony Provisions documents*. All counts were ordered to be served concurrently. Defendant filed a direct appeal and the Fifth District Court of Appeal affirmed Defendant's judgment and sentence and remanded to correct a scrivener's error. *Crenshaw v. State*, 338 So. 3d 425 (Fla. 5th DCA 2022)(Mem).

In the instant Motion, Defendant claims his trial counsel, Candace A. Hawthorne ("Ms. Hawthorne"), provided ineffective assistance because she failed to object when the

State tendered and the Court accepted Brook Hoover, a crime laboratory analyst with the Florida Department of Law Enforcement, as an expert witness. Additionally, Defendant asserts Ms. Hawthorne failed to move for a mistrial based on the tender and acceptance of said expert witness.

Defendant contends there is a conflict between the First, Fourth, and Fifth District Court of Appeal concerning the tender and acceptance of expert witnesses, especially if the tender and acceptance are performed in front of the jury. He is seeking the Florida Supreme Court to settle the conflict and for this Court to vacate his judgment and sentence.

At trial, the State called Ms. Hoover as a witness and proceeded to elicit Ms. Hoover's education, training, and employment to establish her as an expert in DNA analysis and testing. See, *Exhibit D, Tr. of Jury Trial, dated June 2, 2021*, at 473–478. Then the State asked the Court to permit Ms. Hoover "to testify to her opinion regarding the field of forensic DNA analysis." *Id.* at 478. The Court replied, "You may proceed." *Id.* The record does not reflect an objection by Ms. Hawthorne to the tender and acceptance of Ms. Hoover as an expert witness.

The record shows the following jury instruction concerning expert witnesses was presented to the jury and the jury instructions were consistent with Standard Jury Instruction (Criminal) 3.9. See, *Exhibit E, Tr. of Jury Trial, dated June 3, 2021*, at 623.

[THE COURT:] Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead based upon the nature and quality of the evidence presented.

The fact that a witness is employed in law enforcement does not mean that his testimony deserves more or less consideration than that of any other witness.

Expert witnesses are like other witnesses, with one exception. The law permits an expert witness to give their opinion. However, an expert's opinion is reliable only when given on a subject about which you believe them to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

Id.

As stated above, Defendant asserts there is a conflict between judicial circuits as to if it is an error to "tender and accept" an expert witness in front of a jury. According to Defendant, when the Court accepts an individual as an expert in front of a jury, it equates to the Court bolstering the witness. In *Mitchell*, after the State established the witness's qualifications and experience, subsequently, they requested the trial court accept the witness as an expert. *Mitchell v. State*, 207 So. 3d 369 (Fla. 5th DCA 2016). The trial court stated, "[a]ll right. She'll be received and designated as an expert witness in that field." *Id.* Defendant claimed the trial court's acceptance was a fundamental error, but the Court disagreed. *Id.* Furthermore, the Fifth District Court of Appeal discussed conflicting case law and explained,

We believe that it is overly formalistic to presume that the mere acceptance of a witness as an expert constitutes a comment on the credibility of the witness. This is particularly true given that the jury instructions specifically address the role of expert witnesses at trial, and juries are presumed to follow their instructions. See *Hurst v. State*, 202 So.3d 40 (Fla. 2016). Thus, we disagree with *Osorio* that a trial court's declaration that a witness is an expert is error.

Id.

In this case, the "tender and acceptance" by the State and the Court, respectively, do not rise to the level of an error by the Court. Additionally, the reading of the expert jury instructions "significantly mitigates the concern that the jury would view the court's declaration of the witness as an expert as a positive comment on the witness's credibility

or a wholesale endorsement of the witness's testimony." See *Norfleet v. State*, 223 So. 3d 395 (Fla. 1st DCA 2017). Ms. Hawthorne cannot be deemed ineffective for failing to make a meritless objection or argument. Moreover, Defendant failed to establish that due to Ms. Hawthorne's failure to object when the State tendered, and the Court accepted Ms. Hover as an expert witness in front of the jury the outcome of his trial would be different. See *Strickland v. Washington*, 466 U.S. 668 (1984).

With respect to Defendant's claim that Ms. Hawthorne provided ineffective counsel when she failed to move for a mistrial based on the tender and acceptance of Ms. Hoover as an expert witness, the Court addressed the tender and acceptance of Ms. Hoover above. Ms. Hawthorne cannot be deemed ineffective for failing to file a meritless motion for a mistrial. See *Ferrell v. State*, 29 So. 3d 959 (Fla. 2010).

Based on the foregoing, it is

ORDERED: Defendant's *pro se* Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850 is **DENIED**. Defendant may appeal this decision, in the manner permitted under Florida law, within thirty (30) days of rendition of this Order.

ORDERED this 6th day of April 2023, at Ocala, Marion County, Florida.



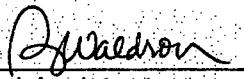
LISA HERNDON
Circuit Court Judge

CERTIFICATE OF SERVICE

I CERTIFY that a true and accurate copy of the foregoing has been provided to the following, by U.S. Mail or the Florida Court's e-portal, on April 6, 2023.

Office of the State Attorney

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Marion Correctional Institution
P.O. Box 158
Lowell, Florida 32663-0158



D. Baldwin
Judicial Assistant