IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LAEFAEBEI EUYLESSITY STINGLEY — APPELLANT

VS. — NO. 2006-KA-0555-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

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VS. **NO. 2006-KA-0555-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On October 31, 2005, Mr. Laefaebei Stingley, "Stingley" was tried for possession of forty pounds of marijuana with intent to distribute or sell before a Tunica County Circuit Court jury, the Honorable Albert Smith, III presiding. R.1. Stingley was found guilty and given a ten year sentence in the custody of the MDOC. C.P. 95. From that conviction and sentence, Stingley appealed to this Court. C.P. 106.

ISSUES ON APPEAL

I.

WAS THERE CREDIBLE, SUBSTANTIAL EVIDENCE IN SUPPORT OF A DENIAL OF ALL PEREMPTORY INSTRUCTIONS.

II.

DID STINGLEY RECEIVE A FAIR TRIAL WHEN THE JURY KNEW CHARGES FOR A CO-DEFENDANT WERE DROPPED?

STATEMENT OF FACTS

On August 22, 2005, Mr. Stingley and Perry Broadway were indicted by a Tunica County Grand jury for possession of marijuana with intent to distribute or sale. C.P. 7-8.

On October 31, 2005, Stingley and Broadway were tried for possession of marijuana with intent to sell on or about April 21, 2005 before a Tunica County Circuit Court jury, the Honorable Albert Smith, III presiding. R.1. Stingley was represented by Mr. Boyd Atkinson. R. 1.

Chief Willie Dunn identified Stingley as the driver of the car stopped on highway 61 in Tunica County. The car had forty pounds of marijuana in the trunk, in 12 packaged compressed bats, or "bricks" and 12 bags of loose marijuana in other bags. R 59-60.

Chief of Police Willie Dunn testified that he estimated the street value of the combined weight of the packaged marijuana was "some forty to fifty thousand dollars." R. 25.

Ms. Faye Pettis with the Tunica County Sheriff's department testified that she was called about a narcotics investigation. This was on April 21, 2005. She was called by Commander Willie Dunn. This was on Highway 61 south of Memphis, Tennessee. She found the defendant detained along with a Chevrolet Caprice with a large quantity of marijuana in the trunk. Pettis performed a field test for marijuana which was positive. R. 124. The marijuana was contained in two duffle bags. Inside the duffle bags was two black plastic garbage bags. The compressed or "brick" marijuana was found inside one of the black plastic bag. R. 142. It was stipulated that the combined weight of the marijuana was about "forty pounds," which would constitute a street value of some "forty to sixty thousand dollars." R. 133.

Ms. Pettis testified that when Stingley was asked what he was going to do with all the marijuana, he replied that he was "going to have a Cheech and Chong party." R. 149. Pettis explained that this meant he was going to have "a smoke party." R. 149.

It was stipulated for the record that the forty pounds of marijuana was confirmed to be marijuana. It was confirmed by scientific testing at the State Crime lab. R. 135-141.

The trial court denied a directed verdict as to Stingley. R. 165.

When the prosecution rested its case, the trial judge informed the jury that the charges against the co-defendant Broadway had been dismissed. R. 169.

Mr. Stingley testified in his own behalf. R. 169-194. On direct examination, he denied knowing that there was any marijuana in the trunk of the car he was driving. Stingley claimed that he was merely driving the car in which the marijuana was found. The car belonged to his cousin in Shaw. He testified that he did not put anything in the trunk, or take anything out. Nor did he ever check to see what was in the trunk. R. 185. He admitted to driving to Memphis from Shaw. He admitted that the trunk of the car was opened while he was driving. R. 174. He admitted that he was driving with a suspended license. R. 181. He admitted he had purchased Absolut Vodka and Remy Martin brandy on the way to Memphis. R. 179. He admitted that he was on probation for a DUI in Memphis, Tennessee. R. 171. He admitted purchasing liquor while driving was a violation of his probation for DUI. R. 187.

Mr. Stingley denied having told investigators that he was going to have "a Cheech and Chong party." R. 184.

The jury found Stingley guilty and he was given a ten year sentence in the custody of the MDOC. R. 211. A motion for a JNOV or a New Trial was denied. C.P. 99. Stingley, through counsel, filed notice of appeal. C.P. 106-107.

SUMMARY OF ARGUMENT

1. When the evidence presented by the prosecution was taken as true with reasonable inferences there was credible substantial evidence in support of the trial court's denial of all peremptory instructions. **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993). The record reflects Stingley was driving a car that contained "forty pounds of marijuana." R.84. This included "brick" or compressed marijuana as well as 12 bags of loose marijuana. **Blissett v. State**, 754 So 2d 12452, 1244-1245 (Miss. 2000).

The car belonged to Stingley's cousin, Mr. Kenneth Burton R. 154. Stingley had possession of the car and the key to the car. R. 169-192. He admitted that he drove it to Memphis and back. He admitted that the trunk was opened on the way to Memphis. R. 174.

In addition, Stingley made an admission against interest. M. R. Evid. 801(d)(2). **McDonald v. State** , 881 So. 2d 895, *900 -901 (Miss. App. 2004). When asked what he was going to do with forty pounds of marijuana , Stingley replied he was going to have "a Cheech and Chong party." R. 149. Officer Pettis pointed out that forty pounds of marijuana would be easily detectible by "smell." R. 156. The value of the forty pounds of marijuana was some "forty to sixty thousand dollars." R. 133.

2. The record reflects this issue was waived for failure to make a contemporaneous objection. R. 169. **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994). In addition, the record reflects that the trial court did not abuse its discretion in informing the jury that the charges against co-defendant, Mr. Broadway, had been dismissed. There was no evidence that Broadway drove the car, and he, unlike Stingley, did not make any admissions against interest. Stingley told investigators about "having a Cheech and Chong, or a smoking party with the trunk full of marijuana.

Stingley testified in his own behalf. R. 169-192. Stingley denied knowing any thing about the forty pounds of marijuana in the car he was driving. He also denied making any statements about his wanting to have "a Cheech and Chong party."R. 184-186. This contradicted the testimony of Detective Pettis. R. 149. Stingley's testimony made his credibility a jury question.

The jury instructions including instructions for finding Stingley not guilty should the prosecution not prove each element necessary for "constructive possession of marijuana." C.P. 63. There was no request for or need for a limiting instruction since co-defendant Broadway did not testify. The prosecution was not relying upon his testimony as a co-conspirator. **Derden v. State,** 522 So. 2d 752 (Miss. 1988). Therefore there was no "conclusive presumption" of guilt created by the dismissal of the charges against Broadway, as argued in Stingley's appellant's brief.

ARGUMENT

PROPOSITION I

THERE WAS SUFFICIENT EVIDENCE FOR ESTABLISHING CONSTRUCTIVE POSSESSION OF CONTROLLED SUBSTANCE.

Singley believes there was insufficient evidence in support of his conviction. Since he was not the owner of the car, and there was no physical evidence linking him to the marijuana found inside the car's trunk, he believes there was not enough evidence in support of his having "constructive possession" of the marijuana found in someone else's car. The appellant believes there was evidence of his constructive possession of the car but not of the marijuana found inside the trunk. Appellant's brief page 3-7.

To the contrary, the record reflects that while Stingley was not shown to be the owner of the car, he admitted to having driven the car to Memphis and back to Tunica County. This was where he was stopped on highway 61. He admitted that he had the keys to the car, control of the car, and that while the car was in his possession, the trunk of the car was opened. R. 174. There was some forty pounds of marijuana in the trunk of the car. R. Detective Pettis testified that the odor of marijuana would have been quite noticeable with the trunk open. R. 156.

It was packaged into both "bricks" of marijuana, as well as individual packages which would indicate planning for sale or distribution. In addition, there was "an admission against interest." When Ms Pettis asked Stingley what he was going to do with all this marijuana, he replied that "he was going to have a Cheech and Chong party." R. 149.

Chief Willie Dunn identified Stingley as the driver of the car stopped on 61 in Tunica County. R. 59. The car had forty pounds of marijuana in the trunk, in 12 packaged compressed, or "bricks" and 12 other bags of loose marijuana.

R. 59-60.

Q. Now, how many bags were there?

A. Uh, I'm not for sure exactly how many bags but I'm thinking it was two large garbage bags. I believe it was two or three large garbage bags. And some had the bricks in it and some had some that were broken down, if I'm right in plastic bags. R. 58.

...

Q. **Is the fact that there was forty pounds of marijuana found in the trunk a mistake?**

A. **Yes, sir.**

Q. I mean, was that a mistake?

A. No, sir. No, sir, it wasn't.

Q. And that's why we are here today?

A. Yes, sir. R. 84. (Emphasis by Appellee).

Chief Willie Dunn with the Tunica County Sheriff's office testified that the street value of the combined weight of the packaged marijuana was some forty to fifty thousand dollars.

Q. Now, would it be accurate to say that you found twelve bricks of marijuana?

A. Yes, sir, it was something about that.

Q. **And twelve loose bags of marijuana?**

A. **Somewhere in that area, yes, sir.**

Q. And would you confirm that the estimated value was forty to fifty thousand dollars street value?

A. Yes, sir, that's the value. R. 25. (Emphasis by Appellee).

Captain Paul Biggins testified that Stingley who was driving had a suspended driver's license.

Q. –once it was determined that the driver had an invalid license and the passenger–

A. A suspended license.

Q. –had had a beer--

A.. The driver had a suspended license.

Q. The driver had a suspended license; the passenger had a beer.

A. Uh-huh. R. 104.

Detective Faye Pettis testified that she tested the substances found in the trunk of the car Stingley was driving. It tested positive for marijuana. R. 124. She also testified that compressed marijuana indicated packaging for sale. R. 131. Ms. Pettis also testified that when Stingley was asked what he was going to do with forty pounds of marijuana, he stated he was going "to have a Cheech and Chong show." R. 149. This was a way of referring to a marijuana smoking party.

> Q. Tell us how you received that phone call, and what you did when you got there. Tell the jury that.
>
> A. Well, around–I guess around may be, 12:54, 12:30, Officers was calling for a narcotics agent. When I made it to the scene, Commander Dunn and Captain Biggins, they advised me that they had a vehicle stopped, a Chevrolet with a large quantity of drugs in it. When I made it to the scene, I took photos of the drugs that was inside the vehicle, tag number, and I retrieved the drugs and called the evidence clerk, Marilyn Davis.
>
> Q. What did you–as a narcotic officer, what did you physically do with the drugs?
>
> A. Well, I got there, I had samples that you can test and can tell whether-if it's marijuana or–so I had a tester and I tested some of the marijuana that was in–that was found in this duffle bag and it tested positive for marijuana. R. 123-124.
>
> ...
>
> Q. Take as many of those exhibits as you want to, and explain to the jury exactly what it is?
>
> Pettis: **Yes, sir. Its 24 in all. It's twelve–it's twelve bricks and twelve loose bags of marijuana** . R. 129.

Q. Faye, explain what that is to the jury?

A. This-this is a brick of marijuana, and it was sent to the crime lab, and was tested as marijuana. It came back positive as marijuana.

Q. **In your experience as a narcotics officer, why would it be packaged that way?**

A. **The brick?**

Q. **Uh-huh?**

A. **Intent to sell or distribute.**

Q. **Is it sold by the brick?**

A. **Some of them are sold as bricks. It can be sold as pounds, ounces.**

Q. And loose marijuana, is that chopped up or how is that sold?

A. Either/or. You can separate it, as they say, into dime, nickel bags, or break it down to a ounce, two ounces, three ounces. R. 131. (Emphasis by Appellee).

It was stipulated that the forty pounds of marijuana was confirmed to be marijuana. It was confirmed by scientific test at the State Crime lab. It was also 16.9 kilograms which is approximately forty pounds.

...

Q. If you could read the weight on submission one.

A. Submission one-submission one is a core sample removed from submission 001. The weight of the 0018 is 16.9–

Q. Kilograms.

A. Kilograms. R. 136. (Emphasis by Appellee).

Detective Faye Pettis testified that Stingley told her that he was "going to have a Cheech and Chong party" with the forty pounds of marijuana. A "Cheech and Chong party" is slang for a marijuana smoking party.

Q. **Well, what did he say?**

A. **We asked him what was he going to do with all that marijuana? He said he was going to have a Cheech and Chong party.**

Q. **A Cheech and Chong (sic) party?**

A. **A smoke party.**

Q. Ma'am?

A. **I assume it was a smoke party**. R. 149. (Emphasis by Appellee)

Pettis also testified that when the trunk of the car was opened, the large quantity of marijuana could be smelled.

Q. So even if someone looked in the trunk, saw them in the trunk, they wouldn't necessarily know that was marijuana, would they?

A. In the duffle bag?

Q. Yes.

A. **I would assume when you open the trunk, you could smell the marijuana.** R. 156. (Emphasis by Appellee).

Stingley admitted that the trunk was opened while he was driving the car.

Q. **Who opened up the trunk?**

A. **Mr. Broadway.**

Q. Okay. Did you ever get out when he put the turtle in the trunk of the car?

A. No, sir. R. 174. (Emphasis by Appellee).

In **Blissett v. State**, 754 So 2d 12452, 1244-1245 (Miss. 2000), the Supreme Court found that the quantity of drugs found with a defendant could be sufficient for supporting a conviction. In **Blissett**, there was between 40 and 50 pounds of marijuana in the trunk of the car Blissett was driving. Blissett also was not the owner or designated renter of the car. Officers observed there were many air fresheners in the car, and Blissett was exhibiting signs of nervousness. Narcotics

officers testified that this amount of marijuana was more than would be collected for personal use. In that case, as in the instant cause, there was evidence that " the smell" of marijuana coming form the car Blissett was driving would have been quite noticeable.

> Blissett also argues that the quantity of the evidence alone is insufficient to establish an intent to distribute. **However, this Court has held on several occasions that a large quantity of a controlled substance can alone establish an intent to distribute.** See, e.g. **Boches v. State**, 506 So. 2d 254, 260 (Miss. 1987)(348 pounds of marijuana); **Keys v. State**, 478 So. 2d 266, 268 (Miss. 1985) (five grocery bags of marijuana). **The jury observed the quantity of the marijuana, and two narcotics agents estimated the bags together weighed between 40 and 50 pounds. Both also testified that, in their experience as narcotics agents, this quantity is far beyond what a person would keep for personal consumption.** Examining the facts in the light most favorable to the state, sufficient evidence was provided to establish Blissett's intent to distribute. (Emphasis by Appellee)

In **Keys v. State**, 478 So. 2d 266, 268 (Miss. 1985), the court found that five grocery bags of loose marijuana in a bath room was sufficient for establishing that Keys was in "constructive possession" of the marijuana. It was found inside Key's apartment which he alone occupied. In the instant cause, we have twelve bags of loose marijuana in addition to twelve bricks of marijuana present.

In **McDonald v. State** , 881 So. 2d 895, *900 -901 (Miss. App. 2004), the Court found no error in allowing a letter into evidence because it was "a statement against interest." It was an attempt by McDonald to influence testimony against him in an upcoming trial.

> McDonald argues the trial judge erred when he described the letter McDonald sent to Lard as a statement against interest. By describing the letter to the jury as a statement against interest, McDonald argues the trial judge imposed his own interpretation of the letter between*901 McDonald and Lard, thereby thwarting McDonald's attempt to explain the true meaning of the letter.
> [5] ¶ 18. At trial, the State questioned Lard concerning a handwritten letter that he and McDonald had exchanged in jail. McDonald objected to the letter as hearsay. The trial judge ruled that the letter was a statement against interest and was admissible as an exception to the hearsay rule. M.R.E. 801(d)(2). "Trial judges may explain their rulings on evidentiary objections as long as they do not comment upon the evidence in a prejudicial manner." **Wells v. State**, 698 So.2d 497, 510

(Miss.1997). The comment did not prejudice McDonald's defense.

In **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993), the Court stated that when the sufficiency of the evidence is challenged, the prosecution was entitled to have the evidence in support of its case taken as true together with all reasonable inferences. Any issue related to credibility or the weight of the evidence was for the jury to decide, not this court.

> The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. **Wetz v. State**, 503 So. 2d 803, 807-08 (Miss. 1987). In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. **Esparaza v. State**, 595 So. 2d 418, 426 (Miss. 1992); *Wetz* at 808; **Harveston v. State**, 493 So. 2d 365, 370 (Miss. 1986);...The credible evidence consistent with McClain's guilt must be accepted as true. **Spikes v. State**, 302 So. 2d 250, 251 (Miss. 1974). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wetz*, at 808 , **Hammond v. State**, 465 So. 2d 1031, 1035 (Miss. 1985); *May* at 781. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. **Neal v. State**, 451 So. 2d 743, 758 (Miss. 1984);..We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty. **Wetz** at 808 **Harveston** at 370; **Fisher v. State**, 481 So. 2d 203, 212 (Miss. 1985).

When the evidence presented by the prosecution was taken as true with reasonable inferences, there was more than sufficient, credible evidence in support of the trial court's denial of a directed verdict. There was sufficient evidence for inferring that Stingley was in "constructive possession" of the forty pounds of processed marijuana found in the trunk of the car he was driving. Forty pounds of marijuana was far more than one would be using for personal consumption. In addition, there were also admissions by Stingley. He admitted that the he was going to have "a Cheech and Chong party" with the forty pounds of marijuana found in the car's trunk R. 149. He also admitted the trunk was opened to the car while he was driving it. R. 174.

In **Noe v. State**, 616 So. 2d 298, 302 (Miss. 1993), this Court stated that when the sufficiency of the evidence is challenged that the evidence favorable to the State must be accepted as true with all reasonable inferences. Evidence favorable to the defense must be disregarded.

> In judging the sufficiency of the evidence on a motion for a directed verdict, or request for peremptory instruction, the trial judge is required to accept as true all of the evidence that is favorable to the state, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. **Clemons v. State**, 460 So. 2d 835 (Miss. 1984)

The cases cited by the appellant are distinguishable in that none of them involve a suspect with "forty pounds" of marijuana who admitted that the was going to have "a Cheech and Chong party" with his trunk full of packaged smoking material. R. 84;149.

The Appellee would submit that the amount of marijuana, the way it was packaged, and the admission of Stingley showing guilty knowledge was sufficient for making out a prima facie case of possession with intent. Stingley's denial of his admission against interest and his self serving testimony suggesting others could have placed marijuana in his car merely created a conflict in the evidence the jury was responsible for resolving.

The Appellee would submit that this issue is lacking in merit.

PROPOSITION II

STINGLEY RECEIVED A FAIR TRIAL UNDER THE FACTS OF THIS CASE.

Stingley believes that the trial court abused its discretion. It abused its discretion when it informed the jury that the charges against co-defendant Mr. Broadway had been dismissed. Stingley believes that this was "plain error" since there was no objection. He believes it was error because it improperly suggested to the jury that Mr. Stingley had become the sole source of possible criminal conduct. Appellant's brief page 7-9.

To the contrary, the record reflects that this issue was waived for failure to object to the trial court's instruction to the jury about the charges against Broadway being dropped. . R. 169.

In **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994).

the Court stated failure to object on the same ground raised on appeal waived the issue.

> Because these arguments are not preserved for appeal, this Court cannot reverse based upon them. The assertion on appeal of grounds for an objection which was not the assertion at trial is not an issue properly preserved on appeal. **Baine v. State**, 606 So. 2d 1076 (Miss. 1992); **Willie v. State**, 585 So. 2d 660, 671 (Miss. 1991); Crawford v. State, 515 So. 2d 936,938(Miss. 1987);...

The trial court instruction to the jury about co-defendant Broadway was as follows:

> Court: One note before we start. You will notice that there is only one defendant. The Court dismissed the charges against the co-defendant and you will only be deciding the case against Mr. Stingley. R. 169.

Without conceeding that this issue was waived, the Appellee will also consider this issue hypothetically.

The record reflects that Stingley admitted that he was driving a car without a driver's license. R. 181. He admitted that he had the keys to the car, control of the car and had driven the car to Memphis and back. Yet he denied knowing anything about the forty pounds of marijuana in the

trunk of the car he was driving. While he denied having said anything about a Cheech and Chong party, Officer Pettis testified that when Stingley was asked what he was going to do with all this (forty pounds of bricked and loose marijuana) his answer was "have a Cheech and Chong party." R.184.; 149.

Ms Pettis also testified that the smell of marijuana would have been noticeable in the car Stingley was driving. R. 156. Particularly would this be true given Stingley's admission that the trunk of the car he was driving had been opened while he was in the car. R. 174.

Stingley had no explanation for why someone he did not know would allegedly put $60,000.00 worth of marijuana in the car he was driving. R. 186.

Stingley's testimony about parking lot attendants in Memphis having access to his car, and keys, as well as his testifying about fish in the back seat to compete with the smell of marijuana was his attempt to suggest others could have placed marijuana in his trunk. Is it credible to believe that a parking attendant or any one else in Tunica County or Memphis would place forty pounds in the trunk of the car Stingley was driving worth some fifty thousand dollars without him knowing anything about it?

In **Blissett v. State** 754 So.2d 1242, *1245 (Miss. 2000), cited above under proposition I, the Court found that when the evidence presented by the prosecution was taken as true, Blisset's suggestions that some other unknown person must have placed the forty pounds of marijuana in the car he was driving.

> Accepting the evidence that supports the verdict as true, the Court finds that it is unlikely an "acquaintance" would allow Blissett to go driving around with marijuana worth an estimated $96,000 unsecured in the trunk. Furthermore, it is unreasonable to believe that Blissett did not question why the deodorizers were scattered throughout the car or suspect something from the overpowering smell of the marijuana. This point of error is without merit.

In **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983), the Court stated that any conflicts in the evidence created by testimony from defense witnesses was to be resolved by the jury. What the jury believes and who the jury believes as to what piece of evidence presented is solely for their determination. As stated:

> Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into finding of fact sufficient to support the verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution. **Shannon v. State**, 321 So. 2d 1 (Miss. 1975) 373 So. 2d at 1045.

In **Williams v. State**, 2006 WL 3008133, *3 (Miss. App. 2006), the Court of Appeals relied upon **Carter v. State**, 722 So. 2d 1258 (Miss. 1998) in finding it "harmless error" to have admitted hearsay statements from a recording. In **Carter**, the Court found that improper rebuttal testimony connecting Carter to the caliber of pistol used to kill the victim was "harmless" where there was overwhelming evidence of guilt.

> Even if this Court were to accept Williams's argument that the statements were testimonial, it would be harmless error to admit them. Our supreme court has noted that "[a]n error is harmless when it is apparent on the face of the record that a fair-minded jury could have arrived at no verdict other than that of guilty." **McKee v. State**, 791 So.2d 804, 810(¶ 24) (Miss. 2001). "Where the prejudice from an erroneous admission of evidence dims in comparison to other overwhelming evidence , this Court has refused to reverse." **Carter v. State**, 722 So.2d 1258, 1262(¶ 14) (Miss.1998).

In **Williams v. State** , 856 So.2d 571, *577 (Miss. App. 2003), the Court pointed out that the trial judge should not give any undue prominence to an portion of the evidence before the jury.

In the instant cause, co-defendant Broadway did not testify. None of Broadway's out of court statements implicated Stingley in knowing anything about the forty pounds of marijuana in

the trunk. There was a lack of evidence that the case against Stingley was based upon a co-conspirator's testimony. **Derden v. State**, 522 So. 2d 752 (Miss. 1988). There was therefore no basis for a "limiting instruction."

> As a general proposition, the trial judge should not give undue prominence to particular portions of the evidence in the instructions. This prophylactic rule has the salutary purpose of protecting the jury from their natural inclination to put great weight in the judge's statements. To that end, this Court has held that instructions which emphasize any particular part of the testimony in such a manner as to amount to a comment on the weight of that evidence are improper .... In the present case, whether or not Mickell had a gun was a central issue to the case.

In the instant cause, as stated above, Stingley testified in his own behalf. R. 169-194. Stingley did not implicate co-defendant Broadway. He merely testified that Broadway was his passenger to and from Memphis. Other than testifying that Broadway opened the trunk of the car he was driving on the way to Memphis , Stingley did implicate him in any wrong doing. R. 174. Broadway did not testify. So nothing Broadway said was used against Stingley.

There was no testimony or evidence indicating that Broadway ever drove the car. There was also no evidence indicating that Broadway made any "admissions against interest," as did Stingley.

The record reflects that jury were instructed that should they find, from all the evidence presented, that the prosecution had not presented evidence beyond a reasonable doubt that Stingley was in constructive possession of the forty pounds of marijuana then they should find him not guilty. C.P. 63.

Therefore, the Appellee would submit that the record indicates that a dismissal of the charges against Broadway did not create any "conclusive presumption" concerning the charges against Stingley. Particularly would this be true where Singley testified in his own behalf and denied any knowledge of the forty pounds of marijuana.

This issue is also lacking in merit.

CONCLUSION

Mr. Stingley's conviction and sentence should be affirmed for the reasons cited in this brief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: W. Glenn Watts

W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

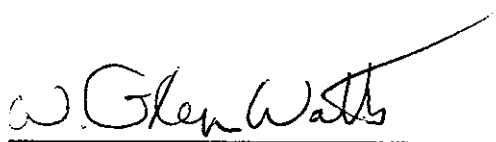
I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Albert B. Smith, III
Circuit Court Judge
Post Office Drawer 478
Cleveland, MS 38732

Honorable Laurence Y. Mellen
District Attorney
Post Office Box 848
Cleveland, MS

Brenda Jackson Patterson, Esquire
Attorney At Law
301North Lamar Street
Suite 210
Jackson, MS 39201

This the 29th day of March, 2007.



W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680