

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00358 COA**

**ROOSEVELT WASHINGTON**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KEITH STARRERR

COURT FROM WHICH APPEALED: LINCOLN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JACK G. PRICE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: DUNN LAMPTON

NATURE OF THE CASE: BURGLARY

TRIAL COURT DISPOSITION: FOUND GUILTY OF BURGLARY OF AN INHABITED  
DWELLING. SENTENCED TO 15 YEARS.

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

PER CURIAM:

Roosevelt Washington (Washington) was indicted on December 16, 1994, for two counts of armed robbery and three counts of burglary of an inhabited dwelling. The trial was severed and Washington was tried and convicted on one charge of burglary on January 30, 1995. He was sentenced to serve fifteen years in the Mississippi Department of Corrections. Aggrieved, Washington appeals asserting that the trial court erred in admitting into evidence his confession because it was obtained in violation of his Sixth Amendment rights. Finding no reversible error, we affirm the judgment.

### FACTS

Washington was arrested by the Summit Police Department on September 29, 1994 in connection with several robberies occurring in Pike county. At approximately 5:00 P.M. the same day, the Appellant was arraigned and advised that he had the right to an attorney. Washington informed the court that he would hire his own attorney.

On September 30, 1994, Officer Robert Berry (Berry) of the Lincoln County Sheriff's Department drove to the Pike County jail to question Washington concerning several similar robberies which had occurred in Lincoln county. Before questioning Washington, Berry read Washington his *Miranda* warnings. Washington signed a waiver and gave an oral and written statement to Berry which incriminated him in the Lincoln county robberies. This statement was subsequently introduced into evidence at trial, and Washington was convicted.

### DISCUSSION

The Appellant argues that the statement made to Officer Berry on September 30th should have been suppressed because he had invoked his Sixth Amendment right to counsel during his September 29th hearing. The State counters that Washington never invoked his Fifth Amendment right to counsel, but instead invoked his Sixth Amendment right to counsel which is an offense specific right. Thus, his statement to Officer Berry concerning offenses in Lincoln County was not in violation of his Sixth Amendment protections.

Well-established case law bears out specific differences in the protections afforded by the Fifth Amendment and Sixth Amendment. The Fifth Amendment requires that a defendant be advised of his right to have an attorney present during custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). The Sixth Amendment, however, applies to the defendant's right to be represented by counsel following the initiation of criminal judicial proceedings. *Balfour v. State*, 598 So. 2d 731, 743 (Miss. 1992).

As the trial court recognized, the important distinction in this case is whether the Appellant invoked his Fifth Amendment right to counsel or his Sixth Amendment right to counsel. A review of the record reveals that Washington first requested an attorney during his initial appearance on September

29, 1994. This request invoked his Sixth Amendment right to counsel. The Appellant does not contest this in his brief. However, the Appellant does argue that by invoking his Sixth Amendment right to counsel on the 29th, the admission of his statement concerning a different offense on the 30th was erroneous. We disagree.

The Mississippi Supreme Court recognized in *Balfour v. State* that a defendant's Sixth Amendment right to counsel is offense specific. *Balfour*, at 741; *see also, McNeil v. Wisconsin*, 501 U.S. 171, 174 (1991). Thus, it is clear that the Appellant's invocation of his Sixth Amendment right to counsel concerning the Pike County robbery charges did not extend to the Lincoln County charges. The pivotal inquiry is whether Washington waived his right to counsel concerning the Lincoln County offenses prior to making a statement to Berry. The record reveals that before Berry questioned Washington, he read him his *Miranda* rights which, among other things, advised him of his right to counsel. Washington responded that he understood his rights and proceeded to sign a waiver form. There is no evidence of coercion or involuntariness, and none is alleged. The Appellant in this case voluntarily provided the statements at issue before his Sixth Amendment right to counsel was invoked with respect to the Lincoln County offenses. Thus, there is no merit to the Appellant's only assignment of error.

**THE JUDGMENT OF THE CIRCUIT COURT OF LINCOLN COUNTY OF CONVICTION OF BURGLARY OF AN INHABITED DWELLING AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO LINCOLN COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**