

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00360 COA

DARRICK ARNS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HONORABLE FRANK G. VOLLOR

COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

E. FRED DOBBINS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS DISTRICT ATTORNEY: GILMORE G. MARTIN

NATURE OF THE CASE: FELONY: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SERVE A TERM OF 15 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

MANDATE ISSUED: 6/10/97

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

KING, J., FOR THE COURT:

The Appellant was convicted of aggravated assault in the Circuit Court of Warren County and sentenced to serve a term of fifteen years in the custody of the Mississippi Department of Corrections. Aggrieved, the Appellant appeals and contends that he was deprived of the effective assistance of counsel. We find no error and affirm.

FACTS

On or about October 3, 1993, the Appellant and five other individuals travelled from the Delta Point Motel in Vicksburg to P.J.'s Bar in Louisiana. Appellant and his entourage exchanged words with Bennie Grantham and others standing outside P.J.'s as they were departing. P.J.'s security interceded and asked the Appellant and his entourage to leave. Appellant and his cohorts departed P.J.'s and returned to the Delta Point Motel where they had been residing.

Upon returning to the hotel, the Appellant and his cohorts decided to return to P.J.'s and confront Grantham. Appellant and his cohorts returned to P.J.'s and inquired of Alton Jones and Chris Jones the identity of the individual owning a black truck parked at P.J.'s. Told that the truck belonged to Bennie Grantham, the Appellant and his cohorts proceeded to vandalize Grantham's truck.

Grantham had momentarily left P.J.'s, but returned just as the Appellant and his cohorts were departing. Alton and Chris advised Grantham that the Appellant and his cohorts vandalized the truck, and Grantham pursued the entourage in his truck. Alton and Chris accompanied Grantham in the pursuit. The pursuit ended at the Delta Point Motel where a fight ensued. Grantham, Alton, and Chris received severe cuts during the fight and were treated at a local medical facility.

Arns was arrested and charged with aggravated assault upon Grantham, Alton, and Chris. Arns was tried on the aggravated assault charges and testified for the defense. Arns testified that he "blacked out" during the fight and when he regained consciousness, he realized that he held a knife in his hand, and his hands had blood on them. Arns was unable to recall cutting anyone, but he remembered that he had commenced fighting Alton prior to the black out.

Grantham and Chris were unable to identify the individual responsible for cutting them during the fight. Alton testified that he struggled with Arns, but ran away when he saw a knife in Arn's hand. Alton testified that Arns then pursued him. When Alton ran into a wall, Arns cut his arm, elbow, and back with the knife.

The jury found Arns guilty of aggravated assault upon Alton and innocent of the assaults upon Grantham and Chris.

DISCUSSION OF THE LAW

Arns contends that the following deficiencies in trial counsel's performance deprived him of the Sixth Amendment's guarantee of the effective assistance of counsel:

1. Defense counsel failed to subpoena individuals, who had witnessed the events of the evening;
2. Defense counsel failed to move for suppression of statements made by the Appellant after arrest;

3. Defense counsel failed to request an instruction addressing Appellant's contentions that he acted in self-defense;
4. Defense counsel failed to request a continuance so that he could better prepare for trial;
5. Defense counsel did not attempt to locate knives confiscated by the police officer from the scene of the fight;
6. Defense counsel failed to renew his request for a directed verdict after resting;
7. Defense counsel failed to object to any of the exhibits introduced into evidence by the State;
8. Defense counsel failed to request a pre-sentence investigation;
9. Defense counsel moved for a new trial, but failed to request a hearing on the motion and did not withdraw from representation.

As support for the contention that the aforementioned deficiencies deprived him of the effective assistance of counsel, Arns cites *Triplett v. State*, 666 So. 2d 1356 (Miss. 1995). In *Triplett*, the supreme court cited a number of deficiencies which raised questions concerning the effectiveness of trial counsel's representation. Among the deficiencies cited by the supreme court were: (1) no request for pre-trial discovery was made; (2) no request by the defense for subpoenas; (3) no attempt to seek a continuance in order to better prepare for trial; (4) counsel made no attempt to suppress or challenge the voluntariness of defendant's statement to the sheriff presented as part of the State's case in chief; and (5) counsel offered no instruction factually embracing his client's defense. Even though some of the deficiencies cited in *Triplett* appear in the present case, we are unable to conclude that the Appellant was denied the effective assistance of counsel.

A defendant seeking reversal of a conviction on the basis of the ineffective assistance of counsel must show more than mere deficiency in counsel's performance. The defendant must also show that counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L. Ed. 2d. 674, 693 (1984). In other words, the defendant must show that absent the unprofessional errors, there is a reasonable probability that the result would have been different. *Ahmad v. State*, 603 So. 2d 843, 848 (Miss. 1992) (citation omitted). Appellant Arns has failed to clear the second hurdle.

At trial, Arns admitted that he had been involved in an altercation with Alton Jones, but stated that he "blacked out" during the altercation and could not remember the events which transpired. Arns testified further that upon regaining consciousness and discovering a knife in his hand with blood on it, he went to his wife's room and told her, "I think I might have killed somebody. I don't know what's going on." Even though Arns could not recall cutting Alton, Alton positively identified Arns as the individual who cut his arms. Based upon this evidence, we are unable to conclude that the outcome would have been different but for counsel's deficient performance. Therefore, we affirm the conviction and sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF WARREN COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED.

COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
PAYNE, AND SOUTHWICK, JJ., CONCUR. HINKEBEIN, J., NOT PARTICIPATING.**