

COPY

IN THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI
FIFTEENTH JUDICIAL DISTRICT

STATE OF MISSISSIPPI

VS.

Criminal Action, File No. 2002-0061E

CORY J. MAYE

SECOND ADDENDUM
TO AMENDED MOTION FOR JUDGMENT *NON OBSTANTE VERDICTO* OR,
IN THE ALTERNATIVE, FOR A NEW TRIAL

COMES NOW Defendant Cory J. Maye, by and through counsel, and, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, to analogous sections of Article 3 of the Mississippi Constitution and to Rule 10.05 of the Mississippi Rules of Circuit and County Court Practice, hereby moves this Court to enter its order setting aside the jury verdict as returned in this action and enter a judgment of "Not Guilty" in favor of Defendant Maye and thereby discharge him from custody of the MS Department of Corrections. Or, in the first alternative, Defendant Maye requests that this Court enter its order setting aside the said jury verdict and granting him a new trial. In the second alternative, Defendant Maye requests that this Court enter its order setting aside the death penalty as returned in this action and granting him a new penalty phase. In support of this Motion, Defendant Maye would set forth grounds as follow.

FILED
JERI L. LANDRY
CIRCUIT CLERK
DATE 11-30-05
BY [Signature]
DEPUTY CLERK

I.

**INCORPORATION OF MOTION FOR NEW TRIAL,
AMENDED MOTION FOR JUDGMENT *NON OBSTANTE VERDICTO* OR,
IN THE ALTERNATIVE, FOR A NEW TRIAL AND ADDENDUM THERETO**

All allegations and averments set forth in Defendant's Motion for New Trial as filed in this action on February 02, 2004, are incorporated herein. All allegations and averments set forth in Defendant's Amended Motion for Judgment *Non Obstante Verdicto* or, in the Alternative, for a New Trial, as filed on November 07, 2005, and the Addendum thereto as filed on November 17, 2005, are incorporated herein.

II.

ADDITIONAL INSTANCES OF INEFFECTIVE ASSISTANCE OF COUNSEL

During the State's closing argument at the conclusion of the guilt phase of the trial, the State referred to Defendant's defense as "bogus" (P. 496 @ ll. 26-29) and a "smoke screen" (P. 487 @ ll. 3-17). Trial counsel failed to object although said remarks were, as set forth in *U.S. v. Procopio*, 88 F.3d 21, 32 (1st Cir. 1996), excessively disparaging and otherwise improper.

Trial counsel also failed to object when the State, again during its guilt phase closing argument, vouched for the State's witnesses when referring to the actions of Ron Jones (P. 498 @ ll. 17-20) and the testimony of other officers present (P. 490 @ ll. 5-10). Such buttressing by the State of its own witnesses is improper. See *U.S. v. Cornett*, 232 F.3d 570, 575 (7th Cir. 2000), *U.S. v. Loayza*, 107 F.3d 257, 261 (4th Cir. 1997); *U.S. v. Manning*, 23 F.3d 570, 572-73 (1st Cir. 1994).

And when the State, also during its guilt phase closing argument, referred to Defendant as a liar (P. 492 @ ll. 22-23 & 25-26; P. 496 @ ll. 26-29; P. 499 @ ll. 2-4), trial counsel again failed to interject

an objection although such characterizations of the Defendant by the State are improper. *See U.S. v. Thomas*, 246 F.3d 438, 439 (5th Cir. 2000).

Trial counsel's failures to object, particularly when taken in conjunction with trial counsel's other deficiencies as set forth elsewhere in Defendant's motion and addenda, constitute ineffective assistance of counsel.

WHEREFORE, PREMISES CONSIDERED, Defendant Cory Maye hereby moves this Court to enter its order setting aside the verdict of the jury in this action and enter its judgment of "Not Guilty" in Defendant's favor and thereby discharging him from the custody of the Mississippi Department of Corrections. Or, in the alternative, Defendant moves this Court to enter its order setting aside the verdicts (both guilt and sentencing) of the jury and granting to him a new trial on each.

Respectfully submitted,

CORY J. MAYE

By:



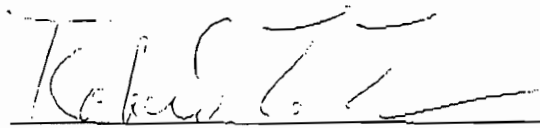
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Attorney for Cory J. Maye

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CERTIFICATE OF SERVICE

I, Robert E. Evans, attorney of record for Cory J. Maye, do hereby certify that I have this date served counsel for the State of Mississippi with a true and correct copy of the above and foregoing Second Addendum to Amended Motion for Judgment *Von Obstante Verdicto* or, in the Alternative, For a New Trial by putting said copy in the U.S. Mail in an envelope with adequate prepaid first class postage affixed thereto and addressed to Hon. Doug Miller, Ass't. District Attorney, 500 Courthouse Square, Suite 3, Columbia, MS 39429.

SO CERTIFIED on this, the 23rd day of November, 2005.



ROBERT E. EVANS

FILED
JERI L. LANDRY
CIRCUIT CLERK
DATE 11-30-05
BY [Signature]
DEPUTY CLERK