IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT PATTON — APPELLANT

VS. — NO. 2006-KA-1019

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

Proposition One: The verdict of the jury was supported by the overwhelming weight of the evidence and the evidence was sufficient to prove beyond a reasonable doubt that Patton was guilty of bribery of a public official.

Proposition Two: Patton did not prove his affirmative defense of entrapment since the presented no evidence of government inducement and could not prove that he lacked the predisposition to commit bribery to protect his brother's illegal gaming operation.

Proposition Three: The trial court did not err in denying the Patton's Motion for Judgment Notwithstanding the Verdict or, in the alternative, For New Trial, and Patton did not prove his affirmative defense of entrapment. Patton alleges no other error before this Court and therefore there is no error, cumulative or otherwise, that would require reversal of this case.

SUMMARY OF THE ARGUMENT

The State clearly proved that Patton offered a bribe to a public officer, Police Chief Eddie Shannon with the intent to influence his action or judgment regarding the protection of his brother's illegal gaming machines by warning him whenever the Gaming Commission would be in town. The weight and sufficiency of the evidence are unassailable and the trial court correctly denied Shannon's

Motion for a Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial.

Patton did not prove his affirmative defense of entrapment since the presented no evidence of government inducement and could not prove that he lacked the predisposition to commit bribery to protect his brother's illegal gaming operation.

In his third issue on appeal, Patton alleges that there were cumulative errors at trial that would not independently require reversal and that taken together have deprived Patton of a fair trial and warrant reversal. However, Patton states only that these errors are "apparent from the record" and does not enumerate any alleged errors or errors to support this argument or state any authority supporting the assertion of error. The trial court did not err in denying the Patton's Motion for Judgment Notwithstanding the Verdict or, in the alternative, For New Trial, and Patton did not prove his affirmative defense of entrapment. Patton alleges no other error before this Court and therefore there is no error, cumulative or otherwise, that would require reversal of this case.

STATEMENT OF THE FACTS

On March 4, 2005, City of Shelby police officer, Patrolman Marion Bedford was called to Minnie's Café, an establishment owned by Hezekiah Patton, who is Patton's brother, to investigate a burglary. Officer Bedford received the call from Charlie Dorsey, who runs Minnie's Café, reporting that someone had broken out a window at the café. Minnie's Café is a large two room building. The establishment sells potato chips, drinks and beer.

Officer Bedford took Officer Ricardo Tell with him to investigate the burglary. Officers Bedford and Tell went inside the building and secured it. Mr. Dorsey showed them where a window pane was broken and the window was raised. They checked all the rooms in the building and Mr. Dorsey showed them where someone had taken some beer and was going out the back entrance of the building. When the Officers went in the back of the building they found six gaming machines.

The machines appeared to be video poker machines and were plugged in to electric outlets. Based on his training, Officer Bedford believed that these were illegal gaming machines. He then called the dispatcher and asked her to contact his supervisor, Police Chief Eddie Shannon and to asked what Chief Shannon wanted done with the machines. Officer Bedford and Officer Tell remained at the café until Chief Shannon arrived about 15-20 minutes later. Hezekiah arrived at the café and then his brother, Robert Patton, the Mayor of Shelby, arrived. When Chief Shannon arrived, Officer Bedford observed that he and Patton spoke and then observed Chief Shannon and Patton get in a vehicle. They made a block or so and came back to the café. Chief Shannon then told Officer Bedford that they would deal with the machines the next day. Officer Bedford then returned to the station where Officer tell had the suspect who was supposed to have broken into Minnie's and did the paperwork on that situation. When Officer Bedford left Minnie's, Chief Shannon and Patton were still there.

Chief Shannon testified that he received a call to assist Officers Bedford and Tell who had discovered some gaming machines in the course of investigating a break in at Minnie's Café. When Chief Shannon arrived at Minnie's, Officer Tell, Officer Bedford, Mayor Patton and his brother Hezekiah were there. Mayor Patton initiated a conversation with Chief Shannon and asked him to get in his car and make a block with him. Chief Shannon drove around the block with Mayor Patton. Mayor Patton asked him to leave the machines at Minnie's Café and told Chief Shannon that he would give him money if he would inform them when the Gaming Commission was coming. When they returned to Minnie's Chief Shannon instructed his officers to leave the machines at Minnie's Café.

On the morning of March 5th, Chief Shannon contacted the Gaming Commissioner's Office and the Attorney General's Office. He testified that he made the call because he had been instructed

by the Mayor to leave the machines at Minnie's Café and he knew that it was illegal to leave them at the café. Chief Shannon testified that in his capacity as Chief of Police, Mayor Patton was his boss. On March 8th Chief Shannon received a call from the Attorney General's Office. During that phone call, plans were made for an investigation. Investigator J.W. Watkins of the Mississippi Attorney General's Office testified that they put together a plan of investigation stemming from the allegation of bribery. The initial plan was to put an electronic device on Chief Shannon, let him speak to Mayor Patton, and to go from there. Investigator Watkins testified that he wired Chief Shannon five or six times. He identified five micro-cassette tapes as evidence from the Office of the Attorney General which he had received from Chief Shannon. He identified an envelope containing $50 in currency as evidence received from Chief Shannon.

Later on March 8th Mayor Patton came by the police department and asked Chief Shannon to go with him to take pictures of an abandoned house. Once they were at the site, Mayor Patton asked Chief Shannon if everything was "quiet." Chief Shannon told him that it was. Chief Shannon told Mayor Patton that one of the police officers was not happy about leaving the machines there, but that he could handle it. Mayor Patton said that he knew what the officer wanted – he wanted some money, and that he would give him. $20 or $30 and that would take care of it.

Chief Shannon identified a micro-cassette tape which he had dated and initialed. This tape was a recording of the conversation Chief Shannon and Mayor Patton had at the site of the abandoned house and that Chief Shannon had provided to the Attorney General's Office. On March 9th Chief Shannon attended a meeting at the Hampton Inn in Cleveland, at which agents from the State Gaming Commissioner's office and the Attorney General's Office discussed setting up equipment for the next morning to conduct an investigation. As part of the investigation, Chief Shannon was to inform Mayor Patton that the Gaming Commission was coming, so that Hezekiah

could move the machines out of Minnie's Café. On the morning of March 10th, Chief Shannon went to Mayor Patton's home and informed him that he had gotten a call from the Gaming Commission that they would be coming around 12:00 o'clock that day that they had received an anonymous tip of machines being in the club. Chief Shannon testified that Mayor Patton appeared nervous at this news. Mayor Patton went immediately to the phone and called "June Bug", who is Hezekiah Patton. Chief Shannon reminded Mayor Patton of the promise he had made to give Chief Shannon money if he informed him that the Gaming Commission was coming. Mayor Patton replied that Hezekiah would give him the money that weekend. As part of the investigation, Chief Shannon attempted to tape the conversation, but the tape malfunctioned. A little later that morning Mayor Patton came to see Chief Shannon at the Shelby Police Department. Chief Shannon and Mayor Patton went into the courtroom which adjoins the police department. Mayor Patton thanked Chief Shannon for the information.

Investigator Bert Wallace of the Mississippi Attorney General's Office testified that he went to Shelby, Mississippi on March 10th of 2005 to meet with Chief Shannon. Investigator Wallace was to install a body wire on Chief Shannon who was to then meet with Mayor Patton and inform the mayor that the Mississippi Gaming Commission would be coming to Shelby, Mississippi. Investigator Wallace met with Chief Shannon, installed the body wire and gave him a micro-cassette tape recorder. Chief Shannon returned to the police department and Investigator Wallace removed and secured the body wire recorder and the tape. The body wire tape did not work, however. In Chief Shannon's absence, Investigator Wallace had set up a video camer on a tripod and videotaped Minnie's Café. A short time after Chief Shannon returned from his conversation with Mayor Patton, there was activity at Minnie's Café. Investigator Wallace testified that the tape accurately reflected the activities at Minnie's Café that day. The tape was entered into evidence and played for the jury.

The tape shows Hezekiah Patton directing several men as they removed six large video gaming machines, along with what appear to be record books, from the rear entrance of Minnie's Café and loaded them onto a pick-up truck. The pick-up truck then drove away.

Chief Shannon testified that gaming agents did come to Shelby that day. They did not seize any machines. Mayor Patton contacted Chief Shannon again later that day and asked if the gaming agents had left. Chief Shannon told him, "Yes." Chief Shannon recorded the conversation and gave the tape to Agent Bert Wallace of the Attorney General's Office. Chief Shannon testified that the tape accurately reflected the conversation he had with Mayor Patton. The tape was entered into evidence and played for the jury.

As of March 24th, Chief Shannon had not had any contact with Mayor Patton. On March 25th, Chief Shannon initiated a conversation with Mayor Patton in the courtroom in the police department. Chief Shannon told Mayor Patton that he had not received anything and that he needed money to pay a bill. Mayor Patton asked Chief Shannon if $50 would do and Chief Shannon replied, "Yes." Mayor Patton said he would see that Chief Shannon got the money. Again, Chief Shannon taped the conversation and testified that it accurately reflected the conversation he had with the mayor. The tape was entered into evidence and played for the jury. On April 12th Chief Shannon contacted Mayor Patton again and told him that he had not received anything. Mayor Patton said he would look into it and that there should be something in a day or two. The conversation took place at the Police Department. Chief Shannon again recorded the conversation and gave it to Investigator J.W. Watkins of the Attorney General's Office. Chief Shannon testified that the tape accurately reflects that conversation he had with Mayor Patton. The tape was admitted into evidence and played for the jury. Later that afternoon, Hezekiah Patton came to the police department, opened the door and stood and nodded for Chief Shannon to come toward him. Chief Shannon went to Hezekiah, who

handed him some money. Chief Shannon counted the money and took it up. Hezekiah stated, "Robert told me to give you this," and turned and walked away. Chief Shannon recorded the conversation and gave it to Investigator J.W. Watkins of the Attorney General's Office. Chief Shannon testified that the tape accurately reflects that conversation he had with Hezekiah. The tape was admitted into evidence and played for the jury.

Later that day Chief Shannon walked over to City Hall to take fine collections to court. Mayor Patton was there and initiated a conversation with Chief Shannon. Mayor Patton asked Chief Shannon, "Did anybody show up?" Chief Shannon replied, "Yes," and that they gave him the $50 just like Mayor Patton had said.

ARGUMENT

Proposition One: The verdict of the jury was supported by the overwhelming weight of the evidence and the evidence was sufficient to prove beyond a reasonable doubt that Patton was guilty of bribery of a public official.

Mississippi Code Annotated § 97-11-11 (1972) provides, in pertinent part that:

> "Every person who shall ... offer to any officer ... any money ... with intent to influence his ... action, or judgment on any question, matter, cause or proceeding which may be then pending ... shall, on conviction, be imprisoned in the penitentiary not more than ten years, or fined not more than $1,000, or both."

In *McLemore v. State*, 241 Miss. 664, 125 So.2d 86 (1960), McLemore was convicted of offering a bribe to a district attorney, in return for which the district attorney would not introduce evidence in an arson case pending against the defendant's friend. The Court in *McLemore* enumerated the elements of the offense: (1) offer of bribe; (2) to public officer; (3) with the intent to influence his action or judgment; (4) on any question, matter, cause or proceeding which may be then or thereafter pending subject to his action or judgment. 241 Miss. at 672, 125 So.2d 86.

In *McLemore*, the Mississippi Supreme Court further stated that:

> The condemned offense is the offer to bribe, not completed bribery. There need not be a mutual intent on the part of both the giver and the offeree or acceptor of the bribe. It is the offering of the bribe that constitutes the substantive crime under the statute. It is immaterial whether an attempt or offer to bribe is successful. Nor is any actual tender of the bribe necessary to perfect the offense.
>
> 241 Miss. at 673, 125 So.2d 86.

In the instant case, the credible evidence shows that Patton, when his brother's lucrative and illegal gaming operation was discovered in the investigation of a burglary, in an effort to protect his brother's illegal activities, initiated a conversation with Police Chief Shannon in which he asked Chief Shannon to leave the illegal machines in place and offered Chief Shannon money for advance warning of raids or inspections by the Gaming Commission. The credible evidence further shows that once given that information, he immediately used it in order to allow his brother hide his illegal activities.

The overwhelming weight of the credible evidence supports the jury's verdict, since the evidence clearly shows that when the illegal machines came to light, Patton had a motive to offer a bribe. Further, the testimony of Chief Shannon establishes that the bribe was initiated by Patton. The evidence shows that Patton appeared at his brother's establishment after Officers Marion Bedford and Ricardo Tell discovered the machines. Patton did not appear to be concerned about the burglary, but rather, approached Chief Shannon for a drive around the block and during that drive asked Chief Shannon to leave the illegal gambling machines in place and told Chief Shannon that he would give him money for advance warning when the Gaming Commission would be coming to town. The taped conversations between Patton and Chief Shannon support Chief Shannon's testimony regarding the initial offer, since the conversations reflect that Patton made the initial promise of bribe money and that he intends to keep his promise.

Thus the state clearly proved that Patton offered a bribe to a public officer, Police Chief Eddie Shannon with the intent to influence his action or judgment regarding the protection of his brother's illegal gaming machines by warning him whenever the Gaming Commission would be in town.

The jury's verdict was consistent with and supported by the overwhelming weight of the evidence against Patton. To prevail on the contention that he is entitled to a judgment of acquittal, Patton faces the following formidable standard of review:

> When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence – not just that supporting the case for the prosecution – in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. ON the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.
>
> *Manning v. State*, 735 So.2d 323, 333 (Miss. 1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss. 1987).

Furthermore,

> 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. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss. 1993) (citations omitted). It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict, it must be accepted as having been found worthy of belief."

> *Williams v. State*, 427 So.2d 100, 104 (Miss. 1983). (emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App. 1999). See also *Jackson v. State*, 580 So.2d 1217, 1219 (Miss. 1991) (on appellate review the state "is entitled to the benefit of all favorable inferences that may reasonably be drawn from the evidence"), and *Noe*, 616 So.2d at 302 (evidence favorable to the defendant should be disregarded). Accord. *Harris v. State*, 532 So.2d 602, 603 (Miss. 1988) (appellate court "should not and cannot usurp the power of the fact-finder jury"). "When a defendant challenges the sufficiency of the evidence to support a conviction, the evidence which supports the verdict is accepted as true by the reviewing court, and the State is given the benefit of all reasonable inferences flowing from the evidence." *Dumas v. State*, 806 So.2d 1009, 1011 (Miss. 2000).

In *Harveston v. State*, 493 So.2d 365, 372 (Miss. 1986), this Court expounded that resolution of this issue

> turns not on how we see the evidence, for our institutionally mandated and self-imposed scope of review is quite limited. That limitation is premised upon our candid recognition that the jury system is at best the least imperfect way we have of determining guilt or innocence. We cannot help but be aware that a rational, fair-minded juror could well have found Harveston not guilty. Nevertheless, were we to substitute our view for the jury's, one thing could be said with certainty: the chances of error in any findings we might make would be infinitely greater than is the case where those findings have been made by twelve citizens, peers of the defendant, who are on the trial scene and have smelled the smoke of the battle.

Regarding Patton's has argument that he is entitled to a new trial, the state submits that Patton must meet the stringent standard of review summarized as follows:

> In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. *Dudley v. State*, 719 So.2d 180, 182 (Miss. 1998) (collecting authorities). Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal. *Id.*
>
> *Montana v. State*, 822 So.2d 954, 967-68 (Miss. 2002).

As the Court of Appeals repeated in *Thomas v. State*, 812 So.2d 1010, 1014 (Miss. App. 2001)

> We invite the attention of the bar to the facts that we do not reverse criminal cases where there is a straight issue of fact or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury.
>
> quoting *Evans v. State*, 159 Miss. 561, 566, 132 So. 563, 564 (1931)

The evidence at trial overwhelming supports Patton's conviction. The weight and sufficiency of the evidence are unassailable and the trial court correctly denied Patton's Motion for a Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial.

Proposition Two: Patton did not prove his affirmative defense of entrapment since the presented no evidence of government inducement and could not prove that he lacked the predisposition to commit bribery to protect his brother's illegal gaming operation.

As an affirmative defense, Patton asserts that he was entrapped, but was unable to offer any proof at trial that the government induced the act of bribery. Further, the credible proof at trial clearly showed that he initiated the conversation with Eddie Shannon, the Shelby Chief of Police.

The defendant in *McLemore* moved for a directed verdict based upon the defense of entrapment. The trial court overruled the motion; and the Mississippi Supreme Court affirmed, stating:

> The word "entrapment," as a defense, has come to mean the act of inducing or leading a person to commit a crime not originally contemplated by him, for the purpose of trapping him in its commission and prosecuting him for the offense. However, defendant cannot rely on the fact that an opportunity was intentionally given him to commit the crime which originated in the mind of the accused. The fact that an opportunity is furnished constitutes no defense.
>
> 241 Miss. at 675, 125 So.2d 86.
>
> See also Phillips v. State, 493 So.2d 350, 354 (Miss.1986); Miller v.

State, 234 So.2d 297, 301 (Miss.1970); Averitt v. State, 246 Miss. 49, 61, 149 So.2d 320 (1963).

Specifically regarding entrapment as a defense to the crime of bribery, the McLemore court stated:

> There is a very clear distinction between inducing a person to do an unlawful act and setting a trap to catch him in the execution of criminal designs of his own conception. The state's evidence amply supports the conclusion that the criminal intent to make the offer to bribe originated in the mind of defendant, and Strickland simply furnished the opportunity and the means for McLemore to consumate that purpose.
>
> 241 Miss. at 675-76, 125 So.2d 86.

Contrary to the evidence in the case at bar, for the defense of entrapment to be available, the intent to commit the offense must have been lodged in the defendant by the government agent for the purpose of causing the defendant's arrest and prosecution for bribery. It is no defense in a prosecution where bribing a government agent, who was an actual participant in the bribery scheme and accepted money which was given to influence his official action, that the official made the first overtures indicating that he would be receptive to the tender of a bribe. *69 A.L.R.2d 1397*, Entrapment-Bribery or Offer to Bribe (p. 1406).

In *Malatkofski v. United States*, 179 F.2d 905 (1st Cir.1950), the court held that facts which constitute illegal entrapment for bribery would be evident where officers instigate criminal intent and activity which otherwise would not have existed, by first requesting, demanding, or suggesting payment of a bribe from an accused to influence their action on matter in which the accused is interested; and, the accused, who apparently did not have the criminal intent to commit the offense before the request was made, is either, because of fears of official retaliation or the persuasion and representations of the agents, lured or induced into committing the offense so that he may be arrested

and prosecuted for it. *Citing*, 69 A.L.R.2d at 1417-18.

In *Gill v. State*, 924 So.2d 554 (Miss. Ct. App. 2005), the Mississippi Court of Appeals stated that in order for a defendant to make a prima facie case for entrapment, the defendant must show both of the necessary elements: (1) government inducement and (2) the absence of predisposition. Indeed, the presence of inducement and the absence of predisposition must both be shown. Ealy v. State, 757 So.2d 1053, 1056 (Miss. Ct. App. 2000)

> The sole issue revolves around whether or not Gill was entitled to a jury instruction on entrapment and if without the instruction he did not receive a fair trial. Before the defendant can present an entrapment defense he must show evidence to make a prima facie case of the government inducement and his lack of predisposition to commit the crime. The standard of review is "Whether an issue should be submitted to the jury is determined by whether there is evidence which, if believed by the jury, could result in resolution of the issue in favor of the party requesting the instruction. Conversely, only where the evidence is so one-sided that no reasonable juror could find for the requesting party on the issue at hand may the trial court deny an instruction on a material issue." Walls v. State 672 So.2d 1227,1230 (Miss.1996)
>
> "The presence of inducement and the absence of predisposition must both be shown." *Ealy v. State*, 757 So.2d 1053, 1056 (Miss. Ct. App.2000). Thus in order for Gill to make his prima facie case he must show both of the necessary elements: (1)government inducement and (2) absence of predisposition. Testimony of constant importuning will create a prima facie case. *King v. State*, 530 So.2d 1356, 1360 (Miss.1988) Gill argues that he did not have a predisposition to sell the drugs and would not have without the request of the confidential informant. He argues that sufficient evidence in the record could lead a rational jury to agree he was entrapped.
>
> Gill relies heavily on *King v. State* where the court agreed that the defendant deserved an instruction on entrapment since a reasonable juror could find for the requesting party. The facts of the two cases are similar in that both defendants testified that this was their only drug sale. Both also testified they had the drugs for their own personal drug habit and only decided to make a sale after asked by the confidential informant. The State contends he had the predisposition

> because he needed money to support his drug habit and he needed to profit off the drugs in order to pay his bills.
>
> *Gill v. State*, 924 So.2d 554 (Miss. Ct. App. 2005).

Patton presented no evidence at trial which would prove that the government induced his participation and that he was not predisposed to commit bribery to cover up his brother's illegal gaming operation.

Proposition Three: The trial court did not err in denying the Patton's Motion for Judgment Notwithstanding the Verdict or, in the alternative, For New Trial, and Patton did not prove his affirmative defense of entrapment. Patton alleges no other error before this Court and therefore there is no error, cumulative or otherwise, that would require reversal of this case.

The trial court did not err in denying the Patton's Motion for Judgment Notwithstanding the Verdict or, in the alternative, For New Trial, and Patton did not prove his affirmative defense of entrapment. Patton alleges no other error before this Court and therefore there is no error, cumulative or otherwise, that would require reversal of this case. In his third issue on appeal, Patton alleges that there were cumulative errors at trial that would not independently require reversal and that taken together have deprived Patton of a fair trial and warrant reversal. However, Patton states only that these errors are "apparent from the record" and does not enumerate any alleged errors or errors to support this argument or state any authority supporting the assertion of error.

In *Johnson v. State*, 626 So.2d 631 (Miss. 1993), the Mississippi Supreme Court stated:

> As far as possible, the reasons assigned should be supported by the citation of authorities or they will not be considered, unless it is clearly apparent that they are well taken.' 3 C.J. p. 1431; 3 Ency.Pl. & Pr. pp. 722, 723; 4 Stand.Ency.Proc. pp. 576, 577, 584, 585. 'It is the duty of counsel to make more than an assertion; they should state reasons for their propositions, and cite authorities in their support. * * * It is seldom sufficient to state naked legal propositions, for propositions are by no means always self-evident,' Elliott, App.Proc. pp. 375 , 376 ; and when not self-evident the party who advances them and cites no authority to support them may justly be said to have

failed to maintain them.

> 'It is a strange case upon which, in these days of tens of thousands of law books, no authority can be found, and when none is presented and the proposition is not manifestly well taken, there is the practical presumption that the authorities do not sustain the proposition, else they would have been cited. The courts frequently speak of such unsupported propositions as having been waived because of the failure to properly present them. There are several reasons which make it necessary to give weight to the foregoing considerations, one of which is that no Supreme Court could ever keep up with its docket if the judges were put to the tasks of briefing those cases of which the parties themselves have thought too little to brief.'

Therefore, Patton's unsupported assertion of cumulative error should be considered waived.

CONCLUSION

The state respectfully submits that the arguments presented by Patton are without merit. Accordingly, the judgment entered against him should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laura H. Tedder, 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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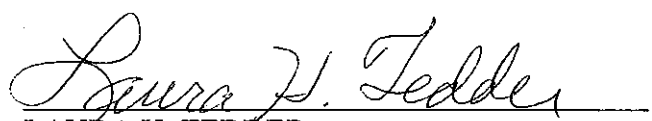
This the 12th day of September, 2007.



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