

JUN 11 2018

BY  ROJERA GRAVES  
CIRCUIT CLERK

IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 17-143-PKT

JAHADD ALLEN

**ORDER**

This matter is before the court on Jahadd Allen's Motion for Judgment J.N.O.V. or, Alternatively, New Trial. Allen seeks to have a verdict entered against him set aside for discovery violations. The motion has been heard. Testimony and argument were offered.

The gun alleged to have been used in the armed robbery was recovered and offered into evidence during the trial of this case. Detective Varnado testified that no testing was done on the gun for fingerprints because the defendant had been wearing gloves. Varnado was cross-examined on the subject and the clear message conveyed to the jury was that the gun had not been tested for fingerprints. (The complete trial testimony of Varnado has been reviewed by the court). Detective Shannon Sullivan also testified at trial about the investigation and never mentioned he had attempted to lift fingerprints from the weapon.

Defense Counsel alleges that after the trial he learned for the first time that Sullivan had attempted to lift fingerprints from the weapon and was unsuccessful. Sullivan was called as a witness at the hearing of the motion and he affirmed that he had tested the gun for fingerprints but was unable to recover any. Sullivan further testified that no written record of this attempt was

created. Finally, Sullivan testified he informed the prosecution of this testing prior to trial.

The state concedes the facts but argues the information in its possession the defendant lacked – a test was performed but no prints were recovered- is not favorable to the defendant and does not undermine confidence in the verdict of the jury.

It should be noted from the pretrial proceedings that discovery was a problem in this case. An eleventh hour discovery of several items by the state in its own possession necessitated a hearing and delay of the trial. The defense had filed a request that included the results of any scientific testing.

The state recognizes its responsibility to provide discovery material to the defense but argues the withheld material would not have been exculpatory. The state views the proof too narrowly. There are at least two things that would have been useful to any defendant in this situation. First, the fact that no fingerprints were recovered from the test when at least one of the defendant's hands was ungloved weighs, however slightly, in the defendant's favor. Additionally the fact that a detective conducted a test and made no written records of the test raises important issues about the conduct of the investigation. (It also created a situation in which apparently one detective didn't know what the other had done with regard to a key piece of evidence).

The jury was told no attempts to fingerprint the weapon were made. That was not true. The defense asked for not only "reports" but "results" of any

testing. The failed attempt to recover fingerprints was such a test and the defendant was entitled to know the results. The defense took the steps necessary to gather information in the possession of the state but the information was not provided.

Detective Sullivan testified at the post-trial hearing that the prosecutor had actual knowledge of the test. It is not even necessary to impute knowledge of the investigators to the prosecutor. *King V. State*, 656 So. 2d 1168, 1174 (Miss. 1995). Rule 25.1 Mississippi Rules of Criminal Procedure sets forth the standards under which a new trial should be granted.

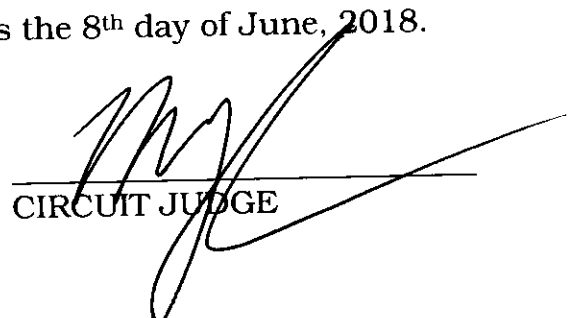
The failure of the state to document its own investigation properly raises important issues the defense could have put before the jury if proper disclosure had been made. A detective could have been impeached for his own lack of knowledge about the undocumented tests. The suppression of the results of the testing undermine confidence in the verdict of the jury.

The state is not entitled to withhold results of tests it conducts (whether any written record was created or not), allow the jury to be misled through incorrect testimony and then claim the test results are not material enough to warrant a new trial. The state was given substantial latitude and allowed to offer into evidence items that were in its possession but not discovered by law enforcement until shortly before trial but the state is not entitled to decide what testing results it will provide to the defense.

The fact that there are many cases, many witnesses and many pieces of evidence only underscores the necessity of maintaining written records of the location of gathered evidence and any other important aspects of a criminal investigation. Nobody can remember everything. The prosecutors are charged with conveying all the exculpatory evidence held by the investigators. It is a huge task under the best of circumstances and it is nearly impossible if the investigation and tests are not memorialized in writing.

The state recognizes and argues Rule 25.1 (3) which imposes a materiality test on newly discovered evidence. As to the defense the evidence was "newly discovered" and it was sufficiently material to require a new trial because of the exculpatory nature of the result and because it would have raised issues about the investigation of this case. In addition, Rule 25.1 (7) requires more. It requires that the defendant have received a "fair and impartial trial". Mr. Allen did not. The motion for new trial should be and is hereby granted.

SO ORDERED AND ADJUDGED this the 8<sup>th</sup> day of June, 2018.

  
CIRCUIT JUDGE

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