

**SUPREME COURT OF MISSISSIPPI**

**COPY**

**CHRISTY HITT**

**v.**

**STATE OF MISSISSIPPI**

**FILED**

**SEP 15 2007**

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SUPREME COURT  
COURT OF APPEALS

*2006-KA-1474-CON*  
~~NO. 2006-KA-0084-NS-G~~

**Appeal from Circuit Court of Neshoba County, Mississippi**

**BRIEF FOR APPELLANT**

**Edmund J. Phillips, Jr.**  
**Attorney for Appellant**  
**P.O. Box 178**  
**Newton, MS 39345**  
**(601) 683-3387**  
**MS. Bar No. [REDACTED]**

Oral argument not requested.

**CERTIFICATE OF INTERESTED PERSONS**

**CHRISTY HITT**

**v.**

**STATE OF MISSISSIPPI**

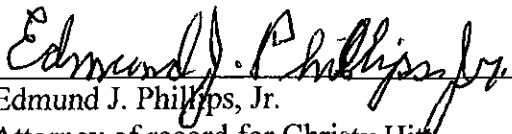
**NO. 2006-KA-0084-NS-G**

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

CHRISTY HITT  
Appellant

Hon. Jim Hood  
Attorney General  
State of Mississippi

Hon. Mark Duncan  
District Attorney

  
\_\_\_\_\_  
Edmund J. Phillips, Jr.  
Attorney of record for Christy Hitt

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### **STATEMENT OF THE ISSUES**

1. The Verdict was against the overwhelming weight of the evidence.
2. The Misstating in the Indictment of an Essential part of the crime charged was reversible Error.

## STATEMENT OF THE CASE

The Appellant, Christy Hitt, appeals her conviction by the Circuit Court of Neshoba County, Mississippi, of simple assault on a police officer in Neshoba County, Mississippi, and a sentence of 3 years in the custody of the Mississippi Department of Corrections.

Two (2) City of Philadelphia, Mississippi Police Officers went to the home of Brett Fox to arrest Appellant for failure to pay delinquent fines. (T-28). Police Officer Cliff Moore testified:

And she - - she stated her left arm was hurt, so she put out her right arm. Then, at that time, I took my handcuffs out, put it on her right arm, and whenever it clicked she snatched away from me, and I tried to grab the cuffs and detain her at the same time. We wrestled around there for a little bit. We fell to the inside of the door, the entrance to the house. We got stood up and I was trying to get her cuffed. She snatched away from me again. She swung at me. I seen it coming. I ducked, and Officer Estess was behind me and that's when he got - - he got hit with the cuffs.

Police Officer Patrick Estess testified as follows (T-41):

- Q. Officer Estess, at the point where you got hit in your eye, can you describe for me where you were standing in relation to Officer Moore and to Christy?
- A. Do In need to stand up for that?
- Q. That'd be great. However you can explain it best.
- A. Okay. Like - - I'm - - like this is the doorway to the home. The car's sitting right here - - parked right here in the carport. Officer Moore is like right in here, almost in the threshold of the doorway, which Christy's got her back to him, which she's in the threshold of the doorway, and I'm standing just - - you know, within half an arm's length of Officer Moore.
- Q. Okay. So, would you describe yourself as standing behind him?
- A. Uh-huh.

- Q. Okay. Now as I read your report - - you did file a report about this incident. Correct?
- A. Yes, sir.
- Q. And you described what happened is, she resisted by pulling away.
- A. Uh-huh.
- Q. And, at that point, you were actually - - there was a officer between you and her?
- A. That's correct.

Officer Estess did not receive treatment for his injuries  
Appellant testified:(T-50-51):

- Q. Okay. Now, where were you in relation to the house when Cliff was in front of you and Patrick was behind you?
- A. Okay. We was up under the carport, and Debra had her Mustang pulled up. I was like standing right in front of the left side of - - in the passenger side of headlight, and Cliff was kind of like right at the fender of the car, and - - uh - - Patrick was behind me.
- Q. Okay. And what happened?
- A. Uh - - whenever he - went to put it on my left arm and I - - you know, I flinched, because I've got - - you know, a real bad scar and it - - uh -
- Q. Okay. What happened - - why do you have a scar on your left arm?
- A. Uh - - I had a head-on - -
- Q. If you will, raise your sleeve and show that to the jury so they can see the scar there.

#### WITNESS RAISES SLEEVE

- A. I had a head-on wreck and - - uh - - I've got six screws, my arm was crushed, and - - uh - - the screw's backing out of it, and its gets on the nerve, and it hurts real bad.
- Q. So, tell me again what happened with the handcuffs?
- A. When he went and put it - - when he went to put it on my arm, I snatched back and Patrick -
- Q. Okay. Now, you told me that you've read the officer's reports.
- A. Yes, sir.
- Q. And you've heard their testimony today.
- A. Yes, sir.

- Q. Okay. Do you agree that their reports say that it was their - - your right arm that he attempted to handcuff?
- A. Yes, sir.
- Q. So you're - - you don't agree with that?
- A. I don't. No.
- Q. You're saying it was your left arm?
- A. Yes, sir.
- Q. And what did you do when he attempted to put handcuffs on your left arm?
- A. I snatched back - - you know.
- Q. Show me the direction your arm went.
- A. Back.
- Q. Okay. What happened when you snatched you arm back like that?
- A. Uh - - he - - he grabbed me and grabbed my left arm and threw me on the hood of the Mustang.
- Q. Okay. Do you know when Patrick Estess got struck?
- A. I had no idea he got struck because he was standing behind me.
- Q. Is it possible that later on, during interaction with the officers, is when he got struck?
- A. No, sir.
- Q. Okay. Have you apologized to Patrick Estess?
- A. Yes, sir. I wrote him a letter, an apology letter, and - - uh - - told him - - you know, that I respect the police officers, and I was sorry that it happened and - -you know - - uh - - that - - uh - -if I was going to get any consequences I deserved them, but I did not - - it was a total accident in him getting hit - - you know, and I was very sorry about him getting hit in the eye.

### **SUMMARY OF THE ARGUMENT**

1. To sustain a conviction the prosecution must prove beyond a reasonable doubt every element of the crime charged.
2. An indictment that misstates the facts constituting an element of the crime charged is substantively defective and a conviction under it must be overturned.



## **ARGUMENT**

### **I.**

#### **THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE**

The burden is on the State to prove beyond a reasonable doubt every element of the crime charged and every material allegations of the crime charged. *Johnson v. Florida*, 391 U.S. 596, 88 S. Ct. 1713, 20 L. Ed. 2d 838 (1968); *Thompson v. City of Louisville*, 362 U.S. 199, 805. Ct. 624, 4L. Ed. 2d 654 (1980).

The necessity of proof by the prosecution beyond a reasonable doubt is guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution. *In re Winship*, 397 U.S. 358, 361 90 S. Ct. 1068, 25 L. Ed. 2d 368, 373 (1970).

In the case before the Court, Appellant's testimony was that, if she did strike police officer Estess, her doing so was accidental. The testimony of the police officers was that she tried to strike one officer and, instead, hit the other one.

According to the testimony of the officers, Appellant and Officer Moore were facing each other at a time when Appellant had a handcuff on her right wrist only and when Estess was behind Moore approximately one-half an arm's length. Assuming a length of chain between the cuffs of two to three inches, the width of the cuff and the length of the chain would have been approximately six inches.

Moore testified (T-28):

She swung at me. I seen it coming. I ducked, and Officer Estess was behind me and that's when he got - - he got hit with the cuffs.

Officer Estess testified (T-39):

“He placed a cuff on her right wrist, and she started screaming something about her wrist was hurting. She jerked away from him and - - uh - - when she did, she turned around and swung, and he - - he ducked and, of course, I was standing behind him . . . . . that’s when I got struck in the - - struck in the eye with the handcuffs.”

Adding the distance between Appellant and Officer Moore, the thickness of Moore’s body and the distance between Moore and Estess results in a distance much in excess of Appellant’s reach.

Appellant’s explanation, that the cuffs were placed on her left arm which had been injured in an automobile accident and which had had six screws inserted in it to hold the bones together, that the pain resulting from placing the handcuffs on it caused her involuntarily to jerk her left arm back, and that Estess was standing behind her and must have been struck when she accidentally jerked her arm back, is much more compatible with the physical facts.

Proof of intent to harm is required by Sec. 97-35-7 (1)(a), Miss. Code of 1972, the statute under which Appellant was charged, and the indictment alleged that Appellant “purposely and knowingly caused bodily injury.” (C.P.3).

Accident is therefore a defense to this charge and a much more likely cause of Estess’s genuinely minor injury (he did not require any medical treatment) than an attempt by Appellant to injure either policeman.

Proof beyond a reasonable doubt of intent to injure was not made and the verdict should be overturned.

## II.

### **THE MISSTATING IN THE INDICTMENT OF AN ESSENTIAL PART OF THE CRIME CHARGED WAS REVERSIBLE ERROR.**

The indictment in the case before the Court charges that Appellant (C.P.3):

**did willfully, unlawfully, feloniously, purposely and knowingly caused bodily injury to Patrick Estes, a human being, and an officer with the Philadelphia Police Department, Philadelphia, Mississippi, while the said Patrick Estes was acting within the scope of his duty as a law enforcement officer with the Philadelphia Police Department, Philadelphia, Mississippi, by striking Patrick Estes in the face, contrary to and in violation of Section 97-3-7(1)(a), Miss. Code Ann. (1972),**

The testimony of two police officers was the only testimony presented by the prosecution. They testified that Appellant tried to strike one officer and, instead, hit the other one.

The indictment allegation that Appellant “purposely and knowingly caused bodily injure” to Officer Estess is an allegation that Appellant attempted to strike Estess.

URCCC T.06 provides that an indictment:

**shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fairly notify the defendant of the nature and cause of the accusation.**

The Sixth Amendment to the United States Constitution entitles an accused “to be informed of the nature and cause of the accusation against him.”

For an indictment to be sufficient, it must allege all essential elements of the crime charged. *Peterson v. State*, 671 So. 2d 647, 653-655 (Miss. 1996). In *Peterson*, at p. 653, the Mississippi Supreme Court quoted with approval from *Love v. State*, 211 Miss. 606, 611, 52 So. 2d 470, 472 (Miss. 1971) the following:

**It is fundamental . . . that an indictment, to be effective as such, must set forth the constituent elements of a criminal offense; if the facts alleged do not constitute such an offense within the terms and meaning of the law or laws on which the accusation is based, or if the facts alleged may all be true and yet constitute no offense, the indictment is insufficient . . . .**

**Every material fact and essential ingredient of the offense**

**– every essential element of the offense – must be alleged with precision and certainty, or, as has been stated, every fact which is an element in a prima facie case of guilt must be stated in the indictment. See *ibid*, secs. 51-63,**

**79: 42 C.J.S., Indictments and Information, Sections 130-137-198. (Emphasis added). *Love v. State*, 211 Miss. At 611, 52 So. 2d at 472.**

Accord: Stinson v. State, 443 So. 2d 869, 873 (Miss. 1983); May v. State, 209 Miss. 579, 584, 47 So. 2d 887 (Miss. 1950).

Sec. 97-35-7(1)(a) Miss. Code of 1972, the provision of law under which Appellant was indicted, requires knowing intent to injure someone or reckless injuring. Appellant was indicted for knowing, purposeful (“purposely and knowingly”) striking Officer Estess. The indictment describes an attempt to injure Estess. The only prosecution testimony described an attempt to strike Officer Moore.

*Docketing  
wrongful intent*

Unless the indictment alleges recklessness the statute requires an effort to injure a specific person. The indictment wrongly identifies that person as Estess. Because the intent is an essential element of the crime of simple assault it must be alleged in the indictment and is a substantive element of the indictment. Mississippi jurisprudence distinguishes between formal and substantial defects in indictments, and holds that formal errors must be demurred to and substantive errors may be brought to the attention of the Court for the first time on appeal. Brewer v. State, 351 So. 2d 535 (Miss. 1977); Copeland v State, 423 So. 2d 1333, 1336, 1337 (Miss. 1982). In Copeland, on p. 133 b, the Court held that:

**A substantive defect in an indictment cannot be cured by  
extrinsic proof and is not waived by failure to demure thereto.**

Emphasis supplied.

This Appellant’s failure at trial to call the defect to the Court’s attention does not prevent his objection to it now.

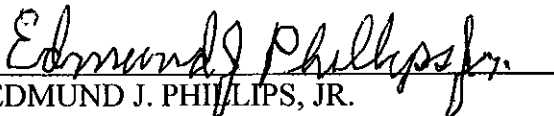
The right of an accused to be informed of the nature and cause of the accusation against him or her includes the requirement that an indictment contain all the essential elements of the offense charged. As a result of the indictment's stating that Appellant "purposely and knowingly" struck Estess, Appellant reasonably could have prepared and relied on a defense that she had no intent to strike Estess. Thus she did not have the actual notice to prepare her defense properly.

### **CONCLUSION**

The misstating in the indictment of an essential part of the crime charged was reversible error.

The verdict should be overturned.


RESPECTFULLY SUBMITTED,

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: September 15, 2007.

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant