IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

THORNTON PETERSON — APPELLANT

VS. — NO. 2004-KA-0642

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This is an appeal against a judgment of conviction from the Circuit Court of Sunflower County, Mississippi, in which Thornton "Shug" Peterson, Jr. was convicted of Possession of Cocaine with Intent to Distribute, the Honorable Ashley Hines presiding.

On December 28, 2001, a Sunflower County Grand Jury indicted Thornton "Shug" Peterson, Jr., on a charge of possession of 19.0 grams of cocaine with intent to distribute, under Section 41-29-139(a)(1) of the Mississippi Code of 1972, Annotated, as a subsequent offender under Section 41-29-147, and as a habitual offender under Section 99-19-81. (CP 14). Peterson entered a plea of not guilty and proceeded to trial by jury. On May 21, 2002, Circuit Judge Margaret Carey-McCray held a hearing on the defendant's Motion to Suppress evidence, which was denied on June 5, 2002. (CP 35-36).

Peterson's first trial was declared a mistrial on October 17, 2002. (CP 45). On November 12, 2002, Judge Carey-McCray recused herself. (CP 47). Judge Ashley Hines was assigned to hear the matter on November 25, 2002. (CP 48). Judge Hines entered an Order for Mistrial on February

13, 2003, and on July 22, 2003. (CP 51; 58). On February 19, 2004, a Sunflower County jury convicted Peterson of Possession of Cocaine With Intent to Distribute. (CP 77). On February 20, 2004, Peterson was sentenced as a subsequent offender under Miss.Code Ann. § 41-29-147 and as habitual offender under section § 99-19-81 to serve sixty (60) years in the custody of the Mississippi Department of Corrections without the possibility of parole. (CP 78). After denial of post trial motions, Peterson appealed raising the following issues:

I. Whether the trial court committed reversible error when the court denied the appellant's motion to dismiss;

II. Whether the trial court violated Rule 901 of the Mississippi Rules of Evidence adopted effective January 1, 1986, by failing to admit in evidence exhibit C-18, and therefore, the appellant's conviction for possession of cocaine with intent pursuant to 41-29-139(a)(1) should be reversed;

III. Whether the trial court failed to properly instruct the jury wherein defendant's instruction D-4 was refused;

IV. Whether the trial court failed to properly instruct the jury wherein defendant's instruction D-6 was refused;

V. Whether the trial court failed to properly instruct the jury on the meaning of the terms and or elements of the crime as charged in the indictment, and the appellant's conviction for possession of cocaine with intent should be reversed;

VI. Whether the trial court erred in admitting the search warrant in evidence as exhibit, S-1;

VII. Whether the trial court erred in admitted the substance identified by Robert Moore as cocaine in evidence as exhibit, S-3;

VIII. Whether the Circuit Judge who conducted the suppression hearing erred in denying the Motion to Suppress the evidence filed by the defendant;

IX. Whether the trial court improperly sentenced the defendant pursuant to 99-19-81 of the Mississippi Code of 1972 as amended, violating the defendant's constitutional right to due process of law, Article 3 section 14 of the Constitution of the State of Mississippi.

STATEMENT OF THE FACTS

Charles Smith, chief of detectives with the police department, and Ernest Gilson, testified about participating in the execution of the warrant and to their actions and observations. (Tr. 284-302; 309-338).

Upon entering the house, officers found several people in separate bedrooms with open doors. (Tr. 254-55). One room had people laying around watching TV. (Tr. 258). They found one room that was padlocked.(Tr. 250-51; 262). After prying the lock open they found a cookie of cocaine weighing 19 grams and three razor blades in the room. (Tr. 296- 98). No one was in the room when they entered it. (Tr. 262). Subsequently, officers discovered one of the keys taken from Peterson opened the padlock that had been on the door. (Tr.278-79; 287-89).

Officer Ernest Gilson testified to having seen Peterson and tenants at the 407 Clay Street house numerous times before execution of the warrant, "too many times to count." (Tr. 310).

An employee with the local water department testified Peterson had the water to the house turned on in 2000. (Tr. 240-44; Exhibit S-8). The water was turned off and the meter removed in February 2001 for lack of payment. *(Id.)* Another meter was installed in March 30, 2001 but the water department has no record of water service being reconnected to the house. (*Id.*).

Carolyn Webb testified that she lived at the Clay Street house for three years. Webb admitted to being addicted to cocaine while living at the house but testified she had since been through treatment and had been clean for two and a half years. (Tr 389). Webb was given immunity in exchange for her testimony. (Tr. 377).

Webb helped Peterson in his drug business in exchange for cocaine for herself. (Tr. 341-396). Webb answered the door at the Clay Street house when customers came to buy drugs from Peterson. (Tr. 346). Peterson did not live at the house but was there often. Two other addicts lived

at the house also, but each had their own room. (*Id.*) No one but Peterson had a key to the padlocked room where the drugs were found; the room was off limits to the tenants. (T. 350; 397). According to Webb, the only way to get into the room was through Peterson. (Tr. 379-80).

ISSUES

I. **The State presented legally sufficient evidence to prove every element of the offense as charged.**

II. **The trial court properly admitted the stipulation into evidence.**

III. **The trial court properly instructed the jury.**

IV. **The search warrant and cocaine were admissible into evidence.**

V. **The trial court properly sentenced the defendant pursuant to Mississippi's habitual offender statute.**

SUMMARY OF ARGUMENT

Thornton "Shug" Peterson's conviction and sentence for possession of cocaine with intent to distribute in violation of Section 41-29-139(a)(1), as a subsequent offender under Section 41-29-147, and as a habitual offender under Section 99-19-81 of the Mississippi Code of 1972, Annotated should be affirmed. Although Peterson argued his case on appeal in nine separate issues, the State would respectfully combine several of its arguments.

Peterson's motion for a directed verdict was properly denied as the State proved each element of the offense beyond a reasonable doubt. The State proved Peterson's constructive possession of the cocaine through witness testimony. Further, Carolyn Webb's credibility as a witness was a jury question. The trial court properly admitted Exhibit C-18 into evidence; the parties' stipulation to the admission of the evidence waives any authentication required.

Instructions D-4 and D-6 were properly refused as they incorrectly stated the law. The trial court properly instructed the jury on the elements of the crime as charged in the indictment. The elements were stated so as to be understood by a reasonable juror, which is all that is required.

Peterson failed to raise the issue of the search warrant authentication, the return, or the inventory at trial or in his pretrial motion so he is barred from raising the issues on appeal. The trial judge did not err in denying Peterson's Motion to Suppress as judges are allowed to use witness testimony to determine if probable cause existed when a search warrant was issued. Peterson was properly sentenced pursuant to Mississippi's habitual offender statute.

ARGUMENT

I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO PROVE EVERY ELEMENT OF THE OFFENSE AS CHARGED.

In his first assignment of error, Peterson claims the State failed to prove beyond a reasonable doubt each element of the offense of possession with intent to distribute. The State asserts there was legally sufficient and credible evidence to support Peterson's conviction. The evidence established that Peterson had the only key to the room where the cocaine was found, establishing his dominion and control over the cocaine. Peterson had constructive possession of the cocaine. Constructive possession may be proved by showing a suspect had dominion and control over the location in which the contraband is found.

Peterson attacks the credibility of Carolyn Webb because she was a confessed drug addict. The present case is similar to the facts of *Smith v. State*, 3 So.3d 815 (Miss. Ct. App. 2009). In *Smith*, the defendant argued that the jury verdict was "against the overwhelming evidence" because the jury relied on the testimony of two cocaine users. 3 So.3d at 817. Smith, as Peterson in this case, claimed that the State showed no physical possession aside from the this testimony. *Id.*

"The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed." *Smith* at 818, quoting *Ford v. State*, 737 So.2d 424, 425 (¶ 8) (Miss. Ct. App. 1999); *Miller v. State*, 983 So.2d 1051, 1054, citing *Gathright v. State*, 380 So.2d 1276, 1278 (Miss. 1980). In the case *sub judice*, the jury, aware of Webb's drug addiction, and considering all testimony, chose to believe Carolyn Webb's testimony and found Peterson guilty of possession with intent to distribute.

In *Smith*, citing *Williams v. State*, 971 So.2d 581, 587(¶ 16) (Miss. 2007) the court held that

the State must show constructive possession in the absence of physical possession. "Constructive possession is established by showing that the contraband was under the dominion and control of the defendant." *Id.* (quoting *Roberson v. State*, 595 So.2d 1310, 1319 (Miss. 1992)).

In reviewing issues of legal sufficiency, the reviewing court does not "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." *Bush v. State*, 895 So.2d 836, 843 (Miss. 2005). Rather the Court will view the evidence in the light most favorable to the State and determine whether any rational juror could have found the State proved each element of the crime charge beyond a reasonable doubt. *Id.* The following evidence supports Peterson's constructive possession of the cocaine with the intent to distribute.

Officer Moore testified that based on his surveillance, Peterson controlled the house. (TR 184). Captain Charles Smith testified that the key taken from Peterson's pocket opened the lock on the door to the room where the drugs were located. (TR 277). Carolyn Webb testified she helped Peterson in his drug business in exchange for cocaine for herself. (Tr. 341-396). Peterson did not was not an addict and did not use the drugs he sold. (Tr 348). Peterson did not live at the Clay Street house but came to the house to "take care of his business." (TR 348). Webb answered the door at the Clay Street house when customers came to buy drugs from Peterson. (Tr. 345-46). No one but Peterson had a key to the padlocked room where the cocaine was discovered. (T. 350; 397).

Peterson's legal sufficiency argument is without merit. The conviction should be upheld.

II. THE TRIAL COURT PROPERLY ADMITTED THE STIPULATION INTO EVIDENCE.

Peterson claims that the parties' agreement to stipulate that the substance in question was cocaine did not waive the requirement that the stipulation be authenticated and admitted into evidence in accordance with Rule 901 of the Mississippi Rules of Evidence.

During the trial, the trial judge read the stipulation to the jury, thereby placing it into evidence, to-wit:

> THE COURT: While this witness is coming in, ladies and gentlemen, I'm going to read to the jury a stipulation. This is a fact. It is agreed by the parties. The reason they have this stipulation is to avoid having to call a witness where the witness' testimony is not really in dispute, and I'm going to read the stipulation at this time.
>
> "It is hereby stipulated and agreed by and between the State of Mississippi and Thornton Snug Peterson, Jr., that the substance contained in Exhibit S-3 was sent to the Mississippi Crime Laboratory in Jackson, Mississippi; that the seal of the packaging was unbroken; that the substance was tested by Tara Milam, a forensic scientist; that the substance is cocaine, a Schedule 2 controlled substance; it had a weight of 19 grams. No further proof of these facts is required; that is, the jury shall accept this fact as being true."
>
> (STIPULATION WAS RECEIVED AND MARKED BY THE COURT REPORTER AS EXHIBIT NO. C-18 FOR IDENTIFICATION AND IS INCLUDED IN THE CLERK'S SEPARATE ENVELOPE OF EXHIBITS.)

(TR 307-08).

The stipulation was referred to several times as "a fact." Further, "stipulation to the admission of the evidence is sufficient to waive the usual authentication requirements." *Fleming v. Floyd*, 969 So.2d 881, 885 (Miss. Ct. App. 2006), *rev'd on other grounds*, citing *Blakeney v. Hawkins*, 384 So.2d 1035, 1036 (Miss. 1980). Therefore, Rule 901, requiring authentication, was waived by the stipulation between Peterson and the State. This issue is without merit.

III. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY.

INSTRUCTION D-4

Peterson asserts that the trial court erred in refusing instruction D-4. This instruction submitted that the defendant should be "presumed to be wholly innocent of the whole crime charged," and that the jury should view the testimony in a light most favorable to the defendant. (CP 76). Peterson claims that this is correct if the jury doubts that the State has proven its case. (TR 409). The court stated that this was already covered by the Court's instruction on burden of proof and refused the instruction. (TR 409, CR 2 at CP 67). Instructions that incorrectly state the law, are covered elsewhere in the instructions, or are not supported by the evidence "need not be submitted to the jury." *Foley v. State*, 914 So.2d 677, 686 (Miss. 2005), citing *Humphrey v. State*, 759 So.2d 368, 380 (Miss. 2000).

Peterson cites *Edwards v. State*, 630 So.2d 343, 344 (Miss. 1994), where the court ruled it mandatory that a cautionary instruction be given regarding the testimony of an accomplice in a drug sale prosecution when the State's case is solely based on the accomplice's testimony. However, a cautionary instruction is not mandatory where there is "no accomplice or co-defendant and the State's evidence consists of more than the confidential informant's testimony." *Steen v. State*, 873 So.2d 155, 160-61 (Miss. Ct. App. 2004). In the case *sub judice*, the State presented testimony from a number of police officers, as well as Carolyn Webb, whose credibility the State again asserts is a question left to the jury. Further, nothing in the record shows Carolyn Webb to be an accomplice or co-defendant with Peterson. This issue is without merit.

INSTRUCTION D-6

Peterson next claims that the trial court erred in refusing instruction D-6. Instruction D-6 directs the jury that it "cannot, in any way, consider offers of proof of allegations of previous bad acts by the defendant as any evidence that he acted the same way on August 10, 2001." (CP 75).

This a misstatement of law. The State again asserts that instructions that incorrectly state the law "need not be submitted to the jury." *Foley v. State*, 914 So.2d 677, 686 (Miss. 2005), citing *Humphrey v. State*, 759 So.2d 368, 380 (Miss. 2000).

Peterson cites *Smith v. State*, 656 So.2d 95 (Miss. 1995) to show that the trial court should have given a limiting instruction to narrow the purpose of receiving evidence of other crimes to demonstrate intent. However, *Smith* was overruled by *Brown v. State*, 890 So.2d 901, 913 (Miss. 2004), returning to the requirement of Rule 105 of the Mississippi Rules of Evidence, placing the burden upon counsel to request a Rule 404(b) limiting instruction. Miss. R. Evid. 105 "When evidence which is admissible ... for one purpose but not admissible ... for another purpose is admitted, the court, *upon request,* shall restrict the evidence to its proper scope and instruct the jury accordingly."

"Evidence of other crimes, wrongs, or acts...may be admissible for other purposes such as proof, motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Miss. R. Evid. 404(b); *Miley v. State*, 935 So.2d 998, 1003 (Miss. 2006), citing *Carter v. State*, 450 So.2d 67, 69 (Miss. 1984). Instruction D-6 is incorrect because it excludes consideration of "all" prior acts rather than limit the purpose for which the prior acts may be admitted. In the case *sub judice*, evidence of other acts is admissible to show Peterson's intent to distribute cocaine. Therefore, the court acted properly in refusing instruction D-6.

INSTRUCTION S-3

The trial court properly instructed the jury on the elements of the crime as charged in the indictment. Peterson claims that the trial court failed to properly instruct the jury on the meaning of the terms and/or elements of the crime as charged in the indictment. The instruction Peterson refers to on page 418 is Instruction S-3, discussed on pages 402-06 of the trial record. Peterson did object

to language referring to a "lesser included offense." (TR 404). It was agreed that the instruction would be amended to conclude with the word "charged." (TR 406; CP 72). Peterson accepted Instruction S-3. If he felt the instruction did not properly instruct the jury on the meaning of each term, this should have been raised simultaneously with his objection to the language. "Failure to offer a timely objection to an instruction at trial constitutes a waiver of the issue on appeal." *Steen*, 873 So.2d at 161 (quoting *Roberson v. State*, 838 So.2d 298, 305 (¶ 27) (Miss. Ct. App. 2002).

In *Scruggs v. State*, 756 So.2d 817, 822 (Miss. Ct. App. 2000), the defendant claimed that a given jury instruction did not properly instruct on intent, giving the perception that intent is "automatically assumed." The instruction, similar to Instruction S-1 in the present case, instructed the jury to find the defendant guilty on the belief that he "willfully, unlawfully and feloniously" possessed cocaine "with intent to sell, transfer or distribute." *Id.* The court found that the given instruction included all of the elements to prove intent, therefore, the instruction was proper. *Id.*

The court also stated that the elements "should have been understood by a reasonable juror." *Id.* In the case *sub judice*, Instruction S-1 lists distribute as "deliver the same to another." (TR 418; CP 71). The State asserts that a reasonable juror could have understood the meaning of distribute given in the instructions to show intent.

IV. THE SEARCH WARRANT AND COCAINE WERE ADMISSIBLE IN EVIDENCE.

Peterson claims that the search warrant admitted into evidence as Exhibit S-1 is invalid and void, and that the cocaine collected in the execution of the search warrant, as well as the warrant itself, should be excluded.

AUTHENTICATION, INVENTORY AND THE RETURN

According to Peterson, Deputy Robert Moore failed to execute the Return on the subject warrant, list all the evidence taken from the premises and make a return to the issuing judge. "It is therefore void of any authentication of Robert Moore's absent signature that would render the document legally admissible as evidence in the matter before this court." (Appellant's brief 13). However, Peterson failed to make any contemporaneous objection to the warrant on these particular grounds in his motion to suppress evidence or at trial, therefore the issue is waived on appeal. (CP18).

The following took place after Officer Robert Moore was questioned about the search warrant:

STATE: Your honor, at this time, I ask that it be introduced into evidence as State's Exhibit 1.
COURT: Is there objection?
DEFENSE: There's none.
(TR 182). ***
COURT: Without objection, let that document be marked and received in evidence.

(SEARCH WARRANT WAS RECEIVED AND MARKED BY THE COURT REPORTER AS EXHIBIT NO. S-1 AND IS INCLUDED IN THE CLERK'S SEPARATE ENVELOPE OF EXHIBITS.)
(TR 183).

STATE: Your honor, at this time, I ask that the cocaine be introduced into evidence as State's Exhibit 3.
COURT: Is there objection?
STATE: No, sir.
COURT: Let it be -- let the bag be marked and received in evidence. Just hand that to the court reporter.

(BAG CONTAINING COCAINE WAS RECEIVED AND MARKED BY THE COURT REPORTER AS EXHIBIT NO. S-3 AND IS INCLUDED IN THE CLERK'S SEPARATE

ENVELOPE OF EXHIBITS.)
(TR 189).

Peterson cannot now complain about something which he did not object to at the suppression hearing or at trial. "A failure to object at trial waives any error which may have been presented, even in capital cases." *Foley v. State*, 914 So.2d 677, 689 (Miss. 2005), citing *Duplantis v. State*, 644 So.2d 1235, 1245 (Miss. 1994) (quoting *Chase v. State*, 645 So.2d 829, 859 (Miss. 1994)); *Smith v. State*, 724 So.2d 280, 316 (Miss. 1998). In a pretrial motion and hearing, Peterson objected to admission of the search warrant and the cocaine on the basis of an illegal search; however, he failed to raise the issue of authentication, the return, or inventory until appeal. (CP 18). A trial judge cannot be put in error on a matter that was not presented to him for decision. *McLendon v. State*, 945 So.2d 372 (Miss.,2006).

UNDERLYING FACTS AND CIRCUMSTANCES

Peterson claims that Judge Carey-McCray erred in denying Peterson's Motion to Suppress the evidence because the "Underlying Facts and Circumstances" that was the basis for the search warrant was misplaced and not available. He claims that the search warrant, as well as the execution of the search warrant, are void and all evidence should be excluded. Judge Carey-McCray cited *Stubbs v. State*, 811 So.2d 384 (Miss. Ct. App. 2001), in making her decision to deny Peterson's motion. (Motion to Suppress Hearing 61-63). In *Stubbs*, the affidavit for the search warrant was misplaced. 811 So.2d at 388. An agent gave testimony of the underlying facts and circumstances presented to the magistrate, as did Officer Moore in the present case. *Id.* The *Stubbs* court found that a trial judge can make an independent determination based on witness testimony to determine if probable cause existed to issue a search warrant. *Id.*

Judge Carey-McCray considered the testimony of Officer Moore, as well as the testimony of the issuing judge, Justice Court Judge John Burrell, to find sufficient evidence that probable cause

existed to issue the warrant. (Motion to Suppress Hearing 61-63).

V. THE TRIAL COURT PROPERLY SENTENCED THE DEFENDANT PURSUANT TO MISSISSIPPI'S HABITUAL OFFENDER STATUTE.

Peterson claims that the trial court improperly sentenced him as a habitual offender pursuant to Miss. Code Ann. § 99-19-81. He contends that he could not be sentenced under § 99-19-81 because the Court allowed an amendment to the habitual offender charging portion of the indictment at his sentencing hearing. (Appellant's brief 18). According to Peterson, this is a violation of his constitutional right to due process.

Peterson was initially indicted on December 28, 2001. After several mistrials he was convicted on February 19, 2004. (CP 14; 77). The State, by written motion filed February 20, 2004, moved to amend Peterson's indictment. (CP 61). A review of the record reveals that the amendment to which Peterson complains corrected the sentencing date of an underlying conviction in the habitual offender charging portion of the indictment. (CP 61-63; Tr. 446-61). The trial court granted the State's motion, finding that Peterson was put on notice of the conviction the State planned to use to enhance the sentence and that the original sentencing date, as contained in the indictment, was correct. (Tr 450-51; 62). The State contended that on September 14, 1987, imposition of the sentence in Cause No. 9620 was suspended and Peterson was placed on probation; on January 29, 1990, his probation was revoked and he was sentenced to serve the five year term of his original sentence. *Id.*

In *Burrell v. State*, 726 So.2d 160 (¶ 4) (Miss.1998), the Mississippi Supreme Court clearly stated that amendments to indictments to charge the defendant as an habitual offender are allowed. These amendments are not viewed as one of substance and are allowed by Uniform Circuit and County Court Rule 7.09. *Id.* The amendment is allowed because it affects only the sentence imposed and does not affect the substance of the offense for which the individual was originally indicted. *Id.*

In *Alexander v. State*, 875 So.2d 261, 269 (Miss. Ct. App. 2004), this Court held

> ¶ 33. Rule 7.06(5) of the Uniform Rules of Circuit and County Court provides that "[f]ailure to state the correct date shall not render the indictment insufficient." Furthermore, Section 99-7-21 of the Mississippi Code allows the court to "cause the indictment to be forthwith amended" to cure any formal defect. Miss.Code Ann. § 99-7-21 (Rev.2000). "Although Rule 7.09 denies the trial court authority to make substantive amendments of indictments, the Mississippi Supreme Court has observed that amending the date of the alleged offense is a change of form only where time is not an essential element or factor in the indictment." Givens, 730 So.2d at 87 (¶ 19) (citation omitted).

In the case *sub judice*, the court granted the motion because the indictment adequately put the defendant on notice of the conviction the State intended to use to enhance his sentence. (TR 451; CP 14). Such an amendment is valid because only the imposed sentence is affected, not the substance of the offense. *Anderson v. State*, 766 So.2d 133, 135 (Miss. Ct. App. 2000), citing *Burrell v. State*, 726 So.2d 160 (¶ 4) (Miss. 1998).

Peterson further asserts that the State failed to prove beyond a reasonable doubt that he actually served at least one year on each of the two prior offenses. (Appellant's brief 20). Section 99-19-81 applies to persons "convicted twice previously....sentenced to separate terms of one (1) year or more." Section 99-19-81 does not require that Peterson actually served a year on each sentence.

The fact that a defendant had not actually been incarcerated after receiving sentences for one year or more for 2 separate prior felony convictions did not affect the sufficiency of the sentences as evidence of habitual offender status. *Hewlett v. State*, 607 So.2d 1097 (Miss. 1992). A defendant may be sentenced as a habitual offender, even if not actually incarcerated after being "sentenced for one or more years for two completely different felony convictions." *Anderson*, 766 So.2d at 136, citing *Hewlett v. State*, 607 So.2d 1097, 1105 (Miss. 1992).

Peterson's indictment, the amendment, and the certified copies of the two prior felony convictions admitted into evidence at the sentencing hearing satisfy the requirements set forth in

§ 99-19-81 that he was a habitual offender. (Tr. 451-52).

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm Thornton Peterson's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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