IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOSEPH GLENN JONES — APPELLANT

V. — NO. 2006-KA-1243-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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.

1. State of Mississippi
2. Joseph Glenn Jones, Appellant
3. Honorable Anthony J. Buckley, District Attorney
4. Honorable Billy Joe Landrum, Circuit Court Judge

This the 25th day of April, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: Brenda J. Patterson

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STATEMENT OF THE CASE

On November 1, 2005, Joseph Glenn Jones was indicted by a Jones County Grand Jury for sexual battery pursuant to Mississippi Code Annotated Section 97-3-95(1)(d) as Amended or in the alternative Mississippi Code Ann. Sec. 97-3-95(1)(c). After a jury trial, Mr. Jones was convicted of sexual battery in violation of Mississippi Code Annotated Section 97-3-95(1)(c) as Amended and sentenced to serve a term of thirty (30) years in the custody of the Mississippi Department of Corrections with fifteen (15) years suspended and fifteen (15) years to serve.

STATEMENT OF THE FACTS

On May 17, 2006, Joseph Glenn Jones went to trial for sexual battery of Stephanie Gordon. During trial, Tyrone Stewart, captain of the investigative division for the city of Laurel Police Department, testified that he received a complaint of Joseph Jones having sex with a thirteen (13) year-old girl. It was alleged that this girl had a premature child which was stillborn. From his investigation, he learned that the baby was buried, and due to the lack of physical evidence the

investigation was put on hold. However, once the new administration with the district attorney's office began, Captain Stewart was contacted in reference as to whether there was any physical evidence at South Central Medical Center. Captain Stewart later learned that South Central Medical Center kept all tissue samples of all premature infants on slides which were available for ten (10) years. Once they learned slides were available, they obtained the slides via a subpoena with the assistance of the district attorney's office.

Stephanie Gordon testified, when she was thirteen years old, she was walking from a friend's house, and Joseph Jones was driving a green looking car and he stopped her and asked if she wanted a ride. She said this is how they began contacting each other and how they began having sex. She testified, that when she became pregnant at 13 years old, Joseph Glenn Jones was the person she was having sex with. According to Stephanie, she was born August 5, 1985 and on July 30, 1999 she was 13 years old. Her stillborn baby, was born on December 27, 1999. She turned 14, on August 5, 1999. TE. 299-301. She testified, that Joseph Jones gave her $500.00 to have an abortion, however, she spent the money on something else. TE. 303. Stephanie also testified, that Mr. Jones paid her through Western Union not to give blood for the paternity test. TE. 305. However, she was forced to give blood, after being arrested in Iowa and then transported to Mississippi. TE. 305.

Patricia Collins testified that Mr. Jones used to come by her house and pick Stephanie up when Stephanie was thirteen. When Stephanie returned from being with Mr. Jones, she would have money. TE. 315-317.

Lori Kennedy, registered Health Information Administrator at South Central Regional Medical Center, introduced medical records of Stephanie Gordon and her stillborn child. She testified that Stephanie was hospitalized at South Central Regional Medical Center from December

26, 1999 through December 28, 1999. TE. 322-325.

Nancy Clark, who works for Diagnostic Tissue and Cytology, testified that their pathology department is contracted to South Central Regional Medical Center and that their lab receives surgical tissues from outside clinics. She said that they process the tissue and make a slide and stain it, and the pathologist determines or renders the diagnosis. When a placenta comes in that has an attached umbilical cord and membranes they take a representative section or possibly two representative sections of the umbilical cord and they'll take representative sections of the membranes and put it in a paraffin block. Then they have a separate paraffin block where they put a section of the placenta and they keep these for ten (10) years. TE. 334. Ms. Clark testified that Stephanie Gordan's placenta and umbilical cord were logged in on December 27, 1999 and the slides were preserved at that time. TE. 336.

Next, the State offered the testimony of John Cox with the Laurel Police Department to show that the two paraffin blocks and two slides from the stillborn fetus of Stephanie Gordan were picked up at South Central Regional Medical Center and delivered to Reliagene Laboratories located 5525 Mounes Street, Suite 101, New Orleans, Louisiana for DNA analysis. TE. 348-349.

Wayne Black, investigator with the Jones County District Attorney's Office testified that he served the search warrant and affidavit on Mr. Jones to have his blood drawn for DNA analysis. He said that Mr. Jones refused to have blood drawn, stating that his lawyer advised him to do so. Investigator Black further testified, that he then got a Court Order to have Mr. Jones' blood taken for DNA analysis from Lab Corp., a private laboratory. However, the lab would not retrieve blood from Mr. Jones because Mr. Jones wrote on the Court Order that he was a Jehovah's Witness. He also testified that he got another Court Order directing South Central Regional Medical Center, or any certified lab to draw Mr. Jones' blood for DNA analysis. Finally, a nurse practitioner, Donnie

Scoggin, drew Mr. Jones' blood and Investigator Black drove it directly to Reliagene Laboratories in New Orleans. TE. 364-368.

The State then called Kevin Jackson, a criminal investigator with the Laurel Police Department. Investigator Jackson testified that Joseph Jones' birth-date is March 1, 1961. He also testified that Stephanie Gordon's blood was taken at South Central Regional Medical Center and once the blood was taken he placed it in a BAC kit and he and Officer Robert Strickland took it to Reliagene Laboratories in New Orleans, Louisiana. TE.374-376.

Next, the State called Huma Nasir, forensic DNA analyst for Reliagene Laboratories, who testified that he did most of the lab work in the case of Stephanie Gordon and Joseph Glenn Jones. He said that DNA profile can be determined from everybody, unless there are diseases that would inhibit the testing that is done. In this case, he stated that he got a complete profile. He testified that they test for genetic markers which are called a short tandem repeat, which are called short STR loci. It is a very small sequence of DNA that is repeated over and over in the body. Every person would have a different number in their body for each of the markers that they test for. They usually test for 15 to 17 certain locations of DNA in the body, and those certain locations are called genetic markers. Those markers are tested because they show the most variability from one person to another. They help to distinguish one person from another.

He further testified, that the way paternity tests work is that a child gets half their DNA from the mother and half their DNA from the father. First you compare the child's profile with the mother's profile, and you see what half of the mother's DNA was contributed to the child. You subtract that part out from the child's DNA, and then you look at what the father contributed. You compare that part with the alleged father's DNA, and if it matches all of the genetic markers for which they test for that means the alleged father is the biological father of the child. TE. 399-400.

He also testified that half DNA from the child matches Stephanie Gordon and half of the DNA from the child matches the DNA of Joseph Jones and therefore, Joseph Jones was not excluded as the biological father. The only way to be 100 percent sure that Joseph Jones is the father, one would have to have DNA profiles of everybody in the world. The highest score is 99.999 percent. TE. 402-403.

Finally, the last witness the State called was Dr. Megan Shaffer, who holds a Ph.D. in Microbiology. Dr. Shaffer testified, that she has accreditation from the American Blood Bank Association for paternity testing. TE. 421. She also testified, the test her lab uses is the standard test that's run to determine paternity in every court in the United States. TE. 422. She further testified, that Joseph Glenn Jones was not excluded as the biological father of the fetus of Stephanie Gordan, with a probability of 99.97 percent certainty he is the father. TE. 426.

SUMMARY OF THE ARGUMENT

I.

WHETHER THE VERDICT WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE AND ALSO TO LAW REQUIRING NEW TRIAL IN THE INTEREST OF JUSTICE.

The jury found Joseph Glenn Jones guilty of sexual battery in violation of Mississippi Code Annotated Section 97-3-95 (1)(c) 1972 as Amended. *Miss. Code Ann. Sec. 97-3-95 (1)(c)provides: (1) A person is guilty of sexual battery if he or she engages in sexual penetration with: a child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child.*

At the close of the State's case, Mr. Jones made a Motion for a Directed Verdict for failure of the State to prove a prima facie case of sexual battery. The court overruled the Motion for a Directed Verdict. TE. 433. Mr. Jones argues that the evidence produced at trial does not support the

jury verdict and therefore, the trial court erred in failing to grant his Motion for Directed Verdict. He asserts that the State failed to prove each element of the offense beyond a reasonable doubt and as such, the verdict is contrary to weight of the evidence and also to law and a new trial should have been granted. Specifically, he asserts that there is no evidence in the record to support Stephanie Gordan being of the age of fourteen (14). He cites the following portion of the record:

Pages 299-300.

Q. What is your birthday, Stephanie?

A. August 5, 1985.

Q. August 5, 1985. Okay. And how old are you now?

A. 20.

Q. 20. And back on or about July 30th, 1999, how old were you?

A. 13.

Q. Okay. Now, let me jump around a little bit with you. Did somewhere around during that period of on or about July 30th , 1999, did you discover – make some kind of discovery that you were pregnant?

A. Yes, sir.

Q. Huh?

A. Yes, sir.

Q. Okay. And that baby that you discovered you were pregnant with back on or about somewhere that was conceived around July 30th of 1999, what happened to that baby, Stephanie?

A. She was a stillborn.

A. Stillborn?

Q. Do you remember about what date she was stillborn?

A. December 27th of 1999.

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Q. Okay. Now, Stephanie, I need to – let me direct your attention back to on or about July 30th, 1999. When you were 13 years old, were you having sex – did you have sexual intercourse with somebody on or about that time?

A. Yes.

Q. I want you to look around in the courtroom today and see if you see that man.

A. Joseph Jones.

Page 316 Patricia Collins

Q. Now, what I'm asking about is when Mr. Jones, back during that period of time, did he ever come by your house and pick up Stephanie Gordan?

A. Yeah.

Q. All right. And this was when Stephanie was 13, correct?

A. Yeah.

Page 333 Nancy Clark

Q. And I think it gives the estimated – and this has to be estimated, I understand. If I'm wrong tell me. But the impression was that the baby was 22 weeks, correct?

A. Now, that part – that's with the obstetrician.

Q. Yeah. But that's what it says?

A. Yeah, it says 22 weeks. We go by what we're clinically given on that but. As far as the tissue itself, we actually do a hands-on gross examination of the tissue itself.

In support of his argument, Mr. Jones cites Washington v. State, 645 So. 2d 915 (Miss. 1994), where the Supreme Court held that "where the accused was convicted of all of the elements of the crime of sexual battery except for the age of the victim, with result that verdict was contrary to weight of the evidence and also to law, new trial was required in the interest of justice and was the only proper course of action." In Washington the age of the child was never presented during

trial and the age of the child was an essential element of the crime. The only evidence in the transcript was comments by the trial judge of his personal observations of the child's appearance and such comments were out of the jury's presence. The proof put on by the state was not sufficient to sustain a verdict that beyond a reasonable doubt, the victim was under the age of fourteen.

The Court in Washington cited Neal v. State, 451 So. 2d 743, 757 (Miss. 1984), "It is hornbook criminal law that before a conviction may stand the State must prove each element of the offense." Due Process requires that the State prove each element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 324, (1979). See also Carlson v. State, 597 So. 2d 657, 659 (Miss. 1992). "[T] here must be in the record evidence sufficient to establish each element of the crime." Fisher v. State, 481 So. 2d 203, 211 (Miss. 1985).

In the present case, Mr. Jones asserts that all the evidence in the record supports the complainant, Stephanie Gordan being thirteen (13) years old. Stephanie testified that she was born August 5, 1985. TE. 299. She testified that she was thirteen (13) years old when she became pregnant and Joseph Glenn Jones was the person she was having sex with. TE. 301. She further testified that her stillborn baby was born December 27, 1999. TE. 304. Finally, Nancy Clark testified that from the records she had, that Stephanie Gordan's stillborn baby was 22 weeks old. TE. 333.

Mr. Jones argues in order for him to be found guilty of sexual battery in Mississippi Code Annotated Section 97-3-95(1)(c) the state had to prove that he had sexual intercourse with Stephanie and that he had sexual intercourse with her when she was fourteen (14) years old or older. "The age of the victim "makes or breaks' the conviction. The prosecution's failure to offer proof as to this element in sexual assault cases parallels the situation in which the prosecution fails to offer proof that an alleged victim of a murder is in fact dead." See Washington, 645 So. 2d at 919.

The jury was given the jury instructions with the elements of the crime. They chose

Mississippi Code Annotated 97-3-95(1)(c). From a review of the record, the state failed to prove every element of this offense.

II.

WHETHER THE TRIAL COURT ERRED IN DISMISSING A JUROR AND REPLACING WITH AN ALTERNATE JUROR

Prior to deliberation, Faye Jackson a courtroom spectator was called to testify in chambers concerning conduct of some of the people she believed were there in support of Mr. Jones. The trial court dismissed Juror Willie Bell Dantzler after hearing this testimony.

Mr. Jones argues that the trial court abused its discretion by dismissing Juror Dantzler and replacing her with an alternate base upon the statements made by witness Faye Jackson. He contends that he was prejudiced because Juror Dantzler was a highly educated juror who had a graduate degree and her educational background was needed because of the complications of DNA. He also contends, that her having worked at Ellisville State School for 27 years showed that she was a very stable and serious minded person who would have been very attentive and would have questioned every piece of evidence before returning a verdict of guilty. He submits, that the alternate juror did not have the same credentials as Juror Dantzler and therefore, this prejudiced him. Because she was black and Juror Dantzler was black was insufficient reasons to replace Juror Dantzler.

Mr. Jones contends the state did not present any evidence which substantiated the statements made by witness Faye Jackson, nor did the state show that Juror Dantzler was aware of what these people had said or that she was not a fair and impartial juror.

The testimony presented in chambers proceeded as follows:

TE. 434-436

BY MR. PARRISH:

Q. Would you state your name, please?

A. Faye Jackson.

Q. Faye, yesterday, I don't know if it was after the jury was picked and you went outside?

A. Yes.

Q. You were around a group of people. And could you tell me basically who you saw in that group that you recognized?

A. When I was walking outside to go to my car, Felix Fenderson and Anthony Hudson and some more people were coming out of the building and they were all rejoicing.

Q. Was Mr. Joseph Jones's wife around?

A. Serita was standing by Pearl Dixon's. And they were all saying that we did it. The jurors had come out. They had marched out. The Judge had excused them and they had marched out and they had their badges on. They said we did it, we did it. Said she convinced them to put her on the - to be a juror. And they said who. And she said, Felix aunt is a juror. And they said, Willie Bell is a juror. And said, well, we got it made now. She gone throw the case.

Q. They used the word hang?

A. Hang the jury.

Q. And this woman's name is Willie?

A. Willie B. Dantzler.

Q. Willie B. Dantzler.

A. Correct.

Q. And did you hear them discussing any more about that subject?

A. They were just jumping up and down. That's all.

Q. They said they discussed it with her?

A. They was jumping up and down and saying, you know, if she was on the jury they had a chance to hang the jury.

Q. They fixed it with her?

A. They could hang the jury.

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Mr. Parrish: I'm talking about Willie Dantzler. Let me start over. I'm sorry if I was confusing. Your Honor, there's 14 jurors; two alternates. One of them is a black person. It's been a concern, and based upon what this woman said, these people's statements after this, the State is asking the Court to replace this woman with the black alternate juror.

THE COURT: On what basis?

MR. PARRISH: On the basis of the testimony you just heard.

THE COURT: What testimony has she said? That somebody was excited about somebody being on the jury. I mean, aren't you excited that you got certain people on the jury?

MR. PARRISH: No, I'm not. I certainly am not.

THE COURT: Well, you had a choice of making those people.

MR. PARRISH: No, it wasn't exactly my choice on all of them. The woman, this lady has testified, what I understood her to say, is they were rejoicing that she said that she convinced them to keep her on the jury. And many --

THE COURT: She who?

MR. PARRISH: Willie B. Dantzler.

THE COURT: Do you have any knowledge that Willie B. Danzler has talked to anybody involved in this case, personally talked to them?

THE WITNESS: No, sir. I just heard them when I was coming out.

THE COURT: Heard them who.

THE WITNESS: Felix who is her nephew.

THE COURT: All right.

THE WITNESS: Anthony Hudson and Serita. They were in a group with other people.

THE COURT: And they said that they feel like that they have a chance now that they have her on the jury?

THE WITNESS: Yes. And that was what they said. That's what they said. And they were all

jumping up and saying we got, you know, we got a chance now.

THE COURT: I don't see that that's any reason to take anybody off the jury myself.

MR. PARRISH: I understood her to say, and you correct me if I'm wrong, that they used the word we got a hung jury.

THE WITNESS: Hung jury. They could hang the jury. They had a chance to hang the jury.

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THE COURT: Unless you can show me that there is some actual conspiracy between somebody that got this woman on the jury - - there's been a jury selection of 12 people here that was involved in the defense and the State of Mississippi. And there's 12 people selected. And for me to remove a juror based on what this woman says, I don't have any doubt what this woman says, I don't have any doubt what she said, but what she said has not made any sense to me in regards to that I need to replace this juror because somebody walking down the street is excited about having a particular juror on the jury.

MR. PARRISH: Particular excited to what I understood her to be testimony - -

THE COURT: Her testimony is fine. I don't have any problem with that. But to remove a juror based on the fact that she heard somebody say we got a chance to hang the jury now. I mean, I just don't know of any precedent where anything like that has ever come up before or ever happened where that was a reason to remove a juror without some further evidence or indication that she's has been involved in. She was properly voir dired, properly questioned. Sitting there listening to the testimony.

And I don't know, I'm not casting any dispersion on anything this woman says. I'm glad she came forward and said what she said. But to remove her and replace her just arbitrarily with some other black person. I mean, I don't know of any juris prudence involved in anything like that that I've ever been involved with. If you can come up with something else, that's fine.

This woman showed no action or no reason. She has a right to sit on the jury. Not only does she have a right to be here, she has a right to be voir dired. She has a right to be accepted on the jury.

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THE COURT: Mr. Parrish, you go find me a case. You go find me some precedence on what you're trying to do and I'll consider it. Otherwise I don't know of any. I've never heard of a situation like this before where you want me to take one juror. If I'm going to do that, I've got to take the whole jury and throw the whole jury out. There's no way under God's green earth that I know of that I can take a juror and just arbitrarily replace her with another black juror just because she's a black female.

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THE COURT: This woman has worked at Ellisville State School for 27 and a half years. She's finished college and she's been to graduate school. Her husband works for the City of Laurel Fire Department.

If I bring this woman in here and ask her some questions, what do you propose that I would ask her? What do you propose that I ask a woman 50 years old with four children that's been working at the same job and went to college, graduated from college, went to graduate school, got a husband that works for the fire department? Apparently working the city and Jones County for all these years. Now, what am I going to ask her? You tell me what am I going to ask her? You just can't throw this woman off the jury. You tell me what I'm going to ask this woman?

MR. PARRISH: I didn't know what the Court is going to ask her.

THE COURT: You suggest. You're the prosecutor. You're the one that brought it up. What do you think I ought to ask her?

MR. PARRISH: I brought it up when I had an allegation that made me think that there might be something wrong. And I have to defer to your judgment because you're the boss.

THE COURT: My judgment is that I haven't heard anything yet that would cause me to feel like this woman has done anything to hurt her credibility as a juror here today. If something else comes up and you find out about something later on, then we'll have to deal with that.

After a review of Gray v. State, 846 So. 2d 260 (Miss. 2002) and James v. State, 912 So. 2d 940 (Miss. 2005), the court in the present case decided to investigate witness Faye Jackson's testimony further. During in-chambers questioning by the defense attorney, witness Faye Jackson was asked whether her husband, Kevin Jackson, worked with the Laurel Police Department and she said he did. Defense attorney also asked "And his interest in this case was obviously for the State of Mississippi, correct?" Her reply was, "yes." TE. 461.

In response to the court's question, "Have you seen anything since then that would make you feel like that this juror has had any contact with those people?" Faye Jackson's response was, "No". She further testified that the juror was Felix Fenderson's aunt and that Felix Fenderson was one of the people jumping up and down saying we got a chance to hang the jury. She also testified that Felix was there along with Anthony Hudson, Mr. Jones' ward president. TE. PP. 462-464.

After the above statements made by Mrs. Jackson, the court decided to dismiss Juror

Dantzler. When asked by the defense attorney if he could question Juror Dantzler, the court refused to allow him to question her and informed him he could take her deposition or anything he wanted after the case is over. He then stated he was replacing her with an alternate juror because of alleged conduct by some people. TE. 465-466.

The court then called Juror Dantzler in his chambers and asked her to recuse herself because of something somebody said. He further told her, that he would rather her not be involved in any kind of controversy now or in the future about what might be happening in this case. Her response to his question, "Do you have any problem with that?" was "No". He also asked her, Do you voluntarily recuse yourself or remove yourself from the case without any controversy? You don't have any problem with that, do you?" She replied, "Oh, no, sir." TE. 467.

In Gray v. State, 846 So. 2d 260 at 265 (Miss. 2002) , a juror was replaced with an alternate juror after the State found that she had an indirect relationship with the defendant. During trial, a spectator at the trial, Antonio Harvey visited the defense table and appeared to be viewing documents with the defendant and his attorney. A State Criminal Investigator approached Mr. Harvey and asked if he and the juror were still dating. Mr. Harvey replied, "yeah, we're still kicking." Ms. Mitchell, another officer of the court, stated that she overheard the conversation between the Investigator and Mr. Harvey where Harvey stated he was "kicking" with Williams. Finally, the court called Juror Williams into chambers. Ms. Williams stated she and Mr. Harvey's brother Karlus had dated and she knew Mr. Harvey by seeing him when she would go visit his brother. She stated that she had broken up with Karlus a couple of days before trial. Ms. Williams stated that she could be fair. She also testified, that she knew of the defendant, however, she did not know him personally. The court dismissed Juror Williams and replaced her with an alternate.

In James v. State, 912 So. 2d 940 (Miss. 2005), Dayon James was found guilty of capital

murder in the death of one child victim and sentenced to life in prison. A day after the trial, defense counsel was contacted with information that jurors had discussed the case prior to deliberations, including the fact that Mr. James had been charged with capital murder of a second child that was not the subject of the capital murder trial they sat as jurors for. During deliberations, several jurors argued that Mr. James was guilty because "it was two children." Also, some of the jurors had seen the docket sheet posted outside the courtroom during jury selection. The court clerk had placed an easel outside of the courtroom with the style of the case and the docket sheet which provided in capital letters, "REMARKS: JUDGE TERRY TO HEAR/1ST VICTIM.. Defense counsel requested the trial court conduct further investigation into the jury's exposure to extraneous information. The Court of Appeals reversed and remanded for a determination whether jurors were exposed to extraneous prejudicial information regarding accusation of murder of the second child. On remand, the Circuit Court conducted an investigation and ruled that the guilty verdict should not be reversed. Eleven of the twelve jurors and both alternates were located and served with summonses and each juror and alternate was questioned by the trial court independent of the other jurors as to their knowledge of Mr. James being charged in the murder of a second child victim. The trial court refused to allow the attorneys to question the jurors. The trial court and attorneys were unable to locate the twelfth juror. The trial court found that extraneous information had been communicated to the jury, however, the communication was incidental and that the jury verdict should stand. Mr. James appealed and the Court of Appeals affirmed. On certiorari, the Supreme Court reversed and remanded for a new trial finding that the jury considered extraneous prejudicial information and Mr. James did not get a fair trial. Also, they found that the failure to fully reconvene the jury constituted reversible error. Further, they found that the trial court erred when it refused to allow the attorneys to examine the jurors during the May 2001 hearing.

Mr. Jones argues the facts in his case are distinguishable from the facts in Gray and James. First, the court did not ask Juror Dantzler any questions in reference to the allegations made by witness Faye Jackson as the court did in the above referenced cases. She had been selected as a juror and all the evidence in the record suggested Juror Dantzler was competent to serve as a juror. James dealt with extraneous prejudicial information being brought into the jury box and the facts in Gray concerned a juror who had an indirect relationship with the defendant. Both the courts in James and Gray questioned the jurors concerning the allegations that had been made.

In support of his argument, Mr. Jones cites Caldwellv. State, 381 So. 2d 591 (Miss. 1980). In Caldwell, while qualifying the prospective jurors, the trial judge asked whether the state "... ever had to prosecute or present or handle any matter against any member of your family or a close personal friend?" There was no response to this question and both the state and the defendant were allowed to voir dire the prospective jurors. A jury was accepted along with two alternates and were seated to try the case. Before testimony began, Juror Busby was called into chambers along with the state and defense attorney. In response to the trial judge's question, Juror Busby informed the court that her son was under indictment and that she had past experience of having attended youth court with her son. Her response to why she did not respond when the court asked whether a family member had been prosecuted by the state, was that she did not understand the question . At that time, the state was permitted over the objection of the defense to peremptorily challenge and excuse Juror Busby. The defense sought to peremptorily challenge the alternate jury, however, the trial court overruled.

The Supreme Court found that the state did not show any "compelling" reason for excusing Juror Busby on the record wherein she gave no indication and none was otherwise shown that she would be other than a fair and impartial juror. Upon the facts in the record, the Court reversed the

trial court finding err in allowing the state to peremptorily excuse Juror Busby. Id. at 594.

Mr. Jones contends that his case is the same as Caldwell. Juror Dantzler was accepted along with eleven other jurors and two alternates. Here, the entire testimony had been presented. There was an allegation made by a witness who's husband's interest in the case was clearly for the state, because he worked for the Laurel Police Department. There was not any evidence offered to show that Juror Dantzler had any knowledge of the witnesses conduct nor evidence that she did not intend to be a fair and impartial juror. The trial court failed to ask her any questions in reference to the allegations and therefore there is no evidence in the record which would substantiate the witnesses allegations. Juror Dantzler was a competent juror and it was a violation of Mr. Jones' right to due process, to dismiss Juror Dantzler. Further, witness Faye Jackson repeatedly said they only said, " we got a chance to hang the jury." TE. 436, 438, 462. It only takes one juror to hang a jury. It is obvious that Juror Dantzler had not communicated that she was going to hang the jury or the response would have been, "Willie Bell will hang the jury." The court specifically asked Mrs. Jackson if she had information that Juror Bell had personally talked to anyone. TE. 437. Finally, the court clearly did not think witness Faye Jackson had enough information to find Juror Dantzler incompetent. The court stated among many other things, there was not any evidence that convinced him that hurt the credibility of Juror Bell. TE. 445. He also said that Juror Bell had shown no action or reason to take her off the jury and that she had a right to sit on the jury and a right to be accepted on the jury and that he needed some evidence of a conspiracy to remove her. TE. 439-440. Mr. Jones argues that the facts of Gray and James are insufficient to change the courts beliefs.

CONCLUSION

Because the state failed to provide proof that the complainant was fourteen years old or older, the state failed to prove every element of the crime and Mr. Jones' guilt beyond a reasonable doubt. Also, it was err to remove Juror Willie Bell Dantzler because there was never any evidence to show that she was not a fair and impartial juror. Therefore, Mr. Jones' conviction should be reversed and remanded to the trial court for a new trial.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Brenda J. Patterson, Counsel for Joseph Glenn Jones, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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Honorable Anthony J. Buckley
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This the 25th day of April, 2007.

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