IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COREY BARLOW — APPELLANT

VS. — NO. 2005-KA-1179

STATE OF MISSISSIPPI — APPELLEE

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL DISTRICT
OF LINCOLN COUNTY, MISSISSIPPI

REPLY BRIEF OF THE APPELLANT

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REPLY BRIEF OF THE APPELLANT

COMES NOW the appellant, Corey Barlow, by and through his undersigned court-appointed counsel and files this his reply brief and in support of same would respectfully show unto the Court the following, to-wit:[1]

I. THE TRIAL COURT ERRED BY DENYING BARLOW'S MOTION TO SUPPRESS FRUITS OF THE SEARCH AND SEIZURE.

In its brief, the state uses many buzz words and catch phrases attempting to justify the actions of the Lincoln County Sheriff's Office. Legal citations regarding "totality of the circumstances" and "indicia of reliability" are scattered throughout its brief. However, while the brief is long on citation to authority, it is insufficient to justify the unconstitutional actions of law enforcement in this case.

The state appears, just as law enforcement did, to hang its hat on the fact that Barlow was on parole when he was stopped. It cites *Robinson v. State*, 312 So. 2d 15 (Miss. 1975) for the proposition that "in Mississippi *it is possible*, that inmates or persons on probation or parole may be subjected to searches absent the usual constitutional safeguards against

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[1] This reply brief is limited only to responding as necessary to the arguments made by the state in its brief. Unless otherwise addressed and supplemented herein, Barlow relies on the arguments made in his principal brief.

illegal search and seizure." (State's Brf. At 4.) (Emphasis added.) However, *Robinson* clearly is distinguishable. The defendant in *Robinson* was an escaped convict, suspected of burglarizing businesses, whose location was provided by a known and reliable informant: the defendant's brother who was apprehended while driving a car the defendant had stolen. Robinson was arrested and his entire motel room searched, and he sought to suppress the fruits of the search because the officers lacked a warrant. *Robinson*, 312 So. 2d at 18.

The Court considered Robinson's status as an escapee, and stated that Robinson's "escape certainly did not give him any right to expect that he would be free from arrest without a warrant or that he could expect privacy in any place that he might be found." *Id.* Finding no cases speaking directly to the expectation of privacy enjoyed by an escapee, the Court considered cases where an inmate is paroled. It looked at *People v. Hernandez*, 229 Cal.App.2d 143, 40 Cal.Rptr. 100 (1964), where the California court, after holding that a parolee was subject to have his person, home and effects searched by the parole officer without a warrant said:

> If this constitutional fact strips him of constitutional protection against invasions of privacy by ***his parole officer***, the answer is that he has at least as much protection as he had within the prison walls. He did not possess this guaranty in prison and it was not restored to him when the gates of parole opened.

40 Cal.Rptr. at 104 (emphasis added). Thus, the *Robinson* court concluded that, as an escaped convict with no reasonable expectation of privacy, Robinson was subject to search and seizure anytime. In citing and relying upon *Hernandez's* statement regarding search by "his parole officer", *Robinson* adhered to the due process requirements urged by Barlow

herein. As a parolee, Barlow was subject to search and seizure only by his parole officer, not by any law enforcement officer, and only to the extent to which he agreed, or contracted, with the state in his certificate of parole.

Robinson, then, is clearly distinguishable from the case at bar and offers no support for the state's position; rather, it supports the appellant's. Robinson was an escapee, subject to arrest at anytime without a warrant. He had not agreed to abide by terms and conditions of special release on parole, as had Barlow, and neither he nor the state were subject to those terms.

The state also cites *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972), for the proposition that "the essence of parole is release from prison, before the completion of sentence, ***on the condition that the prisoner abides by certain rules during the balance of the sentence***." (State's Brf. At 5.) (Emphasis added.) *Morrissey* goes on to state that:

> [t]o accomplish the purpose of parole, those who are allowed to leave prison early are subjected to ***specified conditions*** for the duration of their terms. ***These conditions restrict their activities*** substantially beyond the ordinary restrictions imposed by law on an individual citizen.

408 U.S. at 478. (Emphasis added.) Thus, again, *Morrisey* support Barlow's position, not that of the state. It points out that the paroled prisoner has agreed to abide by certain "specified conditions", and that his early release is conditioned upon his following those specific rules. *Morrissey* holds that when a prisoner has been paroled he "has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* at 482. It also specifically requires that due process be applied to parolees,

and distinguishes the parolee from the prison inmate by pointing out that the parolee has much more liberty and is subject only to the requirements under which he was granted parole. *Id.*

Barlow acknowledges that he had a diminished expectation of privacy, and that the state has an interest in supervising parolees. However, Barlow submits that the state's interest can more effectively and uniformly be protected by requiring both the state and the paroled inmate to abide by the terms upon which parole was granted and agreed. Freedom from an unconstitutional stop and search is a fundamental liberty interest which Barlow did not give up as a result of his parole status.

Nowhere in the rules of parole to which Barlow agreed is it stated that any Mississippi Department of Corrections officer can stop him on the public roadways, subject him to search, then take him to another location to perform another search. Accordingly, as aptly illustrated in *Morrissey*, this type of police action, which sverely limited and restricted Barlow's freedom, without warning or notice, was unconstitutional because it was not contained in the "specified conditions" of his parole.[2] *Morrissey*, 408 U.S. at 478.

Since Barlow's parole status did not extinguish his personal liberty sufficient to justify the fake roadblock, the stop and search can be constitutional only if sufficient grounds for it are found elsewhere. The state argues that the totality of the circumstances

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Moreover, nowhere in its brief does the state respond to Barlow's due process argument. Its failure to respond or to cite to relevant authority results in a waiver and confession of the issue on appeal. *See, e.g., Simmons v. State*, 805 So. 2d 452, 487 (Miss. 2001).

created reasonable suspicion to stop Barlow. It cites cases holding that a finding of sufficient reasonable suspicion requires consideration of the content of information (quantity) relied upon by the police and its degree of reliability (quality). (State's Brf. At 6.) However, it correctly points out that the Supreme Court has held that if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion that would be required if the tip were more reliable. *Alabama v. State*, 496 U.S. 325 (1990).

The factors cited by the state as justification and corroboration of the information received from the anonymous tips are as follows: Barlow was a parolee, he had tested positive for drugs on two prior occasions, he was a known drug dealer, information allegedly was received from an anonymous tipster that Barlow was in possession of drugs, providing the type of car he was driving, that he was residing on Beard Road, and that he would be in the specific car at a specific time. *Id.* However, when these factors are each rationally considered, it is clear that they are insufficient individually or collectively.

First, as argued herein and in his principal brief, the mere fact that Barlow was on parole is insufficient grounds to suspect that he is in violation of the law or to eliminate his constitutional rights beyond the limits to which he has agreed to be bound. *Morrissey,* 408 U.S. at 477.

Second, a violation report form prepared by Barlow's actual parole supervisor, Officer Thompson, did state that Barlow tested positive for marihuana on two occasions, April 3, 2002, and March 5, 2003. (Appellant's R.E. at 6, ex. A.) However, these tests were

almost a year apart, and the one most closely related in time to Barlow's March 2, 2004, arrest occurred over one year before. Certainly, testing positive for marihuana a year and two years prior does not give law enforcement the authority to stop and search citizens lawfully traveling on the roadways of this state.

Third, Officer Purser's unsupported allegation that Barlow was a "known drug dealer" cannot constitute sufficient corroboration. No witnesses were presented to support this allegation, which is blatant hearsay, and Officer Purser testified that he allegedly heard this rumor from another anonymous tipster (different from the one which led to Barlow's arrest), that the rumor was never confirmed, and that no charges had been brought against Barlow as a result.

Fourth, the information provided to Officer Purser before the fake, illegal roadblock was provided by an anonymous tipster, from whom Purser had never received information. In *Floyd v. City of Crystal Springs*, 749 So. 2d 110, 118 (Miss. 1999), the Supreme Court held that:

> a tip by an informant of undisclosed reliability standing alone will rarely establish the requisite level of suspicion necessary to justify an investigative detention, and that '[t[here must be some further indicia of reliability, some additional facts from which a police officer may reasonably conclude that the tip is reliable and a detention is justified.'

Floyd, 749 So. 2d 118 (internal citations omitted.) As argued above (and in Barlow's principal brief), there was no significant corroboration to support the anonymous tipster's information. All law enforcement did was drive by the Beard Road residence and see someone that they did not know sitting on the porch. Moreover, the information provided

was simply that Barlow was driving a particular vehicle, was living on Beard Road, and would be on Beard Road later that day. This scant information could have been provided by anyone, including law enforcement, who happened to see Barlow in the vehicle and knew that he sometimes traveled on Beard Road, where his cousin and uncle lived.

Accordingly, the state's totality of the circumstances argument fails very short. There simply was no justification for the officers' actions when taken, and the state cannot support them now. The stop and search of Barlow and McWilliams was unconstitutional and should have been suppressed.

The state describes the stop of Barlow as a "license checkpoint." (State's Brf. At 2.) However, at trial, the officers freely admitted that the stop of Barlow was a fake license checkpoint and that its sole purpose was to detain and search Barlow, which they erroneously argued they could do because he was on parole and because a department of corrections officer was in the area. Clearly, Barlow's parole status was the only alleged justification for the stop of his vehicle.

The state argues that Barlow was not under arrest until the narcotics fell from the lap of McWilliams. It argues that he merely was subject to an investigative stop, which it argues was permissible in the absence of a warrant or probable cause. (State's Brf. at 8.) However, an investigative stop may be made where officials have no probable cause to make an arrest only when they have "a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony or 'some objective manifestation that the person stopped is, or is about to

be engaged in criminal activity.'. . ." *McCray v.* State, 486 So.2d 1247, 1249-50 (Miss. 1986). An investigative stop must still be limited in scope, however. "Where a detention . . . exceeds the scope of an investigative stop, it approaches a seizure. To justify a search and seizure without a warrant, the state must show probable cause for arrest." *Id.* at 50.

In this section of its brief, the state assumes the existence of reasonable suspicion for the stop. However, as argued, the officers freely admitted that Officer Purser's alleged anonymous tip, which was corroborated only by driving by the Beard Road residence and seeing an unknown black male (not Barlow), was the only reason they stopped Barlow. He had committed no crimes in their presence, no warrants were outstanding for him, and they had no independent justification to stop him. Thus, the state lacked even reasonable suspicion, and clearly had no probable cause to stop or arrest Barlow.

The state also makes the tenuous argument that Barlow was subject to arrest because he did not have his drivers' license in his possession when he was stopped, and it cites Section 63-1-41 of the M.C.A. as support. (State's Brf. at 9.) However, the state cites no authority to support its apparent position that Barlow's not having his drivers' license in his possession provided authority for the officers to arrest him, or that they had any reason to suspect that Barlow would not be in possession of his drivers' license when they initiated the stop. Further, while Section 63-1-41 authorizes, by implication, officers to stop a car and require exhibition of a driver's license; "this right must be exercised in good faith for the purpose of determining whether the operator is licensed, and not as a blind search without

warrant." *Morgan v. Town of Heidelberg*, 246 Miss. 481, 150 So. 2d 512 (1963).[3] The state stipulated that Barlow provided his drivers' license number, and that the officers who detained him radioed dispatch and were informed there were no warrants outstanding on Barlow or any other reason to detain him.

"A person is under arrest when he is in custody and not free to leave." *Nicholson v. State*, 523 So. 2d 68 (Miss. 1988). Clearly, Barlow, who was surrounded by law enforcement officers and had been required by the officers to stop and exit his vehicle was not free to leave and effectively was under arrest before any narcotics were recovered. The state has cited no case, and the undersigned is aware of none, in which someone was arrested simply for not physically possessing a drivers' license, particularly when officers confirm that the person has a current Mississippi drivers' license with no outstanding warrants or other justifiable reason for detention. The facts show that at the point he was required to exit the vehicle there was no reason to arrest Barlow. Accordingly, a warrant was required and the failure of the officers to have one justified suppression of any and all evidence thereafter recovered.

The state simply ignores Barlow's due process argument and makes the erroneous argument that "as a parolee, [Barlow] was subject to being stopped and searched in his

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Any argument that this section provides authority for the stop in this case is extinguished by the long line of cases holding that it is unconstitutional to set up a roadblock for general crime fighting reasons, such as the eradication of illegal drugs *Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000). The officers admitted in this case that the sole reason for the stop was to detain Barlow on suspicion of drug possession and distribution.

vehicle and at his residence by an officer of the MDOC." (State's Brf. at 10.) It cites *Samson v. California*, 547 U.S. 843 (U.S. 2006), for the proposition that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." (State's Brf. at 10.) However, the state takes this statement in *Sampson* out of context, and completely ignores the rest of that case. In *Sampson*, an officer made a warrantless and suspicionless search of a parolee during which methamphetamine was found. The officer conducted the search pursuant to a specific California statute, which required every prisoner eligible for release on state parole to "agree in writing to be subject to search or seizure by a parole officer or other peace officer . . ., with or without a search warrant and with or without cause." In *Sampson*, as in *United States v. Knights*, 534 U.S. 112 (U.S. 2001), the parolee had clearly been informed that search by *any* law enforcement officer was a condition of his parole and the inmate had agreed to the condition in writing. Clearly, the case at bar, wherein Barlow was never informed in any manner that he was subject to search on the public roadways, is starkly distinguishable.

In its statement of facts, the state freely admits that Barlow's parole supervisor was Tanya Thompson, a probation officer in Copiah County, Mississippi, not Officer John Purser, the probation officer in Lincoln County who authorized the Lincoln County Sheriff's Department to stop and search him without a warrant, probable cause, or reasonable suspicion on the public roadways (Brf. of Appellee at 2). However, Officer Thompson's authority to stop and search Barlow was limited by due process concerns to the specific terms agreed to by Barlow in his certificate of parole. Since he never agreed to be stopped

and searched by his parole officer, much less a random officer not assigned to him, while lawfully operating a vehicle on the public roadways, the stop and search in this case is unconstitutional and should have been suppressed.

The state cites conditions favorable to it contained in Barlow's parole certificate, wherein he agreed as a condition of his early release to "promptly and truthfully answer questions from my Field Officer, the Parole Board and its authorized representatives and carry out all instructions from them." (State's Brf. at 10.) However, clearly, Officer Purser was not his field officer, and there was no one from the parole board at the fake roadblock. Moreover, there is nothing in the record to support an inference that Purser was an "authorized representative" of that body.

Even with all of its citation to precedent, the state completely fails to address the simple point made by Barlow. In fact, the precedent cited by the state succinctly makes Barlow's point: due process requires that he be informed of the terms and conditions to which he must abide while on parole, and he cannot be held to any greater terms that those of which he is informed and has agreed.[4] A review of Barlow's parole certificate makes clear that he was not informed that he was subject to search and seizure anywhere but at his home, and then only by his field supervisor. This is the restriction on his liberty to which Barlow agreed when he signed the parole certificate. He was bound by those terms, and so

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[4] He is still, of course, bound by the same restrictions as an ordinary citizen not on parole. However, on appeal and in its brief, the state conceded by implication that the only alleged justification for the stop in this case was Barlow's parole status.

was the state. It did not comply with those terms, compliance with them was mandatory, and the learned trial judge clearly was in error for failing to suppress the evidence recovered. The ends cannot justify the means. Due process must work the same for everyone, regardless of their past, or the crimes for which they are suspected. Barlow was denied due process of the law in this case, and it must be reversed.

II. THE TRIAL JUDGE ERRED REGARDING THE HANDGUN.

The state told the trial judge that it would likely dismiss the count in the indictment regarding the handgun if its motion to amend the indictment to charge Barlow as an habitual offender was granted. Accordingly, the trial judge granted the motion, and the indictment was amended, over defense objection. However, the state then failed to dismiss the gun charge. Apparently, it decided that it preferred to have the jury hear about the firearm in an attempt to scare it into convicting Barlow, while, at the same time, having two bites at the apple when it came to enhancement of Barlow's potential sentence if he was convicted. Barlow's motion to exclude mention of the firearm was erroneously denied, despite both the prosecution and the trial judge acknowledging that he could not be enhanced twice.

All of the cases cited by the state in support of allowing the firearm into evidence say simply that it "may" be admissible. None of the cases cited say that it must be admitted. It is admitted only where it is relevant. In the case at bar, had the state dropped the firearm count of the indictment, as it said it would do, the firearm would have been completely irrelevant and clearly would not have passed a proper M.R.E. 403 balancing test.

M.C.A. Section 41-39-152, the firearm enhancement statute, provides, in part, that

a defendant's punishment can be doubled if he is ***in possession*** of a firearm either when he commits an offense or when he is arrested. Barlow was arrested at the fake roadblock, then forcibly taken to the location where the firearm was recovered, a location which the state concedes was occupied by at least one other person, McWilliams.

There was no connection between Barlow and the firearm presented during the testimony, save Officer Barefield's testimony regarding Barlow's alleged statements that there was a gun in his room and he knew to whom it belonged. Nothing else connected Barlow to the firearm, or to the Beard Road residence, until the prosecutor "testified" during the last portion of his closing argument that the gun, with which he claimed Barlow was walking around, belonged to Barlow's girlfriend. But for the prosecutor's comments, the jury could have inferred that the gun belonged to the co-defendant, McWilliams, and that is what Barlow allegedly told Officer Barefield. Such a conclusion was not unreasonable, considering that none of Barlow's personal belongings were found at the residence and uncontradicted testimony at trial proved that he slept, paid bills, and kept his personal belongings in his bedroom at another residence far removed from Beard Road.

The Supreme Court has held that any allegedly improper prosecutorial comment must be evaluated in context, taking into consideration the circumstances of the case when deciding the comment's propriety. *Davis v. State*, 660 So. 2d 1228, 1248 (Miss. 1995). In the case at bar, because someone else lived at the residence where the narcotics were found, the state had to prove that Barlow was in constructive possession of them, and it had to prove that he was in constructive possession of the firearm. None of his belongings were

found at the residence, because they were all at the residence where he slept, paid bills, and actually lived. Barlow was arrested at another location and transported to the Beard Road residence by the state. There was no connection between him and the Beard Road residence, so the prosecutor apparently felt led to make one up by arguing facts that clearly were not in evidence. For strategy sake, he chose the point in the trial when Barlow could say nothing else, his final closing argument. Such disregard for the rules of evidence is prosecutorial misconduct. *Tubb v. State*, 64 So. 2d 911 (Miss. 1953). The prosecutor's comments, combined with the trial judge's erroneous refusal to dismiss the firearm count of the indictment (and exclude any mention thereof), clearly and irreparably prejudiced Barlow and warrant reversal and a new trial.

III. THE TRIAL JUDGE ERRED BY ALLOWING EVIDENCE REGARDING BARLOW'S PRIOR CONVICTION AND PAROLE STATUS.

Barlow sought to exclude this evidence under Rule 403 of the M.R.E., arguing that allowing the jury to hear that he was on parole for the exact offense for which he was being tried would be unduly prejudicial and encourage the jury to convict him based on his past and not the present charges. The state argues in its brief that this evidence passed M.R.E. Rule 403's "balancing test because intent to distribute was a necessary element of the prosecution's proof." (State's Brf. at 17.) However, M.R.E. Rule 403 provides as follows:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Nowhere in the rule is it stated that satisfying the state's burden of proof is justification for

admission of highly prejudicial evidence. In this case, the evidence served no purpose other than to inflame the passions and fears of the jury. The state would not have been handicapped in its ability to tell a complete story without it, particularly considering the trial judge's erroneous admission of expert testimony regarding Barlow's subjective intent to distribute. Barlow's substantial rights were violated by admission of this evidence, and reversal is appropriate.

IV. THE TRIAL COURT ERRED BY ALLOWING OFFICER BAREFIELD TO TESTIFY AS AN EXPERT.

Officer Barefield was involved in every facet of the arrest and investigation, in that order, of Barlow. He is the officer whom MDOC Officer Purser approached following his alleged anonymous tip. He and Officer Purser drove to the Beard Road residence and "corroborated" the tip by seeing an unknown black male (not Barlow) sitting on the porch. He provided testimony regarding the numerous ridiculously incriminating statements that Barlow allegedly made, the locations of the narcotics, and the only testimony regarding the handgun. He was the state's primary fact witness. Almost all of his testimony, particularly the confessions he claimed Barlow made to him, were contested by Barlow at trial. Consequently, when the state announced that it wished to call him as an expert witness, Barlow objected, *inter alia*, on the basis that allowing such a classification of him would unfairly bolster his fact testimony. The objection was overruled and his "expert" testimony allowed.[5]

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[5] In its brief, the state does not address the bolstering of Officer Barefield's testimony.

The state cites the now-familiar *Daubert* standard adopted by our Supreme Court in *Mississippi Transportation Commission v. McLemore*, 863 So. 2d 31 (Miss. 2003), that requires inquiry into (1) whether the theory can be, and has been, tested; (2) whether the theory has been published or subjected to peer review; (3) any known rate of error; and, (4) the general acceptance that the theory has garnered in the relevant expert community. *Id.* at 593-94. (State's Brf. at 18.)[6]

However, the state failed to apply any of the factors it cited to the case at bar. Barefield admitted that he had never been qualified to provide expert testimony before, that his opinions had never been published or subjected to peer review, and, that there was no way to test the potential rate of error of his opinions. (R. at 215-218.) Officer Barefield's testimony clearly did not pass *Daubert.* His testimony was not based on any sound, established principle, it was not a legitimate, recognized field of expertise, and it was unreliable since it was based on nothing but his subjective belief.

Moreover, Officer Barefield's opinions did not pass the threshold test of Rule 702 of the M.R.E. because they were not helpful to the jury. Officer Barefield's testimony was proffered on the issue of intent to distribute. However, he testified that he found no drugs packaged to be sold on the street. (R. at 241.) The only testimony that he could offer as proof of intent to distribute was the large amount of narcotics recovered and the way they

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Accordingly, it is respectfully submitted that it concedes the issue.

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The state neglects to list the *Daubert* factor which inquires into whether there are standards controlling the technique's operation.

were packaged. (R. at 221.) The Supreme Court clearly has held that the amount of narcotics recovered does not prove intent to distribute. *Jowers v. State*, 593 So. 2d 46, 47 (Miss. 1992). Barefield's opinions, then - that anyone in possession of this amount of drugs must intend to distribute them - was not helpful to the jury because it was an elementary conclusion based only on the quantity of drugs. Allowance of this opinion and the resulting bolstering of Barefield's testimony by labeling him as an expert law enforcement officer was erroneous and warrants reversal.

V. THE TRIAL COURT ERRED REGARDING THE JURY INSTRUCTIONS.

Instruction D-31 instructed the jury that if it believed that someone else committed the crime for which Barlow was charged, that it must acquit him. The instruction was improperly denied. The state argues only that it is an incorrect statement of the law because more than one person can be in possession of drugs, and it argued that because the jury was instructed on constructive possession law, it was properly instructed. (State's Brf. at 20.) However, McWilliams undeniably lived at the residence where the drugs were found and the drugs fell from his lap at the fake roadblock. Accordingly, the evidence supported a finding that the drugs belonged to McWilliams, not Barlow. Because the law stated in instruction D-31 was supported by the evidence, refusal of the instruction was erroneous.

Regarding Instruction D-7, the state correctly cites *Deal v. State*, 589 So. 2d 1257, 1260 (Miss. 1991) (internal citations omitted), that "[a] circumstantial instruction must be given unless there is some type of direct evidence such as eyewitness testimony, dying declaration, or confession or admission of the accused." (State's Brf. at 21.) However, later,

it argues that Barlow and McWilliams' conduct "inferred a conspiracy" and was an "implicit conspiracy." (State's Brf. at 23.) In doing so, the state acknowledges that there was no direct evidence that Barlow and McWilliams conspired to do anything. Accordingly, the denial of a circumstantial instruction was error. Because the instruction covered a count for which Barlow received ten years in prison, he obviously was prejudiced by the error.

CONCLUSION

Barlow was, at the time of sentencing, a young man. If he is required to serve his entire forty-seven year sentence,[7] and if he lives until the expiration of that sentence, he will be seventy-four years old when he is released. Accordingly, such a sentence is, in essence, a life sentence for Corey Barlow. He did not murder anyone. He did not kidnap or commit a sexual offense against a child. He was stopped, without probable cause or reasonable suspicion, in the middle of the road, simply because he was a parolee, and taken to a residence where narcotics and a firearm were found. He acknowledges that the legislature has proscribed the *possibility* of a sixty year sentence under facts similar to those presented here; however, the clear fact is that offenders in the Fourteenth Circuit Court district, or elsewhere in Mississippi, simply do not receive such sentences.[8] Indeed, Barlow's co-defendant, McWilliams, who pled guilty to the same crimes as Barlow, received a sentence

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Barlow actually was sentenced to a maximum sixty year sentence; however, the trial judge suspended thirteen and placed Barlow on post-release supervision)

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Moreover, enhancements for gun charges on facts such as this (where the defendant was taken by law enforcement to the gun and narcotics) cannot have been the intent of the legislature when it enacted the enhanced penalty.

of only ten years. Clearly, the sentence was the result of vindictive prosecution that punished Barlow for forcing it to take his case to trial.

The numerous errors that occurred during his arrest and during his trial and sentencing rendered the entire process of incarcerating Corey Barlow fundamentally unfair, and reversal and a new trial are the only appropriate remedies.

For all of the foregoing reasons, and those argued at trial and in Barlow's principal brief, Barlow respectfully submits that he is entitled to a reversal of his convictions and sentences, and moves this Court to reverse and remand this case to the Lincoln County Circuit Court for a new trial.

Respectfully submitted,

COREY BARLOW, APPELLANT

By: 

Matthew W. Kitchens

CERTIFICATE OF SERVICE

I, Matthew W. Kitchens, one of the attorneys for Appellant, Corey Barlow, hereby certify that I have caused this day to be delivered a true and correct copy of the above and foregoing Appellant's Reply Brief by United States Mail, postage prepaid, to the following:

Honorable James Hood
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This the 20th day of December, 2007.

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