IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO.2006-KA-01019-COA

ROBERT PATTON — APPELLANT

VS.

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF APPELLANT

AN APPEAL OF THE CONVICTION OF BRIBERY OF A PUBLIC OF A PUBLIC OFFICIAL IN VIOLATION OF MISSISSIPPI CODE ANNOTATED 1972 SECTION 97-11-11 (REV. 2000) AS AMENDED AND SENTENCE OF FIVE YEARS WITH THE LAST FOUR YEARS SUSPENDED WITHIN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

APPELLANT IS CURRENTLY RELEASED ON BOND PENDING APPEAL

(ORAL ARGUMENT REQUESTED)

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ROBERT PATTON **APPELLANT**

V.

STATE OF MISSISSIPPI **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

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WITNESS the signature of counsel for Appellant on this 9th day of June, 2007.

Johnnie E. Walls, Jr.

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II. WAS THE APPELLANT ENTRAPPED?

III. WHETHER THE CUMULATIVE EFFECT OF THE ERRORS WARRANT REVERSAL OF CONVICTION AND SENTENCE?

STATEMENT OF THE CASE

The Appellant Robert Patton and his brother Hezekiah Patton, Jr. were indicted on the charge of Bribery of A Public Official alleged to have taken place from March 4, 2005 through April 13, 2005 by willfully, unlawfully, and feloniously, promise offer, and give to Eddie Shannon, Chief of Police, Shelby, Mississippi, a public officer, while holding said position, in money with the intent to influence his action on a matter which was subject to his action as the Shelby Chief of Police; in that Robert Patton and Hezekiah Patton, Jr. offered to pay money and caused fifty dollars ($50.00) to be paid to Chief Shannon in return for him notifying the Pattons that a law enforcement agency had plans to inspect or check Minnie's café operated by Hezekiah Patton, Jr. who knew illegal gambling machines were located at Minnie's Café as set out in the indictment in Bolivar County, Mississippi the 21st day of September, 2005. (R.1)(RE.7) The case went to trial on June 5, 2006. The Honorable Albert Smith, III presided.

Hezekiah Patton, Jr. was acquitted while Robert Patton, the Appellant, was convicted by jury on June 6, 2006. (R.89)(RE.11) An Order Adjudicating Guilt was entered by the Court June 7, 2006 and continued for sentencing. (R. 91)(RE.12) The sentence of the Court was rendered by Sentencing Judgment June 14, 2006 to which the Defendant was given a term of Four (4) years suspended after serving one (1) year under the supervision and control of the

Mississippi Department of Corrections. The Court held jurisdiction17 for the purpose of modifying, altering, extending, terminating and/or directing enforcement of the above sentence or any part thereof either in term time or vacation.(R.101, RE.15)

The Appellant was represented by Honorable Robert G. Johnston at trial and timely filed the Motion for Judgment Notwithstanding The Verdict or in the Alternative Motion for New Trial June 13, 2006. (R.95-100)(RE.19 - 24) The Motion was denied by the Court on June 15, 2006. (R. 106)(RE.25) A Motion for bail pending appeal was filed and granted by the Court June 16, 2006. (R.107)(RE.28) Appellant chose to assert his right to appeal and a Notice of Appeal was timely filed by Attorney Johnnie E. Walls, Jr. (R.108) (RE.29)

STATEMENT OF FACTS

The Appellant Robert Patton was elected Mayor of the Town of Shelby, Mississippi, located in Bolivar County. He served 2 years as Mayor and had been on the Board of Alderman in Shelby, Mississippi for the past 25 years. He was a school teacher for 35 years and ended his career in the North Bolivar School System as administrator of the alternative school. (TR. 364) (RE.43) The Appellant was seeking re-election within approximately one month of these charges being filed. (E-114, E-73) (RE.44,45)

On or about March 4, 2005, there was a burglary at Minnie's Café. Minnie's Café was a business whose beer permit was issued to Hezekiah Patton, Jr., the Appellant's brother. (TR. 225) (RE.68) A Charles Dorsey, however, was running the café at the time and was the one who reported the break-in. (TR 200, 223) (RE) While investigating the break-in Officers Bedford and Tell saw machines, that could not be readily identified as gaming machines according to their testimony. (TR. 237) (RE.93) Officer Bedford reported that Hezekiah Patton came to the business and tried to enter but he told him to wait until his supervisor, Chief Eddie Shannon, came. Mayor Robert Patton, Appellant, came out to the scene as well. Officer Bedford testified that it was usual for the Mayor to come out at night to see what is going on around town. (TR. 211)(RE.94) The Appellant Patton got in the car with the Chief and Shannon told him there was a problem with the machines. Appellant Patton testified

that he told the Chief that an order had been issued by Judge Strait to return the machines to his brother's establishment and to leave them there until morning and a "Charles would pick them up" (TR. 365) (RE.95) Judge Strait testified that he in fact ordered machines be returned to Minnie's Café because law enforcement never proved they were illegal. He stated they looked like TV's about 24" tall that could sit on a table top. He also testified that Chief had been fired before this time. (TR. 383-386) (RE. 96-99) The Appellant testified he had not been at the Café for a while and did not know machines were there. (TR. 375)(RE.100)

Officer Bedford stated when the Mayor and Chief returned the Chief told him that they would wait and deal with the machines the next day. (TR. 209-210) (RE.101-102) Bedford left the Chief and Mayor at the Café. (TR. 212) (RE.103) Shannon then claims that he and the Mayor returned to his vehicle circled the block again. Shannon wrote in his statement that the Mayor told him the machines belonged to Charles who was either Charles Dorsey the person who operated the Café or the Mayor's brother. (E-84) (RE.104) However, he testified that while in the police car the second time, the Mayor told him the "machines belonged to Hezekiah and that he would give him some money if I informed them when the Gaming Commission was coming." (TR. 281) (RE.105) On March 10th, the taped conversation reflects that it was Chief Shannon that "asked Mayor Patton if he (Patton) wanted to be notified if he (Shannon) heard

anything else from the Gaming Commission." (E-88) (RE.105A)There was no other testimony that Mayor Patton reentered the vehicle on that night except from Shannon.

The Appellant testified he did not know the machines were there. He denied offering anything in form of a bribe to Chief Shannon. (TR. 366)(RE.106) Mayor Patton believed these accusations were politically motivated and that Chief Shannon supported his opponent in the race.(Tr. 358-59) (RE.107 - 108) It was also undisputed that Chief Shannon was discharged from his duties on the police force while the Appellant was on the Board of Alderman. He stole a battery out of a fire truck and Patton voted to terminate him. (TR. 357) (RE.109)

The Attorney General's office was contacted by Chief Shannon about the machines and the accusation of bribery against Mayor Patton(RE. 163) (RE. 110) Investigator J. W. Watkins met with Chief Shannon to arrange to place a body wire on the Chief to ask the Mayor for money. It was their plan to continue to ask the Mayor for money. (TR. 186) (RE.46) Shannon testified on March 8, the Mayor asked was everything quiet. He told him one of his officers was not pleased machines were left in the café but he would handle it. From that he stated the Mayor told him, he knew what he wanted and would get him $20.00 or $30.00. (TR. 283-284) (RE.47-48).

On March 10, 2006, the Chief met with Investigator Bert Wallace from the Attorney General's office. He wired the Chief who

was to meet with the Mayor and inform him the gaming commission was coming and set up a video tape at the "specified location" in Shelby. The tape was inaudible but the video tape showed machines being moved out of the building(TR. 250-)(RE.49)The machines were moved back in the building around March 25, 2006. (TR. 298) (RE.50)

In the meantime, neither the $20.00 nor $30.00 nor $50.00 has been tendered to Chief Shannon for his alleged bribe money.(TR. 298- 301) (RE.50-52) On April 13, after he initiated the conversation with the Mayor asking about money, Hezekiah Patton, Jr. allegedly brought $50.00 to Shannon by telling him "Robert told me to give it to you this".(TR. 303)(RE.53) He then alleges Patton asked him did anyone show up. (TR. 306)(RE.54) This alleged conversation was not recorded.

Hezekiah Patton testified that the money was for a bond fee he made for Shalunda Smiley who had been arrested on April 11, 2006. (TR. 395, E-180-184)(RE.60,55-59) He also had phone records of the call made to him by Shannon from the police department. (E-185) (RE.61) Hezekiah Patton, co-defendant was found not guilty of the bribery. (TR. 464) (RE.62)

SUMMARY OF THE ARGUMENT

Appellant contends the evidence produced at trial was insufficient to sustain his conviction. There was no corroborating evidence presented to refute the Appellant's claim that he is not guilty. The State failed to prove beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence that the Appellant committed bribery of a public official except by hypothesis and innuendo. Appellant therefore contends the evidence presented was insufficient to sustain a conviction of bribery of a public official.

Clearly, the facts support the entrapment defense, therefore, the weight and sufficiency of the evidence against the Appellant is sorely lacking in accord with the standards set by the highest court of this State.

Consequently, the Appellant's conviction should be reversed for dismissal or remanded for new trial.

ARGUMENT

I. WHETHER THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AS THE STATE FAILED TO MAKE A PRIMA FACIE CASE OF BRIBERY OF A PUBIC OFFICIAL?

The trial court, in considering motions challenging the sufficiency of the State's proof, must view the evidence in the light most favorable to the State giving the prosecution the benefit of all reasonable inferences which may be drawn from the evidence. **McClain v. State**, 625 So.2d 774, 778 (Miss. 1993) The Court is obligated to reverse a conviction and render a judgment of acquittal when it determines that, viewed in that light, the State's evidence as to one or more of the critical elements of the crime - in this case, more particularly, that the Defendant was not guilty of bribery of a public official - is so lacking that reasonable jurors could not have found appellant guilty. Id. If the trial court denies the motion, that denial is raised as an issue on appeal, the Court is charged to review the evidence by the same standard to determine whether the trial court erred in its ruling. Id at 781.

The Appellant was convicted under Miss. Code Ann. §97-11-11 (Rev. 2000) bribery of a public official. The elements the State is required to prove beyond a reasonable doubt as set out in the Jury Instruction S-2-A, are as follows:

The defendants, Robert Patton and Hezekiah Patton, have been

charged by the indictment in this case with the crime of bribing a public official.

> If you find from the evidence in this case beyond a reasonable doubt that:
>
> 1. that defendants Robert Patton and Hezekiah Patton willfully, unlawfully, and feloniously made a promise, or an officer, and did cause fifty dollars ($50.00) in United States money to be paid during the period on or about March 4, 2005, continuing through April 13, 2005, to Eddie Shannon;
> 2. That the money was intended to influence a public official's action;
> 3. on a matter which was subject to his official action, namely: notifying the defendants of an upcoming plan by a law enforcement agency to inspect or seize illegal gaming machines located and operating in Minnie's Café, located in Shelby, Mississippi.
> 4. that throughout the time stated Eddie Shannon was a public official, namely, Chief of Police of Shelby, Mississippi,
>
> then you shall find the defendants guilty as charged.
>
> If the State has failed to prove beyond a reasonable doubt any one or more of the elements of the charge, you shall find the defendants not guilty of bribing a public official. (TR 79) (RE)

Additionally the indictment states,

> "that law enforcement agency had plans to inspect or check Minnie's Café which is located in Shelby, Mississippi, and operated by Hezekiah Patton, for the operation of illegal gambling machines, when Robert Patton and Hezekiah Patton knew that illegal gambling machines were located at Minnie's Café. (R. 1) (RE.7)

The appellant would state that according to his testimony which was un-controverted, he had no knowledge the machines were

in the establishment, Minnie's Café. He had not been there for a while and furthermore he knew Judge Strait had turned machines confiscated earlier back to Hezekiah, the co-defendant. (TR. 365) (RE.66) If Shannon was so quick to acquiesce to the Mayor's request to wait, why would he in turn get back into the vehicle with the Chief and offer him anything? What would be the point?

It is also worth noting the first conversation, Shannon had with the Mayor which was supposed to be a confirmation of the deal to bribe him was not captured on tape. Very convenient. In the chief's own statement March 10, 2005, the following was said:

> "Chief Shannon **asked** Mayor Patton if he (Patton) wanted to be notified if he (Shannon) heard anything else from Gaming. Mayor Patton said he would like to be notified. Mayor Patton thanked the chief again and thanked Shannon for calling his cell phone. The conversation ended. Id at E-88 (emphasis added)

No money was mentioned at all in this conversation. This would have been the prime time to mention money. The mere fact the Chief asked the Mayor did he want to know Gaming was coming, any reasonable person would say yes regardless. Appellant was the Mayor and would have a legitimate interest in knowing what was going on in the Town. The establishment was not his property and he had no interest in bribing anyone for other than himself not even his brother. The Appellant was given the information by virtue of being the Mayor. He did not have to pay for it.

In **Franklin v. State,** 676 So.2d 287,288 (Miss. 1996)the Supreme Court opined that a motion for judgment notwithstanding the verdict implicates the sufficiency of the evidence. **Sheffield v. State,** 749 So. 2d 123, 125 (¶9) (Miss. 1999) In reviewing the sufficiency of the evidence, we must:

> "with respect to each element of the offense, consider all of the evidence-not just the evidence which supports the case for the prosecution-in light most favorable to the verdict. The credible evidence which is consistent with the guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn form the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be removed by the jury. We may 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." Id.

In **Holloway v. State,** 809 So 2d 598, 606 (¶ 22)(Miss. 2000) the court opined:

> A motion for new trial, however, falls within a lower standard of review than does that for a judgment notwithstanding the verdict. A motion for a new trial simply challenges the weight of the evidence. [An appellant][c]...will reverse the trial court's denial of a motion for a new trial only if [the trial]...court abused its discretion [by denying the motion]. We will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. citing **Groseclose**

> **v. State**, 440 So. 2d 297, 300 (Miss. 1983). [F]actual disputes are properly resolved by a jury and do not mandate a new trial...when determining if a reasonable jury could have found the defendant not guilty. Id.

Presented properly and given reasonable consideration, the Appellant asserts that given these facts, critical elements of this crime were so lacking that a reasonable jury could have found the defendant not guilty.

First and foremost, the subject of this alleged bribery by the Appellant is fifty dollars ($50.00), but it was never established by the evidence that this money was part of a bribe. More importantly, the jury found the co-defendant, Hezekiah Walker not guilty. In view of that finding it stands to reason that the jury obviously believed this fifty dollars ($50.00) was paid because of a bond fee owed by Hezekiah Walker to the Police Department. Therefore, this fact causes the foundation of the first element of the bribery to fail. The testimony of Chief Shannon waivers as to exactly how much money he was supposed to obtain. If it was in fact $50.00 he was supposed to get, then he should have received $100.00, an extra $50.00 for the bribery. This did not occur. 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 Appellant not guilty.

The verdict is so contrary to the overwhelming weight of the

evidence that, to allow it to stand, would be to sanction an unconscionable injustice. The Appellant has an exemplary record of public service. The fact that the evidence used to convict him was tenuous at best, and after the not guilty verdict of the co-defendant the basis of the bribery was clarified to be bond money not bribery money.

For these reasons, the Court should reverse or remand for a new trial.

II.

WHETHER THE APPELLANT WAS ENTRAPPED?

Entrapment is defined as "the act of inducing or leading a person to commit a crime not originally contemplated by him for the purpose of trapping him for the offense." ***Phillips v. State***, 493 So. 2d 350, 354 (Miss. 1986); ***McLemore v. State***, 125 So. 2d 86, 91 (Miss. 1960) Entrapment is an affirmative defense and must be proved by the defendant. ID. (citation omitted).

> "If the defendant already possessed the criminal intent, and the request or inducement merely gave the defendant an opportunity to commit what he or she was already predisposed to do, entrapment is not a defense. Id. (citation omitted) Thus, two requirements must be met to successfully raise entrapment as a defense: (1) proof of government inducement to commit the criminal act or acts; and (2) that the defendant lacks the predisposition to commit the criminal acts **Hopson**, 625 So. 2d at 400 (citations omitted).

The Appellant was not predisposed to commit a criminal act of bribery. It was Shannon, the targeted government official that first raised the subject of money. It was Shannon that *asked* the Mayor did he want to know when Gaming came. It was Shannon who kept repeatedly *going to* the Mayor for money. It was the Attorney General investigator that told Shannon that he had to get the Mayor. All of this was initiated by law enforcement.

The Appellant up to this point, again had an exemplary record of public service. He was a veteran of the school system, had

served as an Alderman on the Board for a number of years before becoming Mayor. He was always on call and made it his business to be there for his constituents, even law enforcement testimony substantiated this fact.

On the other hand, the main witness had been discharged for his dishonesty in stealing a battery out of the Town of Shelby's fire truck. During this time, several exhibits, already mentioned in the facts of this case show that there was an intensive and contested Mayoral election being held during the time of these events. The Appellant contended that charges against him were politically motivated. In addition thereto, by Shannon's own statement, he was the one who asked the Mayor about the gaming commission coming, and any reasonable person, not suspecting to be entrapped, would have acquiesced. The Appellant was the Mayor and he was entitled to know.

Furthermore, up to this point the Appellant was under the impression that the alleged illegal gaming machines had already been confiscated and returned to the establishment. He had no stake in the outcome because not only did he have no interest in the business, his brother was not operating it at the time but another person who reported the break-in in the first place.

The Appellant was not shown to have been pre-disposed to commit the crime and the facts do not support his guilt otherwise.

III.

HETHER THE CUMULATIVE EFFECT OF ERRORS WARRANT REVERSAL OF CONVICTION AND SENTENCE?

Genry v. State, 735 So. 2d 186 (Miss. 1999) states that the Court may reverse a conviction and sentence based upon the cumulative effect of errors that independently would not require reversal. It also stipulates that where there is no reversible error in part, there is none to the whole. **Id**. at 201

The Appellant asserts that errors are so apparent from the record and testimony that the cumulative effect of them warrants reversal.

CONCLUSION

Considering all of the above, and its cumulative affect of the errors set out, Appellant asserts he is entitled to a reversal and or a new trial.

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CERTIFICATE OF SERVICE

I, Johnnie E. Walls, Jr., attorney of record for Appellant, hereby certify that I have this day caused to be mailed by first-class mail, postage pre-paid, a true and correct copy of the foregoing Brief of Appellant to:

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Hon. Albert Smith, III
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This the 9th day of June, 2007.

Johnnie E. Walls, Esq.
Attorney for Appellant